


Queensland

# Transport Operations (Marine Safety) Act 1994

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Queensland

# Transport Operations (Marine Safety) Act 1994

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# Transport Operations (Marine Safety) Act 1994

**An Act about marine safety and other matters**

# Part 1 Preliminary

## Division 1 Introduction

### 1 Short title

This Act may be cited as the *Transport Operations (Marine Safety) Act 1994*.

## Division 2 Objectives of Act

### 3 Objectives of this Act

(1) The overall primary objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a system that achieves an appropriate balance between—

(a) regulating the maritime industry to ensure marine safety; and

(b) enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.

(2) In particular, the objectives of this Act are—

(a) to allow the Government to have a strategic overview of marine safety and related marine operational issues; and

(b) to establish a system under which—



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(i) marine safety and related marine operational issues can be effectively planned and efficiently managed; and

(ii) influence can be exercised over marine safety and related marine operational issues in a way that contributes to overall transport efficiency; and

(iii) account is taken of the need to provide adequate levels of safety with an appropriate balance between safety and cost.

(3) These objectives are to be achieved for Queensland regulated ships mainly by—

(a) imposing general safety obligations to ensure seaworthiness and other aspects of marine safety; and

(b) allowing a general safety obligation to be discharged by complying with relevant standards or in other appropriate ways chosen by the person on whom the obligation is imposed.

(4) In particular, a Queensland regulated ship may be taken to sufficiently comply with a general safety obligation even though a competent person has not issued a survey report for the ship.

(5) A further objective of this Act is to manage the operation and activities of ships.

(6) The objectives of the Act, and how they are achieved, are further explained in part 3.

## Division 3 Interpretation and basic concepts

### 4 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.



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## 6 Meaning of ship *connected with Queensland*

A ship is ***connected with Queensland*** if—

(a) it is registered under the *Shipping Registration Act 1981* (Cwlth) with a home port in Queensland; or

(b) it is, or is required to be, registered or licensed under this or another Act; or

(c) it is owned or chartered by—

(i) an individual whose place of residence, or principal place of residence, is in Queensland; or

(ii) a person whose place of business, or principal place of business, is in Queensland; or

(iii) a person whose principal place of business for managing the ship's operations is in Queensland; or

(d) it is a ship declared by regulation to be a ship connected with Queensland.

## 7 Meaning of *master*

(1) The master of a ship is the person having command or charge of the ship.

(2) A pilot having the conduct of a ship, but not belonging to the ship, is not the master of the ship.

## 8 Meaning of *operates* a ship

An owner of a ship ***operates*** the ship if the owner operates the ship or causes or allows it to be operated by someone else.

## 9 Meaning of *owner*

(1) The ***owner*** of a ship is the person who owns the ship, whether or not—

(a) the person is registered as the ship's owner under this Act or a law of another jurisdiction; or



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(b) for a ship that is a domestic commercial vessel—the person holds a certificate of operation for the ship under the national law.

(2) The ***owner*** of a ship includes a person who—

(a) exercises, or purports to exercise, powers of the owner; and

(b) operates the ship or causes or allows it to be operated by someone else.

*Example 1—*

If a ship's owner lives outside Queensland, and the owner appoints an agent in Queensland to exercise the owner's powers and operate the ship, the agent is an owner of the ship.

*Example 2—*

If, under a charter, a person has exclusive possession of a ship and may operate the ship, the person is an owner of the ship.

*Example 3—*

If a bank becomes the mortgagee in possession of a ship and operates it, the bank is an owner of the ship.

## 10 Meaning of *ship*

(1) A ***ship*** is any kind of boat or other vessel used, or intended to be used, in navigation by water or for any other purpose on water.

(2) Without limiting subsection (1), a ***ship*** includes a boat or other vessel—

(a) whatever its size; and

(b) however it is propelled or moved; and

(c) whether it is on land or in water.

(3) A ***ship*** includes, for example—

(a) a barge, lighter or other floating vessel; and

(b) a hovercraft or other surface effect craft.

(4) A ***ship*** does not include a vessel declared by regulation not to be a ship.



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(5) A regulation may provide that a ship includes an aircraft when it is on water or is taking off, or landing on, water.

(6) Except as provided by a regulation under subsection (5), a ship does not include an aircraft.

(7) A reference to a ship includes the ship's equipment.

### 10A Meaning of *Queensland regulated ship*

A ***Queensland regulated ship*** is—

(a) a recreational ship; or

(b) an other Queensland regulated ship.

### 10B Meaning of *recreational ship*

(1) A ***recreational ship*** is—

(a) a ship used only for private recreation; or

(b) a tender to a ship mentioned in paragraph (a).

(2) A regulation may prescribe circumstances in which a ship may be taken to be used only for private recreation.

### 10C Meaning of *other Queensland regulated ship*

An ***other Queensland regulated ship*** is—

(a) a ship that is not a recreational ship or domestic commercial vessel; or

(b) a tender to a ship to which paragraph (a) applies.

## Division 4 Application of Act

### 11 General application of Act to ships

(1) This Act applies to the following ships—



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(a) all ships connected with Queensland, wherever they may be, including while they are outside Queensland waters;

(b) all ships in a pilotage area or port;

(c) all ships on Queensland intrastate voyages, including while they are outside Queensland waters;

(d) all ships on interstate voyages while they are in Queensland waters;

(e) all ships on overseas voyages while they are in Queensland waters.

(2) Subsection (1) is subject to this division.

(3) For the purposes of this section, a ship is taken to be on a voyage from when it gets under way for the voyage until it gets under way for another voyage.

## 12 Relationship with Commonwealth Navigation Act generally

(1) This Act does not apply to a ship to the extent that the Commonwealth Navigation Act applies to the ship.

(2) However, if the Commonwealth Navigation Act provides that it does not apply to a matter if a State Act deals with the matter and this Act makes provision for the matter, this Act applies to the ship to the extent of the provision made for the matter.

## 13 Aids to navigation—relationship with Commonwealth Acts

This Act does not apply to an aid to navigation to the extent to which the Commonwealth Navigation Act or another Commonwealth Act applies to the aid to navigation.



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## 14 Relationship with the national law

(1) The national law applies to particular activities of, and matters relating to, domestic commercial vessels.

(2) This Act does not apply to a domestic commercial vessel to the extent the national law applies to the vessel.

*Note—*

See the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cwlth), section 6(2) for circumstances in which a law of the State may apply in relation to domestic commercial vessels.

(3) Generally, this Act expressly identifies a provision that does not apply to a domestic commercial vessel by stating the provision applies only to a Queensland regulated ship (which does not include a domestic commercial vessel).

(4) However, the absence of a statement of a kind mentioned in subsection (3) does not limit the operation of subsection (2).

## 15 Section 11 subject to certain provisions

(1) The provisions of this Act to which section 11 is subject include the following provisions—

- section 54 (that deals with the application of part 5, division 1)
- section 59A (that deals with the application of part 5, division 2)
- section 61A (that deals with the application of part 5, division 3)
- section 98 (that deals with the application of part 8)
- section 187 (that deals with the application of part 14, division 2).

(2) Section 11 is also subject to a regulation that expressly excludes the application of this section, in whole or in part.

## 16 Defence ships

(1) This Act does not apply to a ship belonging to—



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(a) the Australian Defence Force; or

(b) the naval, military or air forces of a foreign country.

(2) However, if the master of a ship mentioned in subsection (1) voluntarily uses the services of a pilot, the master and owner of the ship are liable for pilotage fees under this Act.

## Division 5 Operation of Act

### 17 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

### 18 Exemption of person or ship from Act

(1) A regulation may exempt a person or ship from this Act or any of its provisions.

(2) The exemption may be given on specified conditions.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

### 18A Exempting of person or ship from regulatory provision

(1) The general manager may exempt a person or ship from a provision of a regulation or a speed limit fixed under section 206A or 206AA (a ***regulatory provision***).

(2) The general manager must consider all relevant matters in deciding whether or not to give an exemption, including, for example, the following—

(a) whether the regulatory provision has been substantially complied with;

(b) whether compliance with the regulatory provision is unnecessary in the particular circumstances;



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(c) whether the action taken or proposed to be taken for the matter that is the subject of the exemption is as effective as, or more effective than, compliance with the regulatory provision.

(3) However, the general manager may give an exemption only if the general manager is satisfied giving it will not adversely affect marine safety or the effectiveness and efficiency of the Queensland maritime industry.

(4) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

(5) The general manager must, as soon as is practicable after giving an exemption, give notice of it in the gazette.

(6) The notice must state the following—

(a) the person or ship the exemption is given for;

(b) the regulatory provision from which the exemption is given;

(c) any conditions on which the exemption is given;

(d) any other details the general manager considers relevant.

(7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to an exemption as if it were a regulation.

(8) A regulation may regulate the giving of an exemption.

(9) Also, if a provision of a regulation is repealed, a regulation may declare that—

(a) an exemption in force for the repealed provision, immediately before its repeal, is taken to be given for a provision of a regulation corresponding to the repealed provision; and

(b) for the purpose of a declaration under paragraph (a), a reference in the exemption to the repealed provision is taken to be a reference to the corresponding provision.



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# Part 3 How to understand this Act

## 28 To which ships does this Act apply

(1) The power to legislate for ships is shared between the Commonwealth and the States and Territories.

(2) As a general rule, this Act does not apply to a ship to the extent to which the Commonwealth Navigation Act or the national law applies to the ship.

*Note—*

See sections 12(1) and 14.

(3) The application of the Commonwealth Navigation Act or the national law to ships varies throughout the Act depending on the subject matter of the provisions concerned.

(4) Section 11(1) provides a general statement of the ships to which this Act applies.

*Note—*

In general terms, these are ships with a sufficient ownership, operational or registration connection with Queensland, ships in Queensland pilotage areas, ports and waters and ships on Queensland intrastate voyages.

(5) This general statement is, however, subject to the application of the Commonwealth Navigation Act, the national law and certain provisions of the Act and regulations.

(6) Section 15 specifies the main exceptions to the general statement.

*Note—*

See also section 16.

## 29 Achieving an appropriate balance between safety and cost

(1) This Act is primarily about marine safety.

(2) Even though it is possible to regulate to achieve the highest level of safety, this would ignore the impact of the regulation



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on the effectiveness and efficiency on the Queensland maritime industry.

(3) Therefore, this Act establishes a system to achieve an appropriate balance between safety and cost.

## 30 What is the system established

(1) Part 4, division 1 imposes general safety obligations for Queensland regulated ships on the following people in the maritime industry—

(a) a competent person who issues a survey report for a ship;

(b) a ship's owner (including an operator);

(c) a ship's master and crew.

(2) Part 4, division 2 imposes general safety obligations for all ships on the following people in the maritime industry—

(a) a ship's pilot;

(b) the managing pilotage entity for a ship in a compulsory pilotage area.

(3) These general safety obligations are generally intended to be performance based rather than prescriptive and to allow people to find more cost efficient ways of achieving safety.

## 31 What is a standard

(1) Standards will help people to understand the general safety obligations for Queensland regulated ships in part 4, division 1.

(2) Standards may deal with most matters about marine safety and issues affecting marine safety that may be dealt with by regulation, including, for example, the crewing and operation of Queensland regulated ships.

(3) However, a standard may not prescribe offences, fees or charges.



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(4) Standards are made by the general manager and approved by the Governor in Council.

(5) The general manager must go through a consultation process before a standard can be approved.

(6) This consultation process allows people in the maritime industry to comment on a standard and make suggestions for changes, including changes that may result in a more effective and efficient maritime industry.

## 32 What happens if a person does not comply with a relevant standard

(1) If a person does not comply with a relevant standard, this may establish noncompliance with a general safety obligation under section 40 or 41.

(2) However, the court may be satisfied that the ship was safe even though the standard was not complied with.

*Example—*

If a ship owner or master operates a recreational ship that does not comply with a standard about the equipment the ship should be equipped with to achieve safety, the noncompliance with the standard may mean section 41 has been contravened. However, the ship owner may satisfy the court the ship was safe, despite noncompliance with the standard.

*Note—*

See section 42 for a fuller statement.

## 33 Role of survey reports in satisfying general safety obligations

A survey report issued by a competent person for a Queensland regulated ship may be used to establish that a general safety obligation under section 40 or 41 has been complied with in whole or part.

*Note—*

See section 42(3)(a).



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## 34 What mechanisms ensure safety

There are various mechanisms in the Act to ensure safety, including, for example, the following—

(a) certain key groups of people need to be licensed under the Act and will be regulated under the licensing system;

(b) owners and masters of Queensland regulated ships are responsible for ensuring the ships are safe;

(c) owners, masters, crew members and other persons involved with the operation of Queensland regulated ships are responsible for ensuring the ships are operated safely;

(d) pilots who have the conduct of ships are responsible for ensuring the ships are operated safely;

(e) Queensland regulated ships must have the required safety equipment;

(f) some Queensland regulated ships need to be registered under this Act;

(g) shipping inspectors are to be appointed and have the power to monitor ships to see if they are safe and are operated safely;

(h) the general manager may require a shipping inspector to investigate a marine incident, or suspected marine incident, involving a Queensland regulated ship;

(i) the chief executive or general manager may suspend or cancel an approval;

(j) the maximum penalties are substantial if a person is found guilty of contravening the Act.

*Note—*

If a provision of this Act provides that the maximum penalty for an offence may be a fine or imprisonment, the court may impose both (*Penalties and Sentences Act 1992*, section 180A). If a body corporate is convicted of an offence against this Act, the court may impose a fine of 5 times the maximum fine that could be imposed on an individual (*Penalties and Sentences Act 1992*,



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section 181B). Thus, for example, the maximum fine that could be imposed on summary conviction on a body corporate ship owner for an offence against section 41 is 2,500 penalty units. If the contravention causes death or grievous bodily harm, the maximum fine on conviction on indictment is 25,000 penalty units.

## 35 How is safety in Queensland waters achieved

(1) Some Queensland waters need to be controlled to ensure safety.

(2) The Act, therefore, allows areas of Queensland waters to be declared as pilotage areas.

(2A) The Act also allows a pilotage area, or part of a pilotage area, to be declared as a compulsory pilotage area.

(3) Control in pilotage areas is achieved by requiring certain ships to use a pilot when the ship is entering, leaving or navigating within a compulsory pilotage area.

(4) Control is also achieved by appointing harbour masters and authorising them to give directions about ships and their navigation.

(5) Part 7 sets out the powers of harbour masters.

## 36 How are harbour masters and shipping inspectors accountable

(1) In exercising a power, harbour masters are accountable to the general manager under the *Public Sector Act 2022* and must comply with part 7.

(2) In exercising a power, shipping inspectors are accountable to the general manager under the *Public Sector Act 2022* and must comply with part 13.

(3) Harbour masters and shipping inspectors are also subject to controls under other laws, including, for example, the *Judicial Review Act 1991*.



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### 37 How is the chief executive accountable

The chief executive must report annually to Parliament through the Minister on the Act's operation.

### 38 Does the Act mention everything that will appear in the regulations and standards

The Act allows for matters to be provided by regulation or standard even though express reference may not be made to the matters in the Act.

*Example—*

Reference is made in the Act to the registration of a Queensland regulated ship, the amendment, renewal, or transfer of the registration of the ship or the exemption of the ship from registration. However, details about these matters are to be found in regulations or standards and not the Act.

### 39 Operation of part

This part does not limit, but may extend, the meaning of—

(a) a provision of another part of this Act; or

(b) a provision of a regulation or standard.

*Example—*

If a regulation provides for a matter and this part mentions the matter, this part cannot be used to limit, but may extend, the regulation making power or the regulation.

# Part 4 General safety obligations

## Division 1 General safety obligations for Queensland regulated ships

### 39A Application of div 1

This division applies only to Queensland regulated ships.



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*Note—*

See the national law, part 3 for general safety duties relating to domestic commercial vessels.

## 40 General safety obligation of competent persons about condition of ships

(1) A competent person who issues a survey report for a ship must ensure that each statement made in the report about the ship's seaworthiness is correct in every material particular.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) However, if—

(a) a particular that was incorrectly declared in the survey report causes a marine incident; and

(b) the marine incident involves the death of, or grievous bodily harm to, a person;

the competent person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

## 41 General safety obligation of ship owners and masters about condition of ships

(1) The owner and master of a ship must not operate the ship unless the ship is safe.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) However, if the contravention of subsection (1) causes a marine incident involving the death of, or grievous bodily harm to, a person, the owner and master commit an indictable offence and are liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(3) For the purposes of this section, a ship is safe if it is seaworthy, and is appropriately equipped and crewed, to meet



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the ordinary perils of the voyage on which the ship is proceeding or about to proceed.

## 42 Relationship between regulatory provisions and general safety obligations for competent persons and ship owners and masters

(1) In this section—

***general safety provision*** means section 40 or 41.

***regulatory provision*** means a provision of a regulation or standard about the condition, equipping or crewing of ships.

(2) This section applies if—

(a) it is claimed in a proceeding that a person contravened a general safety provision because of the condition of a ship or its equipping or crewing (the ***safety issue***); and

(b) a regulatory provision provided a way of dealing with the safety issue to achieve safety.

(3) If it is proved that the safety issue was not dealt with in the way provided by the regulatory provision, the general safety provision is taken to have been contravened unless the court is satisfied that—

(a) to satisfy compliance with the general safety provision, it was reasonable for the person to rely on a survey report issued by a competent person, other than the person, that was in force for the ship and covered the safety issue (completely or partly); or

(b) the general safety provision was complied with, despite noncompliance with the regulatory provision.

(4) In deciding whether the general safety provision had been complied with despite noncompliance with the regulatory provision, the court must have regard to the objectives of this Act.



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## 43 General safety obligation on persons involved with operation of ship

(1) A person involved with a ship's operation (including the owner, master and crew members) must not cause the ship to be operated unsafely.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) Without limiting subsection (1), a person causes a ship to be operated unsafely if the person causes the ship to be operated in a way that—

(a) causes a marine incident; or

(b) contravenes—

(i) a condition of the ship's registration under this Act that is about safety; or

(ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner, master, crew member or other person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(4) A person does not contravene this section because of subsection (2)(a) if the only basis for holding that a marine incident has been caused is lawful damage to, or danger of lawful damage to, property of which the person is the sole owner.

(5) This section does not apply to a ship's pilot.

*Note—*

See section 45 for the obligation on pilots of ships.

(6) In this section—

***lawful damage*** means damage that is not unlawful under the Criminal Code, section 469.



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### 44 Safety equipment obligation

(1) The owner or master of a ship must not operate a ship if—

(a) the ship is required by a regulation to be equipped with safety equipment; and

(b) the ship is not equipped with the safety equipment.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(3) In this section—

***safety equipment*** means equipment that is declared by a regulation to be safety equipment to which this section applies.

## Division 2 Other general safety obligations

### 45 General safety obligation on pilot who has conduct of ship

(1) A pilot who has the conduct of a ship must not cause the ship to be operated unsafely.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) Without limiting subsection (1), a pilot causes a ship to be operated unsafely if the pilot causes the ship to be operated in a way that—

(a) causes a marine incident; or

(b) contravenes—

(i) a condition of the ship's registration under this Act that is about safety; or



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(ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the pilot commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

## 46 General safety obligation on managing pilotage entity

(1) A managing pilotage entity for a compulsory pilotage area must not provide for the piloted movement of ships in the pilotage area in an unsafe way.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) Without limiting subsection (1), a managing pilotage entity causes the piloted movement of ships to be provided in an unsafe way if—

(a) the managing pilotage entity employs an individual as a pilot; and

(b) the individual is not appropriately licensed.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the managing pilotage entity commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.



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# Part 5 Registration, licensing and permits

## Division 1 Registration of Queensland regulated ships

### 54 Application of div 1

A provision of this division applies only to Queensland regulated ships declared by regulation to be ships to which the provision applies.

*Note—*

See the national law, part 4, division 3 for provisions about certificates of operation for domestic commercial vessels.

### 55 Definition for div 1

In this division—

***registered*** means registered under this Act.

### 56 Regulation may require registration of ship

A regulation may require that a ship be registered as a recreational ship or an other Queensland regulated ship.

### 57 Contravention of registration obligations

(1) The owner or master of a ship must not operate the ship if the ship is required to be registered, but is not registered.

Maximum penalty—200 penalty units.

(2) If a ship is registered as a recreational ship, the ship's owner or master must not operate the ship other than as a recreational ship or as otherwise provided for under a regulation.

Maximum penalty—200 penalty units.



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(3) If a ship is registered as an other Queensland regulated ship, the ship's owner or master must not operate the ship for private recreation other than as provided for under a regulation.

Maximum penalty—200 penalty units.

(4) If a ship is registered on conditions, the owner or master must not operate it in contravention of the conditions.

Maximum penalty—200 penalty units.

### 58 Registration, amendment, renewal and transfer etc.

Registration, amendment of registration, renewal of registration, transfer of registration or exemption from registration may be applied for, and granted or refused, as prescribed by regulation.

### 59 Cancellation, suspension and amendment of registration

The chief executive or general manager may cancel or suspend the registration of a ship, or amend the registration of a ship without application by the owner, only by fair procedures prescribed by regulation.

## Division 2 Licensing of masters and crew members of Queensland regulated ships

### 59A Application of div 2

A provision of this division applies only to Queensland regulated ships declared by regulation to be ships to which the provision applies.

*Note—*

See the national law, part 4, division 4 for provisions about certificates of competency for particular duties or functions for domestic commercial vessels.



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### 60 Regulation may require licences

(1) A regulation may require a person to hold a licence—

(a) to operate a ship as its master; or

(b) to act as a crew member of a ship.

(2) In this section—

***licence*** includes a certificate of competency, service or recognition and a permit.

### 61 Operation of ship as master etc. without required licence

(1) A person must not operate a ship as its master if the person is required to be licensed, but is not appropriately licensed.

Maximum penalty—40 penalty units.

(2) A person must not act as a crew member of a ship if the person is required to be licensed, but is not appropriately licensed.

Maximum penalty—40 penalty units.

## Division 3 Licensing of pilots

### 61A Application of div 3

A provision of this division applies only to ships declared by regulation to be ships to which the provision applies.

### 61B Regulation may require pilot licence

(1) A regulation may require a person to hold a licence to have the conduct of a ship as its pilot.

(2) In this section—

***licence*** includes a certificate of competency, service or recognition and a permit.



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### 61C Operation of ship as pilot without required licence

A person must not have the conduct of a ship as its pilot if the person is required to be licensed, but is not appropriately licensed.

Maximum penalty—40 penalty units.

## Division 4 General licence provisions

### 62 Grant, amendment and renewal of licences

(1) The grant, amendment or renewal of a licence may be applied for, and granted or refused, as prescribed by regulation.

(2) A regulation may make provision for licences to be granted, amended or renewed—

(a) by the chief executive or general manager; or

(b) by an entity accredited, under the regulation, by the chief executive or general manager.

(3) Also, a regulation may provide for either the chief executive or the general manager—

(a) to conduct examinations, or to approve an entity to conduct examinations, to establish whether a person meets a requirement under a regulation; or

(b) to approve an entity to conduct training programs about the operation of Queensland regulated ships.

(4) Without limiting subsection (2), a regulation may provide for the following—

(a) a marine licence indicator to be in the form approved by the chief executive or general manager, including a card on which information may be stored electronically;

(b) a PIN to be used by the holder of a smartcard marine licence indicator as a security measure to protect information stored electronically on the smartcard marine licence indicator.



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## 62A When licence is void

A licence obtained by a false statement or misrepresentation is void.

## 63 Cancellation, suspension and amendment of licences

The chief executive or general manager may cancel or suspend a licence, or amend a licence or marine licence indicator without application by the licensee, only by fair procedures prescribed by regulation.

*Note—*

Section 202C(1) provides that, when an order is made under section 202A for a person, a licence, and any subsisting licence, held by the person for whom the order is made is cancelled. Also, section 202I provides for a regulation-making power for cancelling or suspending a restricted licence.

## 63AA Smartcard marine licence indicator is property of the State

(1) A smartcard marine licence indicator is and remains the property of the State.

(2) Subsection (1) applies even though a person other than the State—

(a) has the right to use information that is on the smartcard marine licence indicator or stored electronically on it; or

(b) has the right to have information stored on the smartcard marine licence indicator.

(3) The State is not legally liable for an act or omission relating to the keeping or use of the smartcard marine licence indicator.



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# Division 5 Restricted release of information about marine licences

## 63I Restricted written release of information

(1) The chief executive or general manager may release, in writing, information kept under this Act about a person's marine licence or marine history to—

(a) on receiving an application in the approved form—

(i) the person; or

(ii) with the person's written consent—another person; or

(b) the commissioner of the police service for the purpose of any function of the commissioner or any function of the police service; or

(c) an entity that, under an agreement between the State and other governments, maintains a database containing information about marine licences and marine histories.

(2) Also, the chief executive may release, in writing, to an entity information kept under this Act about a person's marine licence if—

(a) the person produces the person's smartcard marine licence indicator to the entity as proof of the person's identity; and

(b) the entity applies in the approved form for the information; and

(c) the information is necessary to verify the validity of the smartcard marine licence indicator.

(3) Before releasing information to a person or entity under subsection (1)(c), the chief executive or general manager must be satisfied any release of the information by the person or entity will be limited to circumstances similar to those mentioned in subsection (1).



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(4) An application mentioned in subsection (1)(a) or (2)(b) may be made by electronic communication.

(5) This section does not limit section 205B.

*Note—*

Section 205B deals with the electronic search of information to verify that a person is the holder of a licence under this Act.

### 63J Restricted oral release of particular information

(1) The chief executive may orally release, to a person, information kept under this Act about the person's marine licence or marine history.

(2) However, subsection (1) applies only if the chief executive is satisfied that the person is the person to whom the information relates.

*Example for subsection (2)—*

The chief executive may be satisfied as required under subsection (2) if the person correctly answers a series of questions, or produces a document, for identifying the person.

# Part 6 Pilotage areas

### 71 Pilotage areas and compulsory pilotage areas

A regulation may—

(a) declare—

(i) an area of Queensland waters to be a pilotage area; or

(ii) a pilotage area, or part of a pilotage area, to be a compulsory pilotage area; or

(b) close a pilotage area or a part of a pilotage area.



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## 71A Who is the *responsible pilotage entity* for a compulsory pilotage area

(1) The ***responsible pilotage entity*** for a compulsory pilotage area is the entity prescribed under a regulation as the responsible pilotage entity for the pilotage area.

(2) A responsible pilotage entity has the function of providing, or arranging for the provision of, pilotage services in its compulsory pilotage area.

## 72 Harbour master may permit ship navigation in closed pilotage area

(1) If a pilotage area or part of a pilotage area is closed by regulation, a harbour master may permit a person to—

(a) cause a ship to enter, leave or navigate in the area or part; or

(b) anchor, berth or moor a ship in the area or part.

(2) If it is not practicable for the harbour master to give the person a written permission under subsection (1), the harbour master must make a written note of the permission and its details.

## 73 Failure to comply with closure of pilotage area

(1) This section applies if a regulation closes a pilotage area or part of a pilotage area.

(2) A person must not, without the permission of a harbour master—

(a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or

(b) anchor, berth or moor a ship in the pilotage area or part, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.



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# Part 7 Harbour masters

## Division 1 General

### 74 Appointment of harbour masters

(1) The chief executive may appoint an officer or employee of MSQ to be a harbour master.

(2) A person appointed as a harbour master is a shipping inspector without further appointment.

### 75 Only qualified persons may be appointed as harbour masters

The chief executive may appoint a person to be a harbour master only if—

(a) in the chief executive's opinion, the person has the necessary expertise or experience to be a harbour master and shipping inspector; or

(b) the person has satisfactorily finished training approved by the chief executive.

### 76 Limitations on powers of a harbour master

(1) The powers of a harbour master may be limited—

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by notice of the chief executive given to the harbour master.

(2) In exercising a power, a harbour master is subject to the direction of the general manager.



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## 77 Harbour master to consult with port authority

(1) Before a harbour master exercises a power that may affect the functions of a port authority, the harbour master must consult with the port authority to the extent reasonably practicable.

(2) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

## 77A Harbour master to consult with waterways authority

(1) Before a harbour master exercises a power that may affect the functions of a waterways authority, the harbour master must consult with the waterways authority to the extent reasonably practicable.

(2) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

## 78 End of appointment

The appointment of a person as a harbour master ends if the person ceases to be an officer or employee of MSQ.

## 79 Delegation by harbour master

(1) A harbour master may delegate the harbour master's functions to—

(a) an officer or employee of the public service who the harbour master is satisfied has the necessary expertise or experience to exercise the functions; or

(b) a shipping inspector; or

(c) an officer or employee of a port authority; or

(ca) an employee of MSQ; or

(d) a police officer; or

(e) someone else prescribed by regulation.



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(2) A delegation under subsection (1)(d) has effect only if the commissioner of the police service has given written approval to the proposed delegation.

(3) In this section—

***functions*** include powers.

## 80 Identity cards

(1) The chief executive must give an identity card to each harbour master.

(2) A harbour master who delegates functions or powers to a person, other than a shipping inspector, must give an identity card to the person.

(3) The identity card of a harbour master or a harbour master's delegate must—

(a) contain a photograph of the harbour master or delegate; and

(b) be in a form approved by the chief executive; and

(c) be signed by the harbour master or delegate.

(4) A person who ceases to be a harbour master or delegate must return the person's identity card to the chief executive as soon as is practicable after the person ceases to be a harbour master or delegate, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (4)—40 penalty units.

## 81 Proof of authority

(1) A harbour master must display the harbour master's identity card for inspection by a person if the harbour master, in person, gives a direction to the person or exercises another power in relation to the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the harbour master must produce the identity



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card for inspection by the person at the first reasonable opportunity.

(3) If a harbour master gives a written direction to a person, the written direction must be on letterhead approved by the chief executive.

(4) If a harbour master gives a direction to a person by radio, megaphone or another form of distance communication, the harbour master must identify himself or herself as a harbour master.

## 82 Protection from liability

(1) A harbour master is not civilly liable for an act or omission done honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a harbour master, the liability attaches instead to the State.

## 83 Harbour masters to give notice of damage

(1) A harbour master who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.

(2) The notice must be given—

(a) if the thing is a ship or is on a ship—to the ship's master; or

(b) in any other case—to the person who appears to the harbour master to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the harbour master must—

(a) leave the notice on the thing that is damaged; and

(b) ensure the notice is left in a reasonably secure way in a conspicuous position.



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### 84 Impersonation of harbour master

A person must not pretend to be a harbour master.

Maximum penalty—40 penalty units.

### 85 Obstruction of harbour master

A person must not obstruct a harbour master in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

## Division 2 Powers of harbour masters

## Subdivision 1 Powers of direction

### 86 General limitation on harbour master's power to give directions under subdivision

(1) A harbour master may give a direction under this subdivision only if the harbour master reasonably considers it necessary to give the direction to ensure safety.

(2) In giving the direction, the harbour master must have regard to the need to ensure the effectiveness and efficiency of the Queensland maritime industry.

### 86A Direction may be general or particular

(1) A direction under this subdivision may be given as a general direction or particular direction.

(2) A ***general direction*** is a direction that—

(a) applies to all ship owners, ship masters, ships, other persons or matters; or

(b) is limited in its application to stated classes of ship owners, ship masters, ships, other persons or matters; or



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(c) otherwise applies generally or generally with stated exceptions or factors.

(3) A general direction may—

(a) make different provision for different ship owners, ship masters, ships, other persons or matters, or different classes of ship owners, ship masters, ships, other persons or matters; or

(b) apply differently to stated exceptions or factors.

(4) A ***particular direction*** is a direction that applies to—

(a) a particular ship owner or ship master, including an owner or master mentioned in the direction only as the owner or master of a stated particular ship; or

(b) a particular ship; or

(c) another particular person or matter.

(5) A general direction or particular direction may be given orally, in writing or in another way.

(6) Without limiting subsection (5)—

(a) an oral direction may be given by the harbour master, an agent of the harbour master or a shipping inspector—

(i) personally to a person; or

(ii) by phone, radio or another form of electronic communication; or

(iii) by megaphone or another form of distance communication; or

(b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or

(c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to any



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person to whom it applies, including, for example, by use of flags or lights.

(7) For a particular direction applying to a ship's master, the direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship's master.

(8) A particular direction given under subsection (7) to a person in control of a ship, other than the ship's master, is taken to have been given to the ship's master.

(9) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.

## 87 Power of Minister to require directions

(1) The Minister may ask the chief executive to require a harbour master to give a direction under this subdivision.

(2) Section 86 does not apply to the giving of the direction by a harbour master.

(3) A request may only be made by the Minister if the Minister is satisfied that exceptional circumstances exist to justify the Minister's intervention in the public interest.

(4) If the Minister makes a request under this section, the request must be—

(a) notified in the gazette as soon as practicable after it is made; and

(b) tabled in the Legislative Assembly within 14 days after it is given.

## 87A Owner of ship lost, abandoned or stranded

(1) This section applies if—

(a) a ship is lost, abandoned or stranded; and



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(b) a harbour master may, or is required to, give a direction under this subdivision to a person about the ship.

(2) For this division, the person who was the recorded owner of the ship immediately before the ship was lost, abandoned or stranded is taken to be the owner of the ship and the person to whom the direction may or must be given, unless the contrary is proved.

(3) Without limiting subsection (2), if a harbour master incurs expense (whether the expense is the harbour master's expense or the State's expense) in exercising a power under section 93 in relation to the direction, the person taken to be the owner under subsection (2) is the person who is liable for the amount of the expense that may, under section 94, be recovered from the owner of the ship.

(4) If, under subsection (2), more than 1 person is taken to be the owner of the ship, on the giving of the direction to any of the owners, all of the owners are jointly and severally liable for the amount of the expense mentioned in subsection (3).

(5) In this section—

***recorded owner*** means—

(a) for a domestic commercial vessel—the holder of the vessel's certificate of operation under the national law; or

(b) for another ship—the person in whose name the ship is registered under this Act or a law of another jurisdiction, whether inside or outside Australia.

## 87B Direction to master about operation of ship in relation to a marine incident area

(1) A harbour master may direct the master of a ship to operate the ship in a stated way.

(2) Without limiting subsection (1), the harbour master may direct the master of a ship in or adjacent to a marine incident area to operate the ship in a stated way, including, for example, in any of the following ways—



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(a) not to cause the ship to enter the marine incident area;

(b) to cause the ship to enter the marine incident area in a stated way;

(c) to navigate the ship in the marine incident area in a stated way;

(d) to anchor, berth or moor the ship at a stated place in the marine incident area;

(e) to move the ship from an anchorage, berth or mooring in the marine incident area;

(f) to cause the ship to leave the marine incident area or to leave the marine incident area in a stated way.

(3) A person must not contravene a direction under this section, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

## 88 Direction to master about operation of ship in relation to pilotage area

(1) A harbour master may direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage area in a specified way, including, for example—

(a) not to cause the ship to enter the pilotage area; or

(b) to cause the ship to enter the pilotage area in a specified way; or

(c) to navigate the ship in the pilotage area in a specified way; or

(d) to anchor, berth or moor the ship at a specified place in, or adjacent to, the pilotage area; or

(e) to move the ship from an anchorage, berth or mooring in the pilotage area; or

(f) to cause the ship to leave the pilotage area or to leave the pilotage area in a specified way.



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(2) A person must not contravene a direction under subsection (1), unless the person has a reasonable excuse for the contravention.

Maximum penalty for subsection (2)—200 penalty units.

## 88A Direction to managing pilotage entity about pilotage services

(1) A harbour master may direct a managing pilotage entity for a compulsory pilotage area to provide, or arrange for the provision of, pilotage services in the pilotage area in a specified way.

(2) The managing pilotage entity must not contravene a direction under subsection (1), unless the managing pilotage entity has a reasonable excuse for the contravention.

Maximum penalty for subsection (2)—200 penalty units.

## 89 Direction to person in charge of a place

(1) A harbour master may direct the person in charge of a place in, or adjacent to, a marine incident area or pilotage area—

(a) to allow a ship to be berthed at the place or moved from the place; or

(b) to allow access through the place to and from the ship.

(2) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—200 penalty units.

## 90 Direction to person carrying out works

(1) A harbour master may direct a person who is carrying out construction work in or near a marine incident area or pilotage area to light or mark the works in a specified way.

(2) The direction may specify when the action is to be taken.



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(3) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—200 penalty units.

## 91 Direction to person about obstruction

(1) A harbour master may direct a person responsible for something that is obstructing, or may obstruct, navigation to remove it.

(2) The direction may specify how, when and to where the thing must be moved.

(3) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—200 penalty units.

## 92 Direction to person to put out certain lights etc.

(1) This section applies if a harbour master reasonably believes a light, sign, signal, electrical or radio installation or equipment or anything else (a ***source of interference***)—

(a) may be or has been mistaken for, may interfere or is interfering with, or may otherwise affect or is otherwise affecting the proper operation of, an aid to navigation; or

(b) may otherwise affect the safe operation of ships.

(2) The harbour master may direct the following persons to put out, remove or screen the source of interference, or to take other specified action in relation to the source of interference—

(a) the owner or occupier of the place where the source of interference is situated;

(b) the person the harbour master reasonably believes owns or is responsible for the source of interference.



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(3) The direction may specify how and when the action is to be taken.

(4) A person must comply with a direction under subsection (2), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (4)—200 penalty units.

## Subdivision 2 Other powers

### 93 Harbour master may carry out direction

(1) This section applies if—

(a) a person has contravened a direction under subdivision 1 that the person must comply with; or

(b) a harbour master reasonably believes there is no-one to whom a proposed direction under subdivision 1 may be given and, because of urgent circumstances, the harbour master must act under this section.

(2) The harbour master may, to the extent necessary to ensure safety as mentioned in section 86(1), carry out the direction or proposed direction.

(3) Without limiting subsection (2), the harbour master may—

(a) board a ship and operate it, including, for example, by moving or navigating it; or

(b) enter or remain in a place in, or adjacent to, a marine incident area or pilotage area in order to board a ship and anchor, berth, moor or move it; or

(c) light or mark construction works; or

(d) remove a thing that is obstructing, or may obstruct, navigation; or

(e) put out, remove or screen, or take other action in relation to, a source of interference.



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(4) If the harbour master attaches the ship (the ***first ship***) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.

## 94 Recovery by State of expenses of carrying out direction

(1) This section applies if a harbour master incurs expense (whether the expense is the harbour master's expense or the State's expense) in exercising a power under section 93.

(2) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the persons liable for the expense.

(3) The following persons are liable for the expense—

(a) if a direction was given to a person under section 87B, 89, 90, 91 or 92 and the person did not comply with the direction—the person;

(b) if a direction under section 87B, 89, 90, 91 or 92 could have been given to a person but was not given for the reasons mentioned in section 93(1)(b)—the person;

(c) if a direction under section 88 was given to the master of a ship and the master did not comply with the direction—the master and the owner of the ship;

*Note for paragraph (c)—*

Under section 86A(8) a direction given to the person in control of a ship is taken to have been given to the ship's master.

(d) if a direction under section 88 could have been given to the master of a ship but was not given for the reasons mentioned in section 93(1)(b)—the master and the owner of the ship.

(4) If, under subsection (3), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

(5) In this section—



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***direction*** means—

(a) a direction given under subdivision 1 that, under the subdivision, a person must comply with; or

(b) a direction that could have been given under subdivision 1 and, if it had been given under the subdivision, a person would have been required to comply with.

## 95 Temporary closure of pilotage area by harbour master

(1) A harbour master may close a pilotage area or a part of a pilotage area if the harbour master is satisfied that the closure is required for a limited period to ensure safety.

(2) The harbour master must take the steps necessary to ensure that ships that may be affected by the closure are aware of it.

(3) The harbour master must revoke the closure when the harbour master ceases to be satisfied that the closure is still required to ensure safety.

(4) However, the closure ends 14 days after the closure is made if it is not earlier revoked.

(5) When the closure ends, the harbour master must immediately take the steps necessary to ensure that ships that may be affected by the closure are aware of the ending of the closure.

## 96 Harbour master may permit ship navigation in closed pilotage area

(1) If a pilotage area or part of a pilotage area is closed by a harbour master, a harbour master may permit a person to—

(a) cause a ship to enter, leave or navigate in the pilotage area or part; or

(b) anchor, berth or moor a ship in the pilotage area or part.

(2) If it is not practicable for the harbour master to give written permission under subsection (1), the harbour master must make a written note of the permission and its details.



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### 97 Failure to comply with closure of pilotage area by harbour master

(1) This section applies if a harbour master closes the area or part of a pilotage area.

(2) A person must not, without a harbour master's permission—

(a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or

(b) anchor, berth or moor a ship in the pilotage area or part, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—200 penalty units.

# Part 8 Pilots

### 98 Application of part

This part applies only to ships declared by regulation to be ships to which the part applies.

### 99 Pilots required for ship navigation in compulsory pilotage area

A person must not navigate a ship in a compulsory pilotage area unless the person uses the services of a pilot.

Maximum penalty—200 penalty units.

### 100 Regulations about pilotage

A regulation may provide for the duties of—

(a) a ship's owner and master to arrange for pilotage; and

(b) a ship's master to ensure the safety of a pilot when the pilot is boarding, leaving or on board the ship; and

(c) a ship's master to enable the pilot to discharge the pilot's duties; and



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(d) a pilot of a ship to ensure the safety of the ship in the pilotage area, whether the use of the pilot is required or voluntary; and

(e) a pilot's employer—

(i) to equip the pilot; and

(ii) to develop and maintain the skills needed by the pilot to discharge the pilot's duties; and

(f) a master exempted from pilotage under a regulation.

## 101 Immunity for pilots and general employers

(1) A conducting pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot.

(2) A supervising pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot or the supervising pilot.

(3) The general employer of a conducting pilot or supervising pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot or supervising pilot.

(4) Subsections (1) to (3) do not affect—

(a) any liability of a conducting pilot or supervising pilot's general employer for not appointing a qualified and competent person as a pilot; and

(b) any liability of a ship's master and owner.

(5) In this section—

***conducting pilot*** means a pilot who has the conduct of a ship as its pilot.

***general employer***, of a conducting pilot or supervising pilot, means—

(a) the responsible pilotage entity for the compulsory pilotage area in which the pilot is acting to supply pilotage services; or



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(b) if the responsible pilotage entity for a compulsory pilotage area has entered into a written agreement with another entity for the other entity to supply pilotage services in the pilotage area and the pilot is acting in the supply of the services—each party to the agreement.

***supervising pilot*** means a person who is licensed under a regulation as a pilot and who is on board a ship to train a conducting pilot or assess a conducting pilot's competence as a pilot.

## 102 Liability of owner or master of ship under pilotage

(1) The pilot who has the conduct of a ship is subject to the master's authority.

(2) The master of a ship is not relieved from responsibility for the ship's operation merely because the ship is under pilotage.

(3) The owner and master of a ship being navigated by a pilot because the pilotage is compulsory under this Act or another Act is liable for loss or damage caused by the ship, or by a fault of the navigation of the ship, as if the pilotage were not compulsory.

## 102A Restriction on conduct of ship by pilot

(1) A pilot must not have the conduct of a ship as its pilot in a compulsory pilotage area unless the pilot—

(a) is an employee of the responsible pilotage entity for the compulsory pilotage area; or

(b) is acting in the supply of pilotage services the subject of a written agreement between—

(i) the responsible pilotage entity for the compulsory pilotage area; and

(ii) the pilot or another entity.

Maximum penalty—40 penalty units.



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(2) Despite subsection (1), a pilot may have the conduct of a ship as its pilot in a compulsory pilotage area if another pilot (the ***supervisor***) is training the pilot, or assessing the pilot's competence, and the supervisor—

(a) is an employee of the responsible pilotage entity for the compulsory pilotage area; or

(b) is acting in the supply of pilotage services the subject of a written agreement between—

(i) the responsible pilotage entity for the compulsory pilotage area; and

(ii) the supervisor or another entity.

(3) Subsections (1) and (2) do not limit section 61C.

### 103 Offence of impersonating a pilot

A person must not pretend to be a pilot.

Maximum penalty—40 penalty units.

# Part 9 Aids to navigation

### 104 Meaning of *aid to navigation*

(1) An ***aid to navigation*** is a device designed to be used for navigation or the guidance of mariners, including a device to help in—

(a) fixing a ship's position; or

(b) deciding a safe course for a ship; or

(c) warning a ship of dangers or obstructions.

*Examples—*

beacon, buoy, light, lighthouse, marine mark, radio aid or signal

(2) An ***aid to navigation*** includes any structure or equipment ancillary to the aid to navigation.



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*Examples—*

1 the battery house providing a lighthouse with power

2 lifesaving equipment that is part of an aid to navigation

(3) However, an ***aid to navigation*** does not include a device on board a ship.

## 105 General manager may set up aid to navigation

(1) The general manager may set up an aid to navigation—

(a) in or near a pilotage area; and

(b) in any other place where the general manager considers the aid to navigation is desirable to ensure the safety of people or ships or other property.

(2) The general manager may enter into agreements for setting up an aid to navigation.

(3) This section does not limit other powers that the general manager has to set up aids to navigation.

## 105A Gold Coast Waterways Authority may set up aid to navigation

(1) Without limiting section 105, the Gold Coast Waterways Authority may set up an aid to navigation in Gold Coast waters—

(a) in or near a pilotage area; and

(b) in any other place where the authority considers the aid to navigation is desirable to ensure the safety of people or ships or other property.

(2) The Gold Coast Waterways Authority may enter into agreements for setting up an aid to navigation.

(3) This section does not limit other powers that the Gold Coast Waterways Authority has to set up aids to navigation.



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## 105B Sunshine Coast Waterways Authority may set up aid to navigation

(1) Without limiting section 105, the Sunshine Coast Waterways Authority may, with the approval of the general manager, set up an aid to navigation in the Sunshine Coast waterways—

(a) in or near a pilotage area; and

(b) in any other place where the authority considers the aid to navigation is desirable to ensure the safety of people or ships or other property.

(2) However, the approval of the general manager is not required to maintain an aid to navigation.

(3) The Sunshine Coast Waterways Authority may enter into agreements for setting up an aid to navigation.

(4) In this section—

***Sunshine Coast waterways*** see the *Sunshine Coast Waterways Authority Act 2026*, section 7.

## 106 Unlawful interference with an aid to navigation

(1) A person must not unlawfully interfere with an aid to navigation.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) However, if—

(a) the interference with the aid causes a marine incident; and

(b) the marine incident involves the death of, or grievous bodily harm to, a person;

the person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(3) A person unlawfully interferes with an aid to navigation if the person wilfully, and without authority, justification or excuse,



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detrimentally interferes with the effective or efficient operation of the aid.

*Examples of detrimental interference—*

1 A person removes, alters, damages or disturbs the aid.

2 A person obstructs the operation of the aid.

## 107 Trespassing on aid to navigation

A person must not—

(a) moor a ship to an aid to navigation or climb the aid, unless the person has a reasonable excuse for mooring the ship or climbing the aid; or

(b) if the aid to navigation is a lighthouse—enter the lighthouse or any enclosed area around the lighthouse, unless the person has a reasonable excuse for entering the lighthouse or area.

Maximum penalty—40 penalty units.

## 107A Damage to an aid to navigation

(1) This section applies if a ship damages or destroys an aid to navigation.

(2) The master and the owner of the ship are jointly and severally liable for the expense of repairing or reinstating the aid to navigation.

(3) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the master and the owner of the ship.



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# Part 11 Marine incidents

## Division 1 Preliminary

### 123 What is a *marine incident*

(1) A ***marine incident*** is an event causing or involving—

(a) the loss of a person from a ship; or

(b) the death of, or grievous bodily harm to, a person caused by a ship's operations; or

(c) the loss or presumed loss or abandonment of a ship; or

(d) a collision with a ship; or

(e) the stranding of a ship; or

(f) significant damage, or danger of significant damage, to a ship; or

(g) significant damage caused by a ship's operations; or

(h) danger of significant damage to a structure caused by a ship's operations; or

(i) danger to a person caused by a ship's operations.

(2) A ***marine incident*** also includes another event prescribed by regulation.

(3) However, a ***marine incident*** does not include an event declared by regulation not to be a marine incident.

## Division 2 Marine incidents involving Queensland regulated ship

### 123A Application of div 2

This division applies to a marine incident only if it involves at least 1 Queensland regulated ship.



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*Note—*

See the national law, sections 88 to 90 in relation to marine incidents, as defined in that law, involving domestic commercial vessels.

## 124 Duties of masters to help if a marine incident happens involving 2 or more ships

(1) This section applies to a marine incident involving 2 or more ships.

(2) The master of a Queensland regulated ship involved in the marine incident must, to the extent that the master can do so without danger to the master's ship or persons on board the master's ship—

(a) give to each other ship involved in the incident, its master and persons on board the ship the help necessary to save them from danger caused by the marine incident; and

(b) stay by the other ship until the other ship does not need further help; and

(c) give to the master of the other ship reasonable particulars adequate to identify the ship and its owner.

Maximum penalty—

(a) for contravention of paragraph (a) or (b)—500 penalty units or imprisonment for 1 year; or

(b) for contravention of paragraph (c)—40 penalty units.

(3) However, if the contravention of subsection (2)(a) or (b) causes the death of, or grievous bodily harm to, a person, the master commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

## 125 Marine incidents must be reported

(1) If a marine incident causing or involving the loss or presumed loss or abandonment of a Queensland regulated ship happens, the owner of the ship must report the marine incident to a



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shipping inspector at the earliest opportunity, but within 48 hours after the owner becomes aware of the incident, unless the owner has a reasonable excuse for not complying with this subsection.

Maximum penalty—40 penalty units.

(2) If—

(a) a Queensland regulated ship is involved in another type of marine incident; or

(b) a Queensland regulated ship's master has reason to believe that the ship has been involved in another type of marine incident;

the master of the ship must report the marine incident to a shipping inspector within 48 hours after the incident happens, unless the master has a reasonable excuse for not complying with this subsection.

Maximum penalty—40 penalty units.

(3) If the report under subsection (1) or (2) is not made to the shipping inspector in the approved form, the owner or master must make a further report about the marine incident to a shipping inspector in the approved form at the earliest opportunity.

Maximum penalty—40 penalty units.

(4) It is a reasonable excuse if the owner under subsection (1), or the master under subsection (2), did not have access to a way of reporting the marine incident within the time stated in the relevant subsection.

(5) Subsection (4) does not limit the circumstances that may constitute a reasonable excuse under subsections (1) and (2).

## 126 Investigation process into marine incident

(1) If—

(a) a marine incident happens; or



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(b) the general manager believes that a marine incident may have happened, even though it has not been reported;

the general manager may require a shipping inspector to investigate the matter.

(2) After finishing the investigation, the inspector must report the results of the investigation to the general manager.

(3) If, after considering the report, the general manager is satisfied that a marine incident has happened, the general manager may, in the way prescribed by regulation, cancel, suspend or amend an approval of a Queensland regulated ship or person involved in the incident.

(4) Subsections (2) and (3) do not prevent the general manager from—

(a) requiring the inspector to provide interim reports to the general manager; or

(b) taking action mentioned in subsection (3) before the inspector has finished the inspector's investigation.

## 127 Regular reports of marine incidents to Minister

(1) The chief executive must prepare a report for each calendar year about all marine incidents reported within the year.

(2) The report need only contain general particulars of each marine incident and a statistical analysis.

(3) The report must be given to the Minister within 6 months after the year to which the report relates.

(4) The Minister may appoint a person who is not an officer or employee of a public sector unit to review the report and give the Minister any recommendations the person considers appropriate.

(5) The chief executive must give the person any reasonable help the person requires.



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### 128 Report and any recommendations to be tabled

(1) The Minister must table a copy of each report under section 127 in the Legislative Assembly within 30 days after receiving the report.

(2) The Minister must also table a copy of recommendations made to the Minister under section 127(4) about the report in the Legislative Assembly within 30 days after receiving the recommendations.

## Division 3 Other obligations and exclusion zones

### 129 Report of dangers to navigation

(1) This section applies if the master of a ship becomes aware of something in the ship's vicinity that is a danger to navigation.

*Examples of possible dangers to navigation—*

1 an abandoned ship

2 a damaged aid to navigation

3 a tropical storm, cyclone or similar weather conditions

(2) If the ship is fitted with a working radio, the master must promptly send out the signal prescribed by regulation followed by a message giving the information required by regulation to ships in the vicinity and the nearest harbour master or coastal radio station.

Maximum penalty for subsection (2)—40 penalty units.

(3) If the ship is not fitted with a working radio, the master must promptly communicate the information required by regulation by any other available form of communication to ships in the vicinity and as soon as practicable inform a harbour master or coastal radio station of the information.

Maximum penalty for subsection (3)—40 penalty units.



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## 130 Obligation of master to give help

(1) If the master of a Queensland regulated ship at sea has reason to believe that persons on or from a ship or aircraft are in distress at sea, the master must, unless the master cannot do so or, in the special circumstances of the case, considers it unreasonable or unnecessary to do so, go as quickly as possible to help the persons and, if possible, inform them that this is happening.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) The master of a ship or aircraft in distress at sea may, after consultation as far as practicable with the masters of ships that answer the master's call for help, requisition any Queensland regulated ships that the master considers best able to help.

(3) The master of a Queensland regulated ship requisitioned under subsection (2) must comply with the requisition by going as quickly as possible to help the persons in distress.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(4) However, if the contravention of subsection (1) or (3) causes the death of, or grievous bodily harm to, a person, the relevant master commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(5) If the master of a Queensland regulated ship that has not been requisitioned is informed of the requisition of another ship and that the requisition is being complied with by the other ship, the master is released from the master's obligation under subsection (1).

(6) If the master of a Queensland regulated ship is informed by persons in distress, or by the master of another ship that has reached persons in distress, that help is no longer necessary, the master is released from any obligation under subsection (1) or (3) in relation to the persons.

(7) The master of a Queensland regulated ship must make a record—



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(a) of any information received by the master that persons on or from a ship or aircraft are in distress at sea; and

(b) if the master did not go as quickly as possible to help the persons—the master's reasons.

Maximum penalty—500 penalty units.

*Note—*

See also the national law, sections 85 to 87 in relation to obligations on masters of domestic commercial vessels.

## 130A Temporary declaration of exclusion zone by general manager

(1) The general manager may declare a stated area around a ship involved in a marine incident to be an exclusion zone if the general manager is reasonably satisfied the declaration is required for a limited period to ensure safety.

(2) The general manager must take the steps necessary to ensure ships that may be affected by the declaration are aware of it, including, for example, by a notice to mariners.

(3) The general manager must revoke the declaration when the general manager ceases to be satisfied that the exclusion zone is still required to ensure safety.

(4) The declaration ends 28 days after the declaration is made if it is not earlier revoked.

(5) When the declaration ends under subsection (3) or (4), the general manager must immediately take the steps necessary to ensure ships that may be affected by the exclusion zone are aware of the ending of the exclusion zone.

## 130B Failure to comply with declaration of exclusion zone by general manager

(1) This section applies if the general manager declares an exclusion zone under section 130A.

(2) A person must not, without the general manager's permission—



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(a) cause a ship to enter or navigate in the exclusion zone, unless the person has a reasonable excuse; or

(b) anchor, berth or moor a ship in the exclusion zone, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—200 penalty units.

# Part 13 Shipping inspectors

## Division 1 General

### 153 Functions of shipping inspectors

The functions of shipping inspectors are as follows—

(a) to monitor ships and their operations to ensure part 4 and other provisions of this Act are complied with;

(b) to monitor the holders of approvals and their business operations to ensure that part 5 is complied with;

(c) to help harbour masters, including exercising any delegated powers under part 7;

(d) to investigate marine incidents involving Queensland regulated ships and report the results to the general manager under part 11.

### 154 Shipping inspectors subject to directions from general manager

A shipping inspector is subject to the directions of the general manager in exercising powers of a shipping inspector.

### 155 Powers of shipping inspectors under this part

(1) The powers given to a shipping inspector under this part are in addition to, and do not limit, the powers given to a shipping inspector under—



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(a) another part of this Act; or

(b) a condition of an approval.

(2) The powers under this part may be exercised in relation to—

(a) ships; and

(b) places mentioned as a place of business—

(i) in an approval; or

(ii) in a document about a domestic commercial vessel issued by the national regulator under the national law; and

(c) other premises and vehicles.

(3) If a shipping inspector may exercise a power under a provision of this part and another provision of this Act, the inspector may exercise the power under either or both provisions.

(4) If a shipping inspector may exercise a power under this part and under a condition of an approval, the inspector may exercise the power under either or both.

### 156 Limitation on powers of a shipping inspector

The powers of a shipping inspector may be limited—

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by notice of the general manager given to the shipping inspector.

## Division 2 Appointment of shipping inspectors and other matters

### 157 Appointment of shipping inspectors

(1) The general manager may appoint any of the following persons as shipping inspectors—



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(a) officers and employees of the public service;

(b) officers and employees of port authorities;

(c) employees of MSQ;

(d) employees of the Gold Coast Waterways Authority;

(e) police officers or a class of police officers;

(f) other persons prescribed by regulation.

(2) The general manager may appoint a person (other than a police officer) as a shipping inspector only if—

(a) in the general manager's opinion, the person has the necessary expertise or experience to be a shipping inspector; or

(b) the person has satisfactorily finished training approved by the general manager.

## 158 Conditions of appointment of shipping inspectors

(1) A shipping inspector holds office on the conditions specified in the instrument of appointment.

(2) A shipping inspector—

(a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and

(b) may resign by signed notice of resignation given to the general manager; and

(c) if the conditions of appointment provide—ceases holding office as a shipping inspector on ceasing to hold some other office specified in the conditions of appointment.

## 159 Shipping inspector's identity card

(1) The general manager must give an identity card to each shipping inspector.



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(2) The identity card must—

(a) contain a recent photograph of the shipping inspector; and

(b) be in a form approved by the general manager; and

(c) be signed by the shipping inspector.

(3) A person who ceases to be a shipping inspector must return the person's identity card to the general manager as soon as practicable after the person ceases to be a shipping inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (3)—40 penalty units.

(4) This section does not apply to a shipping inspector who is a police officer.

## 160 Display of shipping inspector's identity card

(1) A shipping inspector (other than a police officer) may exercise a power in relation to a person only if the inspector displays the inspector's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

## 161 Protection from liability

(1) A shipping inspector is not civilly liable for an act or omission done honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a shipping inspector, the liability attaches instead to the State.



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## Division 3 General powers of shipping inspectors

### 162 Entry to place by shipping inspectors

(1) A shipping inspector may enter a place if—

(a) the occupier of the place consents to the entry; or

(b) it is a public place and the entry is made when the place is open to the public; or

(c) it is mentioned in an approval, or a national law document, as a place of business and the entry is made when the place is open for conduct of business or is otherwise open for entry; or

(d) the entry is permitted by a warrant.

(2) In this section—

***national law document*** means a document about a domestic commercial vessel issued by the national regulator under the national law.

### 163 Warrants

(1) A shipping inspector may apply to a magistrate for a warrant for a place.

(2) The application must—

(a) be sworn; and

(b) specify the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application be given by statutory declaration.



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(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of the commission of an offence against this Act; and

(b) the evidence is at the place, or may be at the place within the next 7 days.

(5) The warrant must state—

(a) that the inspector may, with necessary and reasonable help and force—

(i) enter the place; and

(ii) exercise the inspector's powers under this Act; and

(b) the evidence for which the warrant is issued; and

(c) the hours of the day when entry may be made; and

(d) the day (within 14 days after the warrant's issue) when the warrant ceases to have effect.

## 164 Warrants—applications made other than in person

(1) A shipping inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application specifying the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) If the magistrate issues the warrant and it is reasonably practicable to fax a copy of it to the inspector, the magistrate must immediately fax the copy to the inspector.



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(5) If the magistrate issues the warrant but it is not reasonably practicable to fax a copy of it to the inspector—

(a) the magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was signed; and

(iii) record the reasons for issuing the warrant on the warrant; and

(b) the inspector must—

(i) complete a form of warrant (***warrant form***) in the same terms as the warrant issued by the magistrate; and

(ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, is authority for the entry and the exercise of the other powers permitted by the warrant issued by the magistrate.

(7) The inspector must send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was completed by the inspector—the completed warrant form.

(8) The sworn application and any completed warrant form must be sent to the magistrate at the earliest practicable opportunity.

(9) When the magistrate receives the application and any warrant form, the magistrate must attach them to the warrant issued by the magistrate.

(10) If—



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(a) in a proceeding a question arises whether the exercise of a power was authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence;

the court must presume the exercise of power was not authorised by a warrant unless the contrary is proved.

## 165 Boarding of ships and entry of vehicles

(1) A shipping inspector may board a ship at any reasonable time of the day or night to find out whether this Act is being complied with.

(2) A shipping inspector may also board a ship or enter a vehicle at any reasonable time of the day or night if the inspector has reasonable grounds for suspecting that—

(a) the ship or vehicle is being, or has been, used in the commission of an offence against this Act; or

(b) the ship or vehicle, or a document or other thing in or on the ship or vehicle, may provide evidence of the commission of an offence against this Act.

## 166 Boarding of ship that is moving or about to move

(1) This section applies if a shipping inspector intends to board a ship under section 165, including a ship that is being carried or towed by a vehicle.

(2) If the ship or the vehicle carrying or towing the ship is moving or about to move, the inspector may signal the person in control of the ship or vehicle to stop the ship or vehicle or not to move it.

(3) To enable the ship to be boarded, the inspector may—

(a) act with any necessary and reasonable help and force; and

(b) require the person in control of the ship or vehicle to give reasonable help to the inspector.



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(4) A person must not disobey a signal under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) A person must not fail to comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(6) It is a reasonable excuse for a person to disobey a signal under subsection (2) if—

(a) the person reasonably believes that to obey the signal immediately would have endangered the person or someone else; and

(b) the person obeys the signal as soon as it is practicable to obey it.

## 167 Shipping inspector's general powers for ships, vehicles and places

(1) A shipping inspector who boards a ship, or enters a vehicle or place, under this part may—

(a) search any part of the ship, vehicle or place; or

(b) inspect, examine, photograph or film anything in or on the ship, vehicle or place; or

(c) take samples of or from anything in or on the ship, vehicle or place; or

(d) if the inspector boards a ship—survey the ship or any part of it; or

(e) take extracts from, or make copies of, any documents in or on the ship, vehicle or place; or

(f) take into or onto the ship, vehicle or place any persons, equipment and materials the inspector reasonably requires for exercising any powers in relation to the ship, vehicle or place; or

(g) require the occupier of the place, or any person in or on the ship, vehicle or place, to give the inspector



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reasonable help for the exercise of the powers mentioned in paragraphs (a) to (f); or

(h) if the inspector boards a ship or enters a vehicle—require the person in control of the ship or vehicle—

(i) to bring the ship or vehicle to a specified place; and

(ii) to remain in control of the ship or vehicle at the place for a reasonable time;

to enable the inspector to exercise the powers mentioned in paragraphs (a) to (f); or

(i) if the inspector boards a ship or enters a vehicle—require the person in control of the ship or vehicle to accompany the inspector to enable the inspector to comply with subsection (6).

(2) A person who is required by a shipping inspector under subsection (1)(g) to give reasonable help to the inspector for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(3) If the help is required to be given by a person by—

(a) answering a question; or

(b) producing a document (other than a document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

(4) A person who is required by a shipping inspector under subsection (1)(h) to take action in relation to a ship or vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.



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(5) A person who is required under subsection (1)(i) to accompany an inspector must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

(6) The inspector must not enter a part of a ship or vehicle that is used only as a living area, or exercise powers under subsection (1)(a) to (f) in relation to the part, unless the inspector is accompanied by the person in control of the ship or vehicle.

(7) Subsection (6) does not apply if the person in control of the ship or vehicle is unavailable or unwilling to accompany the inspector or the inspector is unable for another reason to comply with the subsection.

## 168 Power to seize after boarding ship or entering a vehicle

A shipping inspector who boards a ship or enters a vehicle under this part may—

(a) seize a thing in or on the ship or vehicle; or

(b) after searching the ship or vehicle—seize the ship or vehicle;

if the inspector believes, on reasonable grounds, the thing, ship or vehicle is evidence of the commission of an offence against this Act.

## 169 Power to seize evidence from places

(1) A shipping inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(2) A shipping inspector who enters a place under this part with the consent of the occupier may seize the particular thing for which the entry was made if the inspector believes on reasonable grounds the thing is evidence of an offence against this Act.



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(3) A shipping inspector who enters a place under this part may also seize another thing if the inspector believes on reasonable grounds—

(a) the thing is evidence of the commission of an offence against this Act; and

(b) the seizure is necessary to prevent—

(i) the concealment, loss, death or destruction of the thing; or

(ii) the use of the thing in committing, continuing or repeating the offence.

## 170 Procedure after thing seized

(1) As soon as practicable after a thing (including a ship or vehicle) is seized by a shipping inspector under this part, the inspector must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must—

(a) leave the receipt at the place where the thing was seized; and

(b) ensure the receipt is left in a reasonably secure way in a conspicuous position.

(3) The inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession—

(a) to inspect it; or

(b) if it is a document—to take extracts from it or make copies of it.

(4) The inspector must return the seized thing to the person at the end of—

(a) 6 months; or

(b) if a prosecution for an offence involving it is started within 6 months—the prosecution for the offence and any appeal from the prosecution.



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(5) Despite subsection (4), the inspector must return the seized thing to the person immediately after the inspector stops being satisfied its retention as evidence is necessary.

(6) However, the inspector may keep the seized thing as mentioned in subsection (4) if the inspector believes, on reasonable grounds, that its continued retention is necessary to prevent its use in committing an offence against this Act.

## Division 3A Additional powers for Queensland regulated ships

### 170A Application of div 3A

This division applies only to a Queensland regulated ship.

*Note—*

For similar powers of marine safety inspectors in relation to domestic commercial vessels, see the national law—

- section 99 (which provides for vessel monitoring powers)
- section 109 (which provides for giving directions)
- section 111 (which provides for issuing prohibition notices).

### 170B Power to require production of marine safety equipment

(1) A shipping inspector may ask the owner or master operating a ship to make available, for the inspector's inspection, prescribed safety equipment in a way that is reasonable having regard to the nature of the equipment.

*Examples of ways equipment may be made available for inspection—*

- bringing the prescribed safety equipment to the inspector for inspection
- if the prescribed safety equipment is not easily transportable, identifying where the prescribed safety equipment is kept on the ship

(2) When making a request under subsection (1), the shipping inspector must warn the owner or master that, under subsection (4), the owner's or master's failure to comply with



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the request without a reasonable excuse may be used as evidence that the ship is not equipped with the prescribed safety equipment.

(3) The owner or master of a ship must comply with a request made under subsection (1), unless the owner or master has a reasonable excuse for not complying with it.

(4) In a proceeding for an offence against section 44(1), evidence that a master or owner of a ship has failed to comply with a request made under subsection (1) without providing a reasonable excuse to the shipping inspector who made the request, is evidence that the ship is not equipped with the prescribed safety equipment.

(5) Subsection (1) does not limit the powers of shipping inspectors under sections 165 to 167 or any other provision of this Act.

(6) In this section—

***prescribed safety equipment***, for a ship, means safety equipment with which the ship is required to be equipped under a regulation.

## 171 Direction if shipping inspector reasonably believes ship is not safe or can not be operated safely

(1) This section applies if a shipping inspector reasonably believes that life may be endangered because—

(a) a ship that is being, or is intended to be, operated is not safe; or

(b) a ship can not be operated safely.

(2) To allow the ship to be further inspected and, if necessary, surveyed, the shipping inspector may give a written direction to the owner or master of the ship—

(a) if it is reasonable to require the ship to be inspected at an anchorage, berth, mooring or place on land—to take the ship to the anchorage, berth, mooring or place on land, as stated in the direction; or



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(b) in any other case—to keep the ship at the ship's current anchorage, berth, mooring or place on land, as stated in the direction, for a period of time stated in the direction.

(3) The directed person for the ship must comply with the direction.

Maximum penalty—200 penalty units.

(4) For subsection (3), if a person is required to hold a licence of a particular type or class to operate the ship and the directed person does not hold the licence, the directed person must comply with the direction by causing a person who holds the licence to take the ship to the anchorage, berth or mooring as stated in the direction.

(5) In this section—

***directed person***, for a ship, means either of the following to whom a direction is given under subsection (2)—

(a) the ship's owner;

(b) the ship's master.

## 172 Shipping inspector may direct ship is surveyed and order repairs

(1) This section applies to a ship mentioned in section 171(1)(a) or (b), whether or not a direction under section 171(2)(a) has been given to the owner or master of the ship.

(2) A shipping inspector may board the ship, inspect it and, if the inspector considers necessary, give a direction to the owner or master to obtain a survey report for the ship, as specified by the inspector, from a competent person.

(3) If the shipping inspector is satisfied that life may be endangered because of the state of the ship, the shipping inspector may, by written direction, order the owner or master—

(a) not to operate the ship until specified works are carried out to the ship or the ship is provided with specified equipment; or



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(b) to operate the ship only under specified conditions that the shipping inspector considers appropriate for its safe operation.

(4) An owner or a master to whom a direction under this section is given must comply with the direction.

Maximum penalty—500 penalty units or 1 year's imprisonment.

(5) However, if a contravention of subsection (4) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

## 172AA Shipping inspector may declare that ship is unseaworthy and must not be operated

(1) This section applies if a shipping inspector reasonably believes a ship is unseaworthy.

(2) By written notice attached to the ship, the shipping inspector may declare the ship is unseaworthy and must not be operated, other than in a way approved by the shipping inspector.

(3) A person must not contravene a declaration under subsection (2).

Maximum penalty—200 penalty units.

(4) If the identity of the owner or master of the ship is known to the shipping inspector, the shipping inspector must give the owner or master a copy of the declaration.

(5) Also, the shipping inspector may, by written direction to the owner or master of the ship, require the owner or master to remove the ship from Queensland waters within a period stated in the direction and in a way approved by the shipping inspector.

(6) A person given a direction under subsection (5) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.



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(7) If the identity of the owner or master of the ship is not known to the shipping inspector, the ship is taken to be abandoned property for the purposes of section 175A.

## 172A Other directions

(1) This section applies if a shipping inspector finds—

(a) a person operating a ship that—

(i) is not registered under this Act; or

(ii) is registered under this Act, but is operating in waters beyond the waters in which the ship is authorised to operate under its registration; or

(b) a person operating a ship as its master, or acting as a crew member of the ship, and the person is not appropriately licensed; or

(c) a person operating a ship that—

(i) is required by a regulation to be equipped with safety equipment for the waters in which the ship is being operated; and

(ii) is not equipped with the safety equipment.

(2) If subsection (1)(a)(i) or (b) applies, the inspector may, by written notice, require the master of the ship—

(a) to take the ship to a reasonable anchorage, berth or mooring stated in the notice (***stated destination***) within the reasonable time stated in the notice; and

(b) to not operate the ship for any purpose other than taking it to the stated destination.

(3) If subsection (1)(a)(ii) applies, the inspector may, by written notice, require the master of the ship—

(a) to take the ship to waters in which it is authorised to operate under its registration (***operating waters***) within the reasonable time stated in the notice; and

(b) to not operate the ship for any purpose other than taking it to the operating waters.



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(3A) If subsection (1)(c) applies, the inspector may, by written notice, require the master of the ship—

(a) to take the ship to waters for which the ship has the required safety equipment (also ***operating waters***) within the reasonable time stated in the notice; and

(b) to not operate the ship for any purpose other than taking it to the operating waters.

(4) The master must comply with a requirement under subsection (2), (3) or (3A), unless the master has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) If a master takes a ship to a stated destination as required under subsection (2)—

(a) the master does not contravene section 57; or

(b) the master or crew member does not contravene section 61(1) or (2);

while operating the ship to take it to the destination.

(6) If a master takes a ship to its operating waters as required under subsection (3), the master does not contravene section 57 while operating the ship to take it to the waters.

(6A) If a master takes a ship to its operating waters as required under subsection (3A), the master does not contravene section 44 while operating the ship to take it to the waters.

(7) If a master complies with a requirement under subsection (2), (3) or (3A), the requirement ceases to have effect when the ship reaches the stated destination or operating waters.

(8) A notice under subsection (2), (3) or (3A) must include a brief statement of the grounds for giving the notice.

(9) In this section—

***safety equipment*** see section 44(3).



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# Division 4 Other enforcement powers of shipping inspectors

## 173 Power to require name and address

(1) A shipping inspector may require a person to state the person's name and address if the inspector—

(a) finds the person committing an offence against this Act; or

(b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect on reasonable grounds the person has just committed an offence against this Act.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's name or address if the inspector suspects, on reasonable grounds, that the name or address given is false.

(4) A person must comply with a shipping inspector's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) The person does not commit an offence against this section if—

(a) the shipping inspector required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

## 174 Power to require information from certain persons

(1) This section applies if a shipping inspector suspects, on reasonable grounds—



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(a) an offence against this Act has happened; and

(b) a person may be able to give information about the offence.

(2) The shipping inspector may require the person to give information about the offence.

(3) When making the requirement, the shipping inspector must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the shipping inspector is not in fact relevant to the offence.

## 175 Power to require production of documents

(1) A shipping inspector may require a person to produce a document required to be kept by the person under this Act or the national law to the inspector for inspection.

(2) The person must, unless the person has a reasonable excuse, produce the document—

(a) if the shipping inspector has boarded a ship under section 165(1) and the document is required to be kept on the ship under this Act, an exemption given under section 18A or the national law—immediately after the shipping inspector makes the requirement; or

(b) otherwise—at a reasonable time and place nominated by the shipping inspector when making the requirement.

Maximum penalty—40 penalty units.



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(3) The shipping inspector may keep the document to take an extract from it or make a copy of it.

(4) The shipping inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

## Division 4A Removing abandoned property

### 175A Removing abandoned property

(1) This section applies if a shipping inspector reasonably believes that a ship, part of a ship or other property is abandoned property.

(2) The inspector may seize the abandoned property and remove it to a place the inspector decides is appropriate.

(3) Before seizing and removing the abandoned property, the inspector must—

(a) if practicable, attach to the abandoned property an intention to seize and remove notice in the approved form (***seizure notice***); and

(b) publish the seizure notice in a newspaper circulating in the locality where the abandoned property is.

(4) A seizure notice must include the following particulars—

(a) the date the notice is given;

(b) a description of the abandoned property;

(c) where and when the abandoned property was found;

(d) a time, not less than 28 days after the date of the notice, after which, if no one claims the abandoned property, the inspector may seize and remove it to the place stated in the notice;

(e) a statement to the effect of subsection (5).

(4A) If the shipping inspector is reasonably satisfied about either of the following, the shipping inspector may immediately seize



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and remove the abandoned property without complying with subsection (3)—

(a) the abandoned property is a hazard to ships or navigation or may cause damage to the environment;

(b) before a seizure notice may be published in a newspaper or a time required to be stated in a seizure notice, the abandoned property may become a hazard to ships or navigation or cause damage to the environment.

(4B) If the shipping inspector seizes and removes the abandoned property under subsection (4A), the shipping inspector must publish the following information in a notice in a newspaper circulating in the locality from where the abandoned property was seized—

(a) a description of the abandoned property;

(b) where and when the abandoned property was found;

(c) a statement that the abandoned property was immediately seized and removed;

(d) information about the place to where the abandoned property has been removed;

(e) a statement to the effect of subsection (5).

(5) Having regard to the abandoned property's value and condition, the shipping inspector may sell it by public auction or destroy it if—

(a) no one claims the abandoned property within the time stated in a seizure notice and the shipping inspector seizes and removes the abandoned property; or

(b) no one claims the abandoned property within 28 days after a notice under subsection (4B) is published.

(6) The proceeds from a sale of the abandoned property must be applied as follows—

(a) firstly, in payment of the expenses of the sale;



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(b) secondly, in payment of the costs of seizing, removing and storing the abandoned property and the seizure notice;

(c) thirdly, in payment of the balance to the owner of the abandoned property, or if the owner can not be found, to the consolidated fund.

(7) However, if the proceeds of the sale of the abandoned property are insufficient to cover the amounts mentioned in subsection (6)(a) and (b), the amount by which the proceeds are insufficient is a debt payable to the State—

(a) if the abandoned property is a ship or part of a ship and the owner or master of the ship is known—jointly and severally by the owner and master of the ship; or

(b) if the abandoned property is not a ship or part of a ship and the owner is known—by the owner of the abandoned property; or

(c) if the owner of the abandoned property is not known but a person was registered under an Act as its owner at the time of the abandonment, loss or stranding—the registered person.

(7A) A secured party can not enforce any security interest in the proceeds of sale against an entity to whom an amount is payable under subsection (7)(a) or (b).

(8) In this section—

***abandoned property*** means a ship, part of a ship, or other property, that is abandoned, lost or stranded in Queensland waters or on land adjacent to Queensland waters.

*Examples of land adjacent to Queensland waters—*

mudflats, banks of rivers, bays

***property*** does not include land or an interest in land.

***secured party*** has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

***security interest*** has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.



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## Division 5 Other enforcement matters

### 176 False or misleading statements

A person must not state anything to a shipping inspector that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### 177 False or misleading documents

(1) A person must not give a shipping inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) informs the shipping inspector, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

### 178 Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.



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(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

## 179 Shipping inspector to give notice of damage

(1) A shipping inspector who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.

(2) The notice must be given—

(a) if the thing is a ship or is on a ship—to the ship's master; or

(b) in any other case—to the person who appears to the inspector to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the shipping inspector must—

(a) leave the notice at the place where the damage happened; and

(b) ensure the notice is left in a reasonably secured way in a conspicuous position.

## 180 Consent to entry

(1) This section applies if a shipping inspector intends to seek the consent of an occupier of a place to the entry of the place by the inspector under this part.

(2) Before seeking the consent, the inspector may inform the occupier that the occupier may refuse to give the consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.

(4) The acknowledgement must—

(a) state the occupier was informed of the occupier's right to refuse to give the consent; and



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(b) state the occupier gave the inspector consent under this part—

(i) to enter the place; and

(ii) to exercise the powers mentioned in section 167; and

(c) specify the time and date when the consent was given.

## 181 Evidence of consent

(1) This section applies to a proceeding if—

(a) a question arises whether an occupier of a place consented to the entry of the place by a shipping inspector under this part; and

(b) an acknowledgement under section 180 is not produced in evidence.

(2) In a proceeding to which this section applies, the court may presume the occupier did not consent unless the contrary is proved.

## 182 Obstruction of shipping inspectors

(1) A person must not obstruct a shipping inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person has obstructed a shipping inspector, the inspector must—

(a) warn the person it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) identify the act or omission that the inspector considers is the obstruction; and

(c) tell the person that if the person continues to obstruct the shipping inspector, the shipping inspector may ask a



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police officer to help the shipping inspector exercise the power.

(3) Subsection (2) does not apply to a shipping inspector who is a police officer.

### 183 Impersonation of shipping inspector

A person must not pretend to be a shipping inspector.

Maximum penalty—40 penalty units.

# Part 13A Securing compliance with Act

## Division 1 Purpose

### 183A Purpose of pt 13A

(1) The purpose of this part is to provide for alternative ways of ensuring compliance with this Act.

(2) Division 2 provides for enforcement orders and interim enforcement orders if a person has failed to comply with any of the following—

(a) a direction or requirement given to the person by the general manager, a harbour master or a shipping inspector;

(b) a division 3 undertaking given by the person to the general manager.

(3) Division 3 provides for undertakings.



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## Division 2 Enforcement orders and interim enforcement orders

### 183B Proceeding for enforcement order or interim enforcement order

A prescribed applicant may bring a proceeding in the District Court for any of the following—

(a) an enforcement order;

(b) an order cancelling or amending an enforcement order or interim enforcement order.

### 183C Making enforcement order

(1) The District Court may make an enforcement order if the court is satisfied about any of the following—

(a) a notice offence has been committed or, unless an enforcement order is made, will be committed;

(b) a division 3 undertaking has been contravened or, unless an enforcement order is made, will be contravened.

(2) Subsection (1) applies whether or not there has been a prosecution for the notice offence.

### 183D Making interim enforcement order

(1) If a prescribed applicant has brought a proceeding for an enforcement order but the District Court has not decided the proceeding, the court may make an interim enforcement order if it is satisfied it would be appropriate to make the interim enforcement order.

(2) The District Court may make the interim enforcement order on application by the prescribed applicant or on its own initiative.

(3) An interim enforcement order may be made subject to conditions.



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## 183E Effect of order

(1) An enforcement order or an interim enforcement order may direct a person (the ***respondent***) to do 1 or more of the following—

(a) to stop an activity that constitutes, or will constitute, a notice offence or a contravention of a division 3 undertaking;

(b) not to start an activity that will constitute a notice offence or a contravention of a division 3 undertaking;

(c) to do anything required to stop committing a notice offence, or a contravention of a division 3 undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.

(2) If an enforcement order or an interim enforcement order is made as mentioned in subsection (1), the District Court may do either or both of the following—

(a) direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the enforcement order or interim enforcement order;

(b) make another order the court considers appropriate.

(3) An enforcement order or interim enforcement order—

(a) may be in terms the District Court considers appropriate to secure compliance with this Act; and

(b) must state the time by which the order is to be complied with.

(4) A person who contravenes an enforcement order or interim enforcement order commits an offence against this Act.

Maximum penalty—500 penalty units or 1 year's imprisonment.

(5) The District Court may order the forfeiture to the State of all or part of the security bond given by the respondent under subsection (2)(a) if—



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(a) a prescribed applicant applies to the court for an order for the forfeiture of all or part of the security bond; and

(b) the court is satisfied that the respondent contravened the enforcement order or interim enforcement order during the period for which the security bond was given, whether or not the respondent has been prosecuted for an offence against subsection (4).

## 183F Powers of District Court about enforcement order or interim enforcement order

(1) The District Court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

(a) it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or

(b) the person has previously engaged in an activity of the kind; or

(c) it appears to the court a marine incident may happen if the person engages, or continues to engage, in the activity.

(2) The District Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

(a) it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or

(b) the person has previously failed to do a thing of the kind; or

(c) it appears to the court a marine incident may happen if the person fails, or continues to fail, to do the thing.

(3) The District Court may cancel or amend an enforcement order or interim enforcement order.



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(4) The District Court's power under this section is in addition to its other powers.

## 183G No undertaking as to damages or costs may be required

To remove any doubt, it is declared that no undertaking as to damages or costs may be required of a prescribed applicant or the State in relation to an enforcement order or interim enforcement order.

## 183GA Further power of District Court if enforcement order is contravened

(1) If the respondent contravenes an enforcement order, the District Court may, by further order, authorise the prescribed applicant to take the action stated in the further order.

(2) The District Court's power under this section is in addition to its other powers.

(3) In this section—

***prescribed applicant*** means the prescribed applicant for the enforcement order.

***respondent*** means the person against whom the enforcement order is made.

## 183GB Recovery by State of expenses of taking authorised action

(1) This section applies if the prescribed applicant incurs expense, whether the expense is the prescribed applicant's expense or the State's expense, in taking the authorised action.

(2) The State may recover the amount of the expense, as a debt, from the persons liable for the expense.

(3) If, under subsection (2), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.



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### 183GC Recovery by other persons of damages in particular circumstances

If, in taking the authorised action, the prescribed applicant attaches a ship (the ***first ship***) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.

## Division 3 Undertakings

### 183H General manager may seek division 3 undertaking

(1) This section applies if the general manager reasonably believes a person has contravened, will contravene or will be involved in a contravention of, this Act.

(2) The general manager may, by written notice given to the person—

(a) state the act or omission the general manager believes is, or will constitute, the contravention or involvement with the contravention; and

(b) ask the person to give the general manager a written undertaking under this division (a ***division 3 undertaking***) that the person will not commit, continue to commit or repeat the act or omission.

### 183I Undertaking about other matter

Without limiting section 183H, the general manager may accept a division 3 undertaking given by a person for this division about anything for which the chief executive, the general manager or a harbour master has a function or power under this Act.



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## 183J Variation and withdrawal of division 3 undertaking

(1) This section applies if the general manager has accepted a division 3 undertaking given by a person.

(2) The person may vary or withdraw the division 3 undertaking only if the general manager agrees to the variation or withdrawal.

(3) The general manager may—

(a) vary the division 3 undertaking only if the person agrees to the variation; or

(b) withdraw the division 3 undertaking only if the general manager reasonably believes either of the following—

(i) before the division 3 undertaking was accepted, the person contravened this Act in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the division 3 undertaking;

(ii) the division 3 undertaking is no longer necessary.

(4) If a division 3 undertaking is varied or withdrawn under this section, the general manager must give written notice of the variation or withdrawal to the person.

(5) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

## 183K Enforcement of division 3 undertaking

(1) This section applies if the general manager reasonably believes a person—

(a) has contravened a term of a division 3 undertaking; or

(b) will contravene a term of a division 3 undertaking, unless an enforcement order is made.

(2) The general manager may apply to the District Court for an enforcement order under division 2.



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### 183L Register of division 3 undertakings

(1) The general manager must, in any way the general manager reasonably considers appropriate, keep a register of each division 3 undertaking given to the general manager by a person under this division.

(2) Also, the general manager must ensure the register is available for public inspection, without charge, at a place prescribed under a regulation during normal working hours.

# Part 14 Orderly control over ships

## Division 1 General

### 184 Illegal boarding of or remaining alongside or hovering near a ship

A person must not go on board, remain alongside or hover near a ship in a pilotage area or port unless the person—

(a) has the permission of the ship's owner or master or a person authorised by the owner or master; or

(b) is there on official business under an Act; or

(c) has another reasonable excuse.

Maximum penalty—40 penalty units.

### 185 Offence of failing to leave a ship

A person must not remain on board a ship if—

(a) the person is not entitled to be on board it; and

(b) the owner or master or a person authorised by the owner or master asks the person to leave the ship;

unless the person has a reasonable excuse for remaining on board.

Maximum penalty—40 penalty units.



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## 186 Unlawful interference with Queensland regulated ship

(1) A person must not unlawfully interfere with a Queensland regulated ship.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, another person, the person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(3) A person unlawfully interferes with a Queensland regulated ship if the person wilfully, and without authority, justification or excuse, detrimentally interferes with the safe operation of the ship.

*Example of detrimental interference—*

A person removes, alters or damages the ship's safety equipment.

## 186A Chief executive (fisheries) must disclose information

(1) This section applies if—

(a) the chief executive (transport) is satisfied, on grounds that are reasonable in the circumstances, relevant information held by the chief executive (fisheries) would help in enhancing navigational safety and minimising the risk of marine incidents; and

(b) the chief executive (transport) asks the chief executive (fisheries) for the information.

(2) The chief executive (fisheries) must disclose the relevant information to the chief executive (transport).

(3) Subsection (2) applies despite the *Fisheries Act 1994*, including section 217B of that Act.

(4) The chief executive (transport) must not disclose relevant information obtained under subsection (1) unless—

(a) the chief executive (transport) reasonably considers the disclosure is necessary to—



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(i) prevent a marine incident; or

(ii) enable an entity to provide help to a person or ship in distress at sea; or

(b) it is authorised by the person to whom the information relates; or

(c) the disclosure is required by a court or tribunal in a proceeding in which the information is relevant.

(5) Despite subsection (4)(c), relevant information given to the chief executive (transport) under this section is not admissible in any proceedings under this Act against the person to whom the information relates without the person's consent.

(6) In this section—

***chief executive (fisheries)*** means the chief executive of the department in which the *Fisheries Act 1994* is administered.

***chief executive (transport)*** means the chief executive of the department in which this Act is administered.

***relevant information*** means data sent from approved vessel tracking equipment, within the meaning of the *Fisheries Act 1994*, installed on a boat as required under section 80 of that Act.

## Division 2 Passenger carrying ships

### 187 Application of division

A provision of this division applies only to a ship to which this division, or the provision, is applied by regulation.

### 188 Exclusion of person from ship

(1) In this section—

***master*** includes a person authorised by the master.

(2) A ship's master may refuse to allow a person to board a ship if the master is of the opinion, on reasonable grounds, that the



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person may annoy or injure other persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.

(3) A ship's master may refuse to allow a person to board a ship for another reasonable reason (including, for example, that the ship was full).

(4) A ship's master may ask a person to leave the ship at a convenient port if the master is of the opinion, on reasonable grounds, that the person is likely to annoy or injure, or further annoy or injure, persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.

## 189 Miscellaneous offences by passengers etc.

(1) In this section—

***master*** includes a person authorised by the master.

(2) A person must not board or attempt to board a ship after the ship's master has, under section 188(2) or (3), refused to allow the person to board the ship.

(3) A person who is required under section 188(4) to leave a ship must leave the ship.

(4) A person on a ship must not annoy or injure, or continue to annoy or injure, anyone else on the ship after being warned not to do so by the ship's master or a member of the crew.

Maximum penalty—40 penalty units.

## 190 Obstruction of master or crew

(1) A person must not obstruct the master or a crew member of a ship in the operation of the ship or the performance of any duty on or about the ship, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) In this section—



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***obstruct*** includes a contravention of a direction given by the master or crew member about safety.

### 191 Arrest by ship's master

(1) A person found committing an offence against this part may be arrested without warrant by the master of the ship concerned.

(2) A person arrested by a master must be placed, as soon as practicable, in the custody of a police officer to be promptly brought before a Magistrates Court, released under the *Bail Act 1980* or released by the officer without charge.

## Part 14A General manager's powers of direction

### 191A Direction to master about operation of ship in relation to pilotage area

(1) The general manager may give a direction under this section only if the general manager is satisfied that exceptional circumstances exist to justify the general manager's intervention in the public interest.

*Examples of exceptional circumstances—*

- circumstances on board a ship that pose a serious risk to public health including, for example, a contagious disease
- circumstances where a natural disaster has affected a community and facilitating the off-loading of equipment or materials from a ship would assist the community

(2) The general manager may direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage area in a stated way, including, for example, in any of the following ways—

(a) not to cause the ship to enter the pilotage area;

(b) to cause the ship to enter the pilotage area in a stated way;



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(c) to navigate the ship in the pilotage area in a stated way;

(d) to anchor, berth or moor the ship at a stated place in, or adjacent to, the pilotage area;

(e) to move the ship from an anchorage, berth or mooring in the pilotage area;

(f) to cause the ship to leave the pilotage area or to leave the pilotage area in a stated way.

(3) The direction may be given orally, in writing or in another way.

(4) Without limiting subsection (3)—

(a) subject to the direction of the general manager, an oral direction may be communicated on the general manager's behalf by a harbour master, an agent of a harbour master or a shipping inspector—

(i) personally to a person; or

(ii) by phone, radio or another form of electronic communication; or

(iii) by megaphone or another form of distance communication; or

(b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or

(c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to the master, including, for example, by use of flags or lights.

(5) The direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship's master.

(6) A direction given under subsection (5) to a person in control of a ship, other than the ship's master, is taken to have been given to the ship's master.



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(7) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.

(8) A person must not contravene a direction given under this section, unless the person has a reasonable excuse for the contravention.

Maximum penalty—500 penalty units.

## 191B Direction to person in charge of a place

(1) This section applies if—

(a) the general manager gives a direction to the master of a ship under section 191A(2); and

(b) the direction requires the master of the ship to anchor, berth or moor the ship at a stated place in, or adjacent to, a pilotage area.

(2) The general manager may direct the person in charge of the stated place in, or adjacent to, the pilotage area—

(a) to allow a ship to be berthed at the place or moved from the place; or

(b) to allow access through the place to and from the ship.

(3) A person must comply with a direction under subsection (2), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—500 penalty units.



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# Part 15 Proceedings

## Division 1 General

### 192 Jurisdiction preserved

This part does not affect jurisdiction given to a court under another Act, including, for example, the *Justices Act 1886*, part 6, division 1 that deals with the venue of proceedings for simple offences and breaches of duty.

### 193 Jurisdiction for offences

To give jurisdiction under this Act in a proceeding for an offence, a court's jurisdiction includes the jurisdiction it would have if the offence were committed at the place where the charged person was arrested or served with the summons for the offence.

### 194 Presumption of jurisdiction

In a proceeding under this Act, if a question arises whether a ship is or is not within a provision of this Act, it must be presumed that the ship is within the provision unless the contrary is proved.

### 195 Jurisdiction over ships lying or passing off the coast or in or near navigable waters

(1) If a district in which a court has jurisdiction is next to the coast or navigable water, the court's jurisdiction over—

(a) a ship on or lying or passing off the coast or in or near the navigable water; and

(b) all persons on or belonging to the ship;

includes the jurisdiction the court would have if the ship were in the district.



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(2) More than 1 district in which a court has jurisdiction may satisfy the requirements under subsection (1) for jurisdiction over a ship.

## 196 Offences are summary unless expressly indictable etc.

(1) An offence against this Act is a summary offence, unless it is expressly provided to be an indictable offence.

(2) In applying the *Justices Act 1886*, sections 161 and 161A to a proceeding for an offence against this Act committed by a person as the owner or master of a ship, the goods and chattels of the owner or master include the ship.

## 197 Proceedings for indictable offences

(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

(a) by way of summary proceedings under the *Justices Act 1886*; or

(b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

(a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or

(b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

(b) a plea of the person charged at the start of the proceeding must be disregarded; and

(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and



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(d) before committing the person for trial or sentence the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 2,500 penalty units or imprisonment for 18 months.

## 198 Limitation on who may summarily hear indictable offence proceedings

(1) A proceeding must be before a magistrate if it is a proceeding—

(a) for the summary conviction of a person on a charge for an indictable offence; or

(b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

## 199 Limitation on time for starting summary proceedings

(1) A proceeding for an offence by way of summary proceeding under the *Justices Act 1886* must start within 2 years after—

(a) the commission of the offence; or

(b) the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence;

whichever is the later.

(2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.



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## 199A Court may make orders about compensation and other matters

(1) This section applies to a prosecution for an offence against this Act.

(2) If the court finds the defendant has contravened a direction of a harbour master in contravention of this Act, the court may order the defendant to pay to the State the amount the State could have recovered under section 94(2).

(3) If the court finds the defendant has unlawfully interfered with an aid to navigation, or moored a ship to an aid to navigation, in contravention of this Act and in a way that has damaged or destroyed the aid, the court may order the defendant to pay to the State—

(a) if the defendant is the master or owner of a ship that caused the damage or destruction—the amount the State could have recovered under section 107A(3); or

(b) otherwise—an amount for the expense of repairing and reinstating the aid to navigation.

(4) An order under subsection (2) or (3) is in addition to any penalty or other order the court may make or impose under this Act.

(5) In particular, this section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

(6) However, if a court makes an order under subsection (2) or (3) in relation to a defendant, the State can not recover an amount, under section 94(2) or 107A(3), from the defendant in relation to the same direction, or damage or destruction.

## 199B Court may make orders about apologies and other matters

(1) If a person is convicted of an offence against this Act, the court dealing with the matter may make an order under this section in addition to—

(a) any other penalty the court may impose under this Act, the *Penalties and Sentences Act 1992* or another Act; or



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(b) any other order the court may make under this Act, the *Penalties and Sentences Act 1992* or another Act.

(2) The court may order the defendant—

(a) on application only by the prosecution, to do 1 or more of the following—

(i) to conduct a stated advertising or education campaign to promote compliance with this Act;

(ii) to make a stated private apology or publish a stated public apology to persons affected by the contravention;

(iii) to operate a stated ship in a particular way, including putting a stated procedure or system in place for or on the ship to ensure compliance with this Act;

(iv) to repair, modify or replace a stated ship or part of a ship, or repair, modify, install or replace stated machinery or equipment on a stated ship, to ensure compliance with this Act;

(v) to start or stop a stated activity in relation to a stated ship;

(vi) not to own or operate any ship unless the general manager has given written consent for the ownership or operation; or

(b) to comply with another order the court considers appropriate.

(3) An order under this section is subject to any limitation of liability that may apply under a law of the State or the Commonwealth.

*Example—*

*Limitation of Liability for Maritime Claims Act 1989* (Cwlth)

(4) A person who contravenes an order under this section commits an offence against this Act.

Maximum penalty—3,500 penalty units or 2 years imprisonment.



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## 200 Special provision for service of documents

(1) A document may be served on the master of a ship or a member of the ship's crew by leaving it—

(a) if, at the time of service, there is a person on board who is apparently in charge of the ship—with the person after explaining to the person the purpose of the document; or

(b) in any other case—in a reasonably secure way in a conspicuous position near the ship's controls.

(2) If a document is required or permitted to be served on the master of a ship and there is no master or apparently there is no master, the document may be served on the owner of the ship.

(3) A document is served on all owners of a ship if it is served on any person mentioned in section 9.

*Note—*

Section 9 defines *owner*.

(4) Nothing in this section affects—

(a) the operation of another law that requires or permits service of a document other than as provided in this section; or

(b) the power of a court or tribunal to authorise service of a document other than as provided in this section.

## 200A Allegations of false or misleading statements or documents

It is enough for a complaint for an offence against section 176, 177, 202T, 202U or 205 to state the statement made, or document given, was 'false or misleading' to the person's knowledge, without specifying whether it was false or whether it was misleading.



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## 201 Evidentiary provisions

(1) This section applies to a proceeding under this Act or another Act prescribed by regulation.

(2) Unless a party, by reasonable notice, requires proof of—

(a) the appointment of the chief executive, the general manager, a harbour master or a shipping inspector; or

(b) the authority of the chief executive, the general manager, a harbour master or a shipping inspector to do anything under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the chief executive, the general manager, a harbour master or a shipping inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the chief executive, the general manager, a harbour master or a shipping inspector and stating any of the following matters is evidence of the matter—

(a) a specified document is—

(i) an approval or a copy of an approval; or

(ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or

(iii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;

(b) on a specified day, or during a specified period, a specified person was or was not the holder of an approval or a specified approval;

(c) a specified approval was or was not in force on a specified day or during a specified period;

(d) on a specified day, a specified approval—

(i) was suspended for a specified period; or



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(ii) was cancelled;

(e) on a specified day, a specified person was given a specified direction under this Act;

(f) a specified fee or other amount is payable under this Act by a specified person and has not been paid.

(5) A certificate purporting to be signed by the chief executive, the general manager or a shipping inspector certifying that a laser speed detection device (***device***) has been—

(a) tested at a specified time—

(i) in accordance with the appropriate Australian Standard that was in force at the time; or

(ii) if there was no appropriate standard—in accordance with the manufacturer's specifications; and

(b) found to produce accurate results at the specified time;

is evidence of the matters stated and evidence that the device was producing accurate results at the time of testing and for 1 year after the time.

(6) A certificate purporting to be signed by a shipping inspector stating that a specified device was used by the inspector—

(a) at a specified time; and

(b) in accordance with—

(i) the appropriate Australian Standard that was in force at the time; or

(ii) if there was no appropriate standard—the manufacturer's specifications;

is evidence of the matters stated.

(7) If a defendant intends to challenge—

(a) the accuracy of a device; or

(b) the time at which, or the way in which, the device was used;



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at the hearing of a charge against the defendant under an Act mentioned in subsection (1), the defendant must give written notice of the challenge to the prosecution (***challenge notice***).

(8) The challenge notice must be—

(a) signed by the defendant; and

(b) given at least 14 days before the day fixed for the hearing.

(9) A statement in a complaint for an offence against this Act that a person is or is not, or was or was not, at any time or date stated in the complaint of, under or over a stated age is evidence of the matter stated, and in the absence of evidence to the contrary is conclusive evidence of the matter.

## 202 Conduct of company directors, employees or agents

(1) In this section—

***engaging*** in conduct includes failing to engage in conduct.

***representative*** means—

(a) for a corporation—an executive officer, employee or agent of the corporation; or

(b) for an individual—an employee or agent of the individual.

***state of mind*** of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is enough to show—

(a) the conduct was engaged in by a representative of the corporation within the scope of the representative's actual or apparent authority; and



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(b) the representative had the state of mind.

(3) Conduct engaged in for a corporation by a representative of the corporation within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is enough to show—

(a) the conduct was engaged in by a representative of the individual within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(5) Conduct engaged in for an individual by a representative of the individual within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

## Division 2 Licence disqualifications, cancellations and suspensions

### 202A Disqualifying person from holding licence and cancelling or suspending current licence

(1) This section applies if—

(a) a person is convicted of an offence against—

(i) section 41, 43, 44, 45, 57, 61, 61C, 186, 202J or 211; or

(ii) the *Transport Operations (Road Use Management) Act 1995*, section 79 or 80, or the Criminal Code,



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section 328A, that involved a ship used, being used or apparently about to be used in navigation and the person was the person in control of the ship; and

(b) at the time of the offence—

(i) the person was required under this Act to hold a licence to operate the ship; or

(ii) if the person had not held an authority or licence (however described) from the Commonwealth or another State, the person would have been required to hold a licence to operate the ship; and

(c) the court before which the person is convicted is satisfied the person should, in the interests of marine safety, be disqualified or further disqualified from holding or obtaining a licence.

(2) On application by the prosecution or on its own initiative, the court may order—

(a) if the person is currently disqualified absolutely from holding a licence—from the time of the conviction, the person is again disqualified absolutely from holding or obtaining a licence; or

(b) if the person is currently disqualified from holding a licence for a stated time—

(i) from the time of the conviction, the person is disqualified absolutely; or

(ii) from a time stated by the court, the person is disqualified for a stated time from holding or obtaining a licence; or

(c) otherwise—from the time of the conviction, the person is disqualified absolutely, or for a time stated by the court, from holding or obtaining a licence.

(3) A court that makes an order under subsection (2) is a ***disqualifying court***.



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(4) In making an order under subsection (2), the disqualifying court must have regard to—

(a) the nature of the offence; and

(b) the circumstances in which the offence was committed; and

(c) the real or potential danger to other persons operating or aboard ships and the public generally; and

(d) whether during the period of 5 years before the conviction, including any period before the commencement of this section, the person had been convicted of an offence mentioned in subsection (1)(a).

(5) An order under subsection (2) is in addition to any other penalty the disqualifying court may impose, or other order the disqualifying court may make, under an Act.

(6) It does not matter that the person for whom an order under subsection (2) is made—

(a) was not present when the disqualifying court made its order; or

(b) was not called on to show cause why the order should not be made.

## 202B Dealing with order under s 202A

(1) A relevant clerk of the disqualifying court must send a copy of an order under section 202A to the chief executive of the department in which this Act is administered.

(2) The chief executive must send a copy of the order to the person for whom the order was made.

## 202C Licence cancelled when order made under s 202A

(1) If, at the time the disqualifying court makes an order under section 202A, the person for whom the order is made holds a licence, the licence, and any subsisting licence, is cancelled from the day the order is made.



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(2) The chief executive of the department must give written notice to the person stating that the person is required to give the chief executive the person's licence or marine licence indicator, and any subsisting licence, within 7 days after the day the notice is given to the person.

(3) A person given a notice under subsection (2) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) Despite the cancellation of a licence under subsection (1), if the disqualification by the order under section 202A is suspended pending a decision on an appeal, as mentioned in section 204(5), the licence, and any subsisting licence, is revived during the suspension of the disqualification.

## Division 3 Restricted licences

### 202D Restricted licence for disqualified person

(1) This section applies if a person—

(a) is convicted before a court, by summary proceeding under the *Justices Act 1886*, of an offence against—

(i) section 41, 43, 44, 45, 57, 61, 61C, 186, 202J or 211; or

(ii) the *Transport Operations (Road Use Management) Act 1995*, section 79, other than section 79(1) or (2D); or

(iii) the *Transport Operations (Road Use Management) Act 1995*, 80(5A); and

(b) by order of the court (a ***disqualification order***) is disqualified under section 202A from holding or obtaining a licence.

(2) The court may, if it has received an application in the approved form from the person, make an order that the person be issued with a restricted licence.



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(3) The application may only be made—

(a) at the summary proceeding; and

(b) before the court makes the disqualification order.

(4) For the application—

(a) the court may hear evidence relating to all matters relevant to the application; and

(b) the applicant and other persons may be called as witnesses; and

(c) if the court requires it, the applicant must submit himself or herself as a witness.

(5) The order may only be made—

(a) at the summary proceeding; and

(b) in conjunction with the disqualification order.

(6) If the court grants the application, the court must make an order directing a restricted licence be granted to the applicant during the period of the applicant's disqualification subject to restrictions, as stated in the order, that—

(a) restrict the use, under the restricted licence, of a ship by the applicant to stated circumstances directly connected with the applicant's means of earning his or her livelihood; and

(b) may include, but are not limited to, 1 or more of the following—

(i) the purpose for which a ship may be operated;

(ii) the times at which, or period during which, a ship may be operated;

(iii) the waters in which a ship may be operated.

(7) To remove any doubt, it is declared that if the court makes an order under subsection (2), the applicant—

(a) is disqualified from holding or obtaining a licence other than the restricted licence; and



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(b) may not operate a ship, for the operation of which a licence is required, during the period of the disqualification unless the applicant applies for and obtains the restricted licence the court orders may be granted.

(8) An order under subsection (2) may relate only to a restricted licence that is of the same type as the licence held by the applicant immediately before the disqualification in relation to which the application is made.

## 202E Other limitations on ordering a restricted licence

(1) An application for an order under section 202D for the grant of a restricted licence must not be granted unless the applicant satisfies the court that—

(a) the applicant is a fit and proper person to hold a restricted licence, having regard to the safety of other operators of ships and the public generally; and

(b) a refusal would cause extreme hardship to the applicant, or the applicant's family, by depriving the applicant of his or her means of earning his or her livelihood; and

(c) the disqualification for which the application is made resulted from the applicant's conviction for an offence committed when the applicant held a licence; and

(d) the applicant was the holder of a licence immediately before the disqualification in relation to which the application is made; and

(e) none of the circumstances mentioned in subsection (2) apply to the applicant.

(2) For subsection (1)(e), the application must not be granted in any of the following circumstances—

(a) if, within 5 years before making the application for the order under section 202D including any period before the commencement of this section, either of the following happened—



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(i) the applicant was disqualified from holding or obtaining a licence;

(ii) a licence held by the applicant was suspended or cancelled;

(b) if the applicant was previously convicted—

(i) in Queensland of an offence mentioned in section 202A(1)(a); or

(ii) elsewhere of any offence that, if committed in Queensland, would be an offence mentioned in section 202A(1)(a);

within a period of 5 years before the conviction that results in the disqualification for which the application is made, including any period before the commencement of this section;

(c) if the disqualification for which the application is made resulted from a conviction of the applicant for any of the following—

(i) an offence committed when the applicant was engaged in an activity directly connected with the applicant's means of earning his or her livelihood;

(ii) an offence committed by the applicant operating a ship when not holding a licence the applicant was required to hold;

(iii) an offence committed at a time when the applicant was the holder of a restricted licence;

(d) if—

(i) the disqualification for which the application is made resulted from the applicant's conviction for an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(1F) or (2); and

(ii) the applicant is a person to whom section 79(2D) of that Act would have applied apart from the fact



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that the person was over the general alcohol limit under that Act.

(3) For subsection (1)(b), if the applicant is not self-employed, the applicant must produce to the court an affidavit made by the applicant's employer confirming the applicant would be deprived of the applicant's means of earning his or her livelihood if the application is refused.

(4) In subsection (2)(a), the reference to a disqualification, suspension or cancellation does not include—

(a) a disqualification, suspension or cancellation that was set aside on appeal; or

(b) a disqualification, suspension or cancellation because of the applicant's mental or physical disability.

(5) Also, in subsection (2)(a), the reference to a licence includes a licence of a type or class that is no longer a type or class of licence granted under this Act.

## 202F Consideration of order for restricted licence when making order disqualifying a person

A court, in considering an order it proposes to make under section 202A(2) disqualifying a person from holding or obtaining a licence absolutely or for a period, must have regard to any other order it proposes to make under section 202D.

## 202G Application for, and grant of, restricted licence

(1) This section applies if—

(a) an order is made under section 202D; and

(b) the person for whom the order is made makes an application under a regulation for a restricted licence of the type stated in the order.

(2) The person who, under a regulation, has the power of granting a licence of the type for which the application is made



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(***licensing entity***) must grant to the person a restricted licence of the type stated in the order subject to—

(a) the restrictions imposed by the disqualifying court's order made under section 202D; and

(b) other terms, provisions, conditions, limitations or restrictions, consistent with the order, as may be stated on the licence under this Act.

## 202H Duration of restricted licence

(1) In the first instance, a restricted licence must be granted for—

(a) if the licence that was cancelled under section 202C(1) included a date for the expiry of the licence—the period remaining until the expiry date; or

(b) otherwise—1 year.

(2) If a restricted licence is renewed during the period of the cancellation, the restricted licence must be renewed subject to the restrictions stated in the order last made whether under section 202D or 202K.

(3) A restricted licence remains in force until it expires or is cancelled, suspended or surrendered under this Act.

## 202I Regulation-making power in relation to restricted licence

(1) A regulation may be made about restricted licences.

(2) Without limiting subsection (1), a regulation about restricted licences may make provision about authorising the chief executive or the general manager to cancel or suspend a restricted licence even though the restricted licence is ordered to be granted under an order of a disqualifying court.

## 202J Offence of operating ship other than under a restricted licence

A person who is the holder of a restricted licence must not operate a ship unless—



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(a) the person operates the ship under the restricted licence; or

(b) a licence is not required by anyone to operate the ship.

Maximum penalty—20 penalty units.

## 202K Variation of restrictions

(1) This section applies if, after a disqualifying court makes an order under section 202D or this section, the circumstances connected with the disqualified person's means of earning his or her livelihood have changed.

(2) The disqualified person (the ***applicant***) may apply, in the approved form, to a Magistrates Court exercising jurisdiction at the place where the applicant resides for an order to vary restrictions currently applying to the applicant's restricted licence by an order of a court.

(3) For the application, the following must give evidence relating to all matters relevant to the application and must be liable to cross-examination—

(a) the applicant, if required by the court to submit himself or herself as a witness; and

(b) any other person, if called as a witness.

(4) At least 28 days before the date of the hearing for the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.

(5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.

(6) Also, the chief executive is entitled to be represented at the hearing.

*Note—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.



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(7) A court to which an application is made under subsection (2) may, if it considers that the justice of the case requires that it do so and having regard to the restrictions mentioned in section 202D(6), make an order varying the restrictions to which the restricted licence is subject under section 202D or this section.

(8) If the chief executive is given—

(a) a copy of an order made under this section (a ***variation order***) certified to be a true copy by a relevant clerk of the court that made the order; and

(b) the restricted licence to which the variation order relates and, if the holder of the restricted licence has a marine licence indicator, the holder's marine licence indicator;

the licensing entity who dealt with the previous application for the restricted licence under section 202G must vary the restrictions to which the restricted licence is subject so the restrictions accord with those imposed by the court by the variation order.

(9) Until the licensing entity mentioned in subsection (8) varies the restrictions to which the restricted licence is subject, those restrictions continue to apply to the restricted licence despite any variation order.

## Division 4 Removal of disqualification

### 202L Application for removal of disqualification under div 2

(1) This section applies if a person was disqualified by an order under section 202A(2) from holding or obtaining a licence absolutely or for a period of more than 2 years, whether or not at the time of the order the person held a licence.

(2) The person may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.

(3) The application must be made to—



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(a) if the disqualification was ordered by the Supreme Court—the Supreme Court; or

(b) if the disqualification was ordered by the District Court—the District Court; or

(c) if the disqualification was not ordered by the Supreme or District Court—

(i) if the person lives in Queensland—the Magistrates Court exercising jurisdiction at the place where the person lives; or

(ii) if the person lives outside Queensland—the Magistrates Court, Central division of the Brisbane Magistrates Courts District.

(4) At least 28 days before the date of the hearing of the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.

(5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.

(6) Also, the chief executive is entitled to be represented at the hearing.

*Note for subsection (6)—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.

## 202M Court hearing an application

(1) This section applies to a hearing by the Supreme Court, the District Court or a Magistrates Court of an application under section 202L(2) for the removal of a disqualified person's disqualification.

(2) As it considers appropriate, the court may—

(a) by order, remove the disqualification on and from a date stated in the order; or



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(b) refuse the application.

(3) For subsection (2), the court must have regard to the following—

(a) the character of the disqualified person;

(b) the disqualified person's conduct after the order under section 202A(2) was made;

(c) the nature of the offence for which the disqualified person was convicted by the disqualifying court;

(d) other circumstances relating to the disqualification or application.

(4) If the application is refused, a further application under section 202L(2) must not be considered if made within 1 year after the date of the refusal.

(5) If an order for the removal of a disqualification is made under subsection (2)(a), the court may order the applicant to pay all or part of the costs of the application.

(6) A relevant clerk of the court that deals with the application must give the chief executive information about the outcome of the application.

# Part 15A Protection for whistleblowers

## 202N Definitions for pt 15A

In this part—

***disclosing person*** see section 202P(1).

***official*** means—

(a) the chief executive; or

(b) the general manager; or

(c) a harbour master; or

(d) a shipping inspector.



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***reprisal*** see section 202R(3).

## 202O Application of pt 15A

(1) This part applies to a person other than a person who makes a disclosure as a public officer under the *Public Interest Disclosure Act 2010*.

(2) If a disclosure is made under the *Public Interest Disclosure Act 2010*, this part does not limit the application of that Act and that Act does limit the application of this part.

## 202P General limitation

(1) A person (the ***disclosing person***) is not civilly or criminally liable for disclosing information to an official about a person's conduct, whether committed before or after the commencement of this section, that the disclosing person honestly believes, on reasonable grounds, contravenes this Act.

(2) Without limiting subsection (1)—

(a) in a proceeding for defamation, the disclosing person has a defence of absolute privilege for publishing the disclosed information; and

(b) if the disclosing person would otherwise be required to maintain confidentiality about the disclosed information under an Act, agreement, oath, rule of law or practice, the disclosing person does not—

(i) contravene the Act, oath, rule of law or practice by making the disclosure; or

(ii) breach the agreement by making the disclosure.

(3) In this section—

***agreement*** includes a contract or deed.



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## 202Q Liability for conduct unaffected

(1) The liability of the disclosing person for his or her own conduct is not affected only because the disclosing person discloses the conduct to an official.

(2) However, a court may have regard to the disclosure if the disclosing person is prosecuted for an offence involving the conduct and either of the following applies—

(a) the disclosing person is the master of a ship and his or her conduct was in compliance with an express instruction of the owner of the ship or someone authorised by the owner to give the instruction;

(b) the disclosing person is another member of a ship's crew and his or her conduct was in compliance with an express instruction of the master of the ship or someone authorised by the master to give the instruction.

(3) Subsection (2) does not limit the *Penalties and Sentences Act 1992*.

## 202R Reprisal and grounds for reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a disclosure as mentioned in section 202P(1).

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.



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## 202S Damages entitlement or other remedy for reprisal

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

(4) This section does not limit any other remedy that may be available at law to the person against whom the reprisal is taken.

## 202T False or misleading statements

A person must not, for section 202P(1), state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

## 202U False or misleading documents

(1) A person must not, for section 202P(1), give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) informs the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.



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# Part 16 Review of and appeals against particular decisions

## 203 Definitions for part

In this part—

***original decision*** means a decision made under this Act by the chief executive, the general manager, a harbour master, a shipping inspector or a waterways authority, other than a reviewed decision.

***reviewed decision*** means a decision made, or taken to have been made, by the chief executive, the general manager or a waterways authority on a review under section 203B.

## 203A Main purposes of part

The main purposes of this part are to provide for—

(a) reviews of particular decisions made under this Act, whether the decisions are made by the chief executive, the general manager, a harbour master, a shipping inspector or a waterways authority; and

(b) the application of the *Transport Planning and Coordination Act 1994*, part 5, divisions 2 and 3; and

(c) appeals from decisions under section 202A, including, for example, decisions disqualifying persons from holding or obtaining licences.

## 203B Internal review of decisions

(1) A person whose interests are affected by an original decision may ask the following to review it—

(a) if the original decision was made by the chief executive—the chief executive;

(b) if the original decision was made by the Gold Coast Waterways Authority or a shipping inspector who is an



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employee of the Gold Coast Waterways Authority—the Gold Coast Waterways Authority;

(c) if the original decision was made by the Sunshine Coast Waterways Authority—the Sunshine Coast Waterways Authority;

(d) otherwise—the general manager.

(2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review; and

(b) provides—

(i) for the procedure for applying for the review and the way it is to be carried out; and

(ii) that the person may apply to QCAT to have the original decision stayed.

(3) For applying the *Transport Planning and Coordination Act 1994*, part 5, division 2 to a person other than the chief executive, a reference to the chief executive in that division, including, for example, sections 33 and 34 of that Act, is taken to be a reference to—

(a) if the original decision was made by the general manager—the general manager; or

(b) if the original decision was made by the Gold Coast Waterways Authority or a shipping inspector who is an employee of the Gold Coast Waterways Authority—the Gold Coast Waterways Authority; or

(c) if the original decision was made by the Sunshine Coast Waterways Authority—the Sunshine Coast Waterways Authority.

## 203C External review of decisions

(1) If a reviewed decision is not the decision sought by the applicant for the review, the review entity must give the



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applicant a QCAT information notice for the reviewed decision.

(2) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

*Note—*

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

(3) In this section—

***QCAT information notice*** means a notice complying with the QCAT Act, section 157(2).

***review entity*** means—

(a) if the reviewed decision is made by the general manager—the general manager; or

(b) if the reviewed decision is made by the Gold Coast Waterways Authority—the Gold Coast Waterways Authority; or

(c) if the reviewed decision is made by the Sunshine Coast Waterways Authority—the Sunshine Coast Waterways Authority.

## 203D Decisions that can not be appealed against etc.

The following decisions can not be appealed against or be the subject of a review—

(a) a decision of the Governor in Council;

(b) a decision of the chief executive or general manager about a standard.

## 204 Appeals in relation to disqualification under s 202A

(1) This section applies to a person who, because of a conviction for an offence mentioned in section 202A(1), is disqualified from holding or obtaining a licence by an order under section 202A.



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(2) The disqualified person may appeal against the order in the same way the person may appeal against the conviction.

(3) The court deciding the appeal may, having regard to the circumstances of the case and as it considers appropriate—

(a) by order, remove the disqualification on and from a date stated in the order; or

(b) dismiss the appeal.

(4) A relevant clerk of the court deciding the appeal must give information about the outcome of the appeal to the chief executive.

(5) If the disqualified person starts an appeal against the conviction, the disqualification is suspended pending the decision on the appeal.

(6) However, subject to any decision of a court on the appeal, the part of the period of disqualification that had not expired when the suspension began to operate takes effect from the date of decision of the appeal.

# Part 17 Miscellaneous

## 205 False or misleading documents

(1) A person must not—

(a) for the purposes of this Act, give to the chief executive, the general manager or an officer or employee of the department or of MSQ a document containing information the person knows is false or misleading in a material particular; or

(b) state in a document that the person knows will, for the purposes of this Act, be given to the chief executive, the general manager or an officer or employee of the department or of MSQ by someone else (the ***other person***), information the person knows is false or misleading in a material particular.



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Maximum penalty—200 penalty units.

(2) For subsection (1)(b), it is immaterial whether the other person knows the information is false or misleading in a material particular.

(3) Also, subsection (1)(b) does not limit the Criminal Code, section 7, 8 or 542, in its application to subsection (1)(a).

(4) Subsection (1) does not apply to a person who, when giving the document or making the statement—

(a) informs the chief executive, general manager, officer or employee, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the chief executive, general manager, officer or employee if the person has, or can reasonably obtain, the correct information.

(5) This section does not apply to a document given under section 202U to an official within the meaning of section 202N.

## 205A Inquiries about person's suitability to conduct examinations or conduct training programs

(1) The chief executive or the general manager may make inquiries about a person to help in deciding whether—

(a) the person is a suitable person for approval, or to continue to be approved, to—

(i) conduct examinations for issuing licences; or

(ii) conduct training programs in the operation of Queensland regulated ships; or

(b) a corporation or unincorporated body for which the person is a nominee is a suitable person for approval, or to continue to be approved, to—

(i) conduct examinations for issuing licences; or

(ii) conduct training programs in the operation of Queensland regulated ships; or



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(c) a corporation of which the person is an executive officer is a suitable person for approval, or to continue to be approved, to—

(i) conduct examinations for issuing licences; or

(ii) conduct training programs in the operation of Queensland regulated ships.

(1A) Without limiting subsection (1), the chief executive or the general manager may ask the commissioner of the police service for a written report about a person's criminal history.

(1B) For subsection (1A), the chief executive's or general manager's request may include the following information—

(a) the person's name and any other name the chief executive or general manager believes the person may use or may have used;

(b) the person's gender and date and place of birth;

(c) details of the person's driver licence under the *Transport Operations (Road Use Management) Act 1995*;

(d) details of the application for approval or approval of—

(i) the person; or

(ii) the corporation or unincorporated body for which the person is a nominee; or

(iii) the corporation of which the person is an executive officer.

(2) The commissioner of the police service must give a written report about a person's criminal history—

(a) to the chief executive if the chief executive asked the commissioner for the person's criminal history; or

(b) to the general manager if the general manager asked the commissioner for the person's criminal history.

(3) Subsection (2) applies to the criminal history in the commissioner's possession or to which the commissioner has access.



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## 205AA Notice of change in police information about a person

(1) This section applies if—

(a) the commissioner of the police service reasonably suspects that a person is the holder, or is a nominee or an executive officer of an entity that is the holder, of an approval—

(i) to conduct examinations for issuing licences; or

(ii) to conduct training programs in the operation of Queensland regulated ships; and

(b) the person's criminal history changes.

(2) The commissioner may notify the chief executive or the general manager that the person's criminal history has changed.

(3) The commissioner's notice to the chief executive or general manager must state the following—

(a) the person's name and any other name the commissioner believes the person may use or may have used;

(b) the person's gender and date and place of birth;

(c) whether the change is—

(i) a charge made against the person for an offence; or

(ii) a conviction of the person;

(d) details of the charge or conviction.

## 205AB Chief executive or general manager may enter into arrangement about giving and receiving information with commissioner of the police service

(1) This section applies only to the extent another provision of this Act allows the chief executive or general manager to give information to the commissioner of the police service or the commissioner to give information to the chief executive or the general manager.



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(2) The chief executive and the commissioner, or the general manager and the commissioner, may enter into a written arrangement by which the information is given or received.

(3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.

(4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

## 205AC Confidentiality

(1) A person must not disclose, record or use information that the person gained—

(a) through involvement in the administration of this Act; or

(b) because of an opportunity provided by the involvement.

Maximum penalty—200 penalty units.

(2) However, a person may disclose, record or use the information—

(a) in the discharge of a function under this Act; or

(b) if it is authorised—

(i) under another Act or a regulation; or

(ii) by the person to whom the information relates; or

(c) in a proceeding before a court or tribunal in which the information is relevant.

(3) In this section—

***disclose*** information means—

(a) intentionally or recklessly disclose the information; or

(b) allow access to the information.

***information*** includes a digital photo and digitised signature.



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## 205B Electronic search to verify person is holder of licence

(1) A person may, on payment of the fee prescribed under a regulation, electronically search information held by the department about licences to verify that a person is the holder of a licence under this Act.

(2) However, the person may search information only—

(a) to verify the person's own licence; or

(b) with the consent of the person to whom the search relates.

## 206 Signals of distress

(1) A person must not—

(a) use or display a prescribed signal of distress other than under a regulation; or

(b) cause or permit someone else to use or display a prescribed signal of distress other than under a regulation.

Maximum penalty—200 penalty units.

(2) If—

(a) a person has, under a regulation, used or displayed a prescribed signal of distress or caused or permitted someone else to use or display the prescribed signal; and

(b) any prescribed circumstances arise when the prescribed signal must be revoked;

the person must immediately use all ways of communicating at the person's disposal to revoke the prescribed signal.

Maximum penalty—200 penalty units.

(3) However, if the contravention of subsection (1) or (2) by a person causes the death of, or grievous bodily harm to, someone else, the person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.



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(4) If a person is convicted of an offence against this section, the court may order the person to pay to the State or another person an amount that represents reasonable compensation for loss or expense suffered, work undertaken and risk incurred because of the person's act or omission.

## 206A General manager's power to fix speed limits for ships

(1) The general manager may fix speed limits for ships, other than speed limits for ships for Gold Coast waters, by gazette notice.

(2) The gazette notice is not subordinate legislation.

(3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty—200 penalty units.

(4) The general manager may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a ***speed sign***) stating the speed limit for the waters.

(5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.

(6) This section does not prevent a regulation making provision about speed limits.

(7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.

(8) It is declared that a gazette notice under this section is taken never to have been subordinate legislation.

(9) The general manager must publish on MSQ's website information about all of the speed limits for ships, other than speed limits for ships for Gold Coast waters, including speed limits for ships fixed by the general manager and by regulation.



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## 206AA Gold Coast Waterways Authority's power to fix speed limits for ships

(1) The Gold Coast Waterways Authority may, for Gold Coast waters, fix speed limits for ships by gazette notice.

(2) The gazette notice is not subordinate legislation.

(3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty—200 penalty units.

(4) The Gold Coast Waterways Authority may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a ***speed sign***) stating the speed limit for the waters.

(5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.

(6) This section does not prevent a regulation making provision about speed limits.

(7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.

(8) The Gold Coast Waterways Authority must publish on the authority's website information about all of the speed limits for ships for Gold Coast waters, including speed limits fixed by the authority and by regulation.

## 206B Approval of forms

The chief executive may approve forms for use under this Act.



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# Part 18 Regulations and standards

## Division 1 Regulations

### 207 Regulation-making power

The Governor in Council may make regulations under this Act.

### 208 Marine safety regulations—generally

(1) The Governor in Council may make regulations about marine safety and issues affecting marine safety.

*Example—*

the establishment, registration and control of buoy moorings

(2) Without limiting subsection (1), a regulation may be made about the design, building, surveying, maintenance, equipment, crewing, and stability of Queensland regulated ships.

(3) A regulation may—

(a) specify the objectives to be achieved and maintained under the regulation; and

(b) specify indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the matter dealt with in the regulation; and

(c) establish a program by which the specified objectives are to be achieved and maintained; and

(d) provide for a program performance assessment procedure (including performance indicators).

### 209 Regulations about fees and charges

(1) A regulation may be made about the fees and charges payable under this Act.



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(2) A charge may be a tax.

## 210 Penalties under regulations to be limited

The maximum penalty that may be prescribed by a regulation for an offence against a regulation is 200 penalty units.

## 211 Regulation may give effect to treaties, conventions or international agreements or documents

(1) A regulation may give effect (with or without changes and whether in whole or part) to a treaty, convention or international agreement or document about ships.

*Examples—*

1 the Prevention of Collisions Convention (within the meaning of the Commonwealth Navigation Act, part 4)

2 the Safety Convention (also within the meaning of the Commonwealth Navigation Act, part 4)

3 resolutions, codes, recommendations and other documents issued by the International Maritime Organisation

(2) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units or imprisonment for 1 year.

## 212 Regulations may give effect to agreements or documents about ships approved by Australian entity

A regulation may give effect (with or without changes and whether in whole or part) to an agreement or document about ships approved by an Australian entity whose functions include matters relating to marine safety.

## 213 Regulations about dangerous substances

(1) A regulation may make provision about goods mentioned in the International Maritime Dangerous Goods Code issued by



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the International Maritime Organisation, including, for example—

(a) the marking and carriage of the goods; and

(b) the loading of goods onto, or discharge of goods from, a ship in a pilotage area.

(2) The regulation may also make provision for the powers of harbour masters for the ships.

(3) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

(4) A regulation about a dangerous substance that is an explosive within the meaning of the *Explosives Act 1999* is complementary to that Act.

## 214 Regulations about signals of distress

A regulation may make provision about—

(a) the signals to be used as prescribed signals of distress; and

(b) the circumstances when a prescribed signal of distress may be used; and

(c) the circumstances when a prescribed signal of distress must be revoked.

## 215 Pilotage fees, conservancy dues and related matters

(1) A regulation may provide for the following—

(a) establishing fees on a user pays basis—

(i) for pilotage services in pilotage areas and compulsory pilotage areas; and

(ii) for other services for other matters incidental or related to pilotage services, including, for example,



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establishing other fees for delay or cancellation of pilotage services;

(b) establishing conservancy dues in relation to ships;

(c) procedures for the payment of pilotage fees, other fees and conservancy dues;

(d) procedures for recovering pilotage fees, other fees or conservancy dues payable under this Act.

(2) Without limiting the *Statutory Instruments Act 1992*, section 24 or 25, for establishing a pilotage fee, other fee or conservancy due under subsection (1), a regulation may establish the pilotage fee, other fee or conservancy due by reference to a ship's length.

(3) A conservancy due may be a tax.

(4) In this section—

***other fee*** means a fee for other services for other matters incidental or related to pilotage services, established under a regulation as mentioned in subsection (1)(a)(ii).

***pilotage fee*** means a fee for pilotage services, established under a regulation as mentioned in subsection (1)(a)(i).

## 216 Detention of ships for unpaid fees etc.

(1) A regulation may make provision for the detention of a ship because—

(a) pilotage fees, conservancy dues or other fees, charges or amounts payable for the ship have not been paid; or

(b) a penalty payable by the owner or master of the ship has not been paid.

(2) The regulation must provide for fair procedures for the detention of a ship, including, for example, the giving of notice to the owner or master of the ship about the detention.

(3) The notice about the detention must be signed by—

(a) if the ship is in a port—the general manager; or



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(b) if the ship is in a pilotage area—the general manager or a harbour master.

(4) The notice must also contain information about—

(a) the reasons for the detention; and

(b) the way the owner or master of the ship can give security for the payment of the amounts payable to the State in relation to the ship; and

(c) the way the detention can be appealed against; and

(d) other relevant matters.

(5) A person must not cause a ship to leave the port or pilotage area where it has been detained unless—

(a) the general manager or a harbour master has released the ship from detention; or

(b) a harbour master has directed the ship to depart the pilotage area because of safety considerations; or

(c) a court has ordered that the ship may leave the port or pilotage area.

Maximum penalty—the number of penalty units (rounded upwards to the next number if necessary) obtained by using the following formula—

$$\frac{\textbf{amount owing} \times \textbf{3}}{\textbf{the value of 1 penalty unit}}$$

(6) The owner of a ship is liable for the costs, under a regulation, of detaining the ship.

(7) In this section—

***amount owing***, for a ship detained under this section, means the total of—

(a) the amount owing to the State for which the ship has been detained (including any interest payable on the amount); and

(b) costs payable for the detention of the ship.



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## 217 Regulations about aquatic events and activities

(1) A regulation may make provision in relation to any of the following events or activities—

(a) a race, or speed trial, for any type of ship;

(b) a water skiing competition or display;

(c) any other type of display on water, including, for example, a fireworks display;

(d) a swimming race or other organised activity on water, including, for example, the swimming leg of a triathlon or an attempt to establish a long distance swimming record;

(e) an event involving people on the water in or on a thing as part of a carnival, competition, fun race or other activity;

(f) another event or activity that takes place wholly or partly on or in water, including, for example, white water rafting, parasailing, canoeing and kayaking.

(2) If a regulation requires a person (an ***applicant***) to obtain the consent of a stated person under the regulation before holding an event or activity mentioned in subsection (1), neither the State or the stated person—

(a) is responsible for supervising the holding of the event or activity; or

(b) is liable in relation to the holding or conduct of the event or activity.

(3) Subsection (2) does not prevent the State being held liable in relation to the grant of the consent to the applicant to hold the event or activity by a person whose consent was required under a regulation.

## 218 Other matters for regulations

(1) A regulation may make provision about—



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(a) speed limits for ships and the use of devices to measure the speed of ships; and

(b) the removal of obstructions to navigation outside pilotage areas; and

(c) the security required by the State for the removal of obstructions to navigation (whether in or outside of a pilotage area); and

(d) if a harbour master or someone else removes an obstruction to navigation—selling or disposing of the thing that caused the obstruction and, if relevant, dealing with the proceeds of the sale; and

(e) where buoy moorings may be established, approvals for establishing buoy moorings at locations and other matters relating to identifying and using buoy moorings.

(2) Also, a regulation may make provision about the operation and activities of ships not otherwise provided for under sections 208 to 217.

*Examples for subsection (2)—*

- provision about amenity
- provision about zones and controlling the operation of ships in the zones

(3) If under a regulation, whether made before or after the commencement of this subsection, the general manager, a waterways authority or the chief executive approved the establishment of a buoy mooring or where a buoy mooring may be established, the general manager, the waterways authority, the chief executive and the State are not, and never have been, responsible—

(a) for approving the structural integrity of the buoy mooring; or

(b) for other matters in relation to the buoy mooring's establishment or maintenance.

(4) The general manager, a waterways authority, the chief executive and the State are not, and never have been, liable in relation to a buoy mooring's establishment or maintenance



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other than in relation to the approval of the location of the buoy mooring.

(5) However if a court decided a matter before the commencement of this subsection, and the decision included a finding that the general manager, the Gold Coast Waterways Authority, the chief executive or the State was liable in relation to an approval in relation to a buoy mooring, the decision is not affected by subsections (3) and (4).

### 219 General manager's power to fix other matters by gazette notice

Without limiting the *Statutory Instruments Act 1992*, section 26, a regulation may authorise the general manager to provide, by gazette notice, for an aspect of a matter prescribed in the regulation.

*Examples of aspects of matters—*

- changing times prescribed in a regulation for reporting matters relevant to ships with dangerous cargo or for matters about notice requirements for amending or cancelling pilotage
- defining areas of Queensland waters as category areas for buoy moorings
- stating waters where the presence of anchored ships involves danger to aircraft or other ships or the anchoring, berthing, mooring or operating of a ship, or type of ship, endangers marine safety

## Division 2 Standards

### 219A Standards

(1) The general manager may make standards under this Act.

(2) A standard or an amendment of a standard is subordinate legislation.

(4) A standard is not effective until it is approved by the Governor in Council.



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## 219B Contents of standard

(1) A standard may provide for any matter about which a regulation may be made.

*Note—*

See section 208.

(2) However, a standard may not prescribe for offences, fees or charges.

## 219C Notice of proposal to prepare draft standard

(1) Before making a standard about a matter, the general manager must give public notice of a proposal to prepare a draft standard about the matter.

(2) The notice must be published—

(a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

(b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) If the proposal relates only to an aspect or part of the maritime industry, the notice must also specify the aspect or part.

(4) The notice must—

(a) invite submissions on the proposal from public authorities, industry, interested groups and persons, and the public; and

(b) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the general manager.

## 219D Preparation of draft standard

(1) In preparing the draft standard mentioned in a proposal published under section 219C, the general manager must consider all submissions properly made to the general manager on the proposal.



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(2) The general manager must also ensure that the draft standard—

(a) sets out its purposes; and

(b) takes into account national and international benchmarks and best practices.

## 219E Notice of draft standard

(1) When a draft standard has been prepared, the general manager must give public notice of the draft standard.

(2) The notice must be published—

(a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

(b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) The notice must—

(a) specify the addresses where copies of the draft standard may be inspected and, on payment of the fee prescribed by regulation, purchased; and

(b) invite submissions on the draft standard from public authorities, industry, interested groups and persons, and the public; and

(c) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the general manager.

## 219F Making of standard

(1) The general manager—

(a) must consider all submissions properly made to the general manager on the draft standard; and



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(b) must have regard to the submissions in making the standard for submission to the Governor in Council for approval.

(2) No further notice under section 219E is required even if the general manager changes the draft standard after considering the submissions.

## 219G Interim standards

(1) If the general manager is satisfied that, for reasons of urgency, it is necessary or desirable to make a standard on an interim basis, the general manager may make the standard even though sections 219C to 219F have not been complied with.

(2) The interim standard must include a sunset provision stating the interim standard expires 6 months after its commencement.

## 219H Regulations prevail over standards

(1) If there is any inconsistency between a regulation and a standard, the regulation prevails to the extent of the inconsistency.

(2) Subsection (1) applies whether the standard was made before or after the regulation.

## 219I Amendment of standards

(1) This division applies to the amendment of a standard in the same way as it applies to the making of a standard with any necessary changes.

(2) However, sections 219C to 219F do not apply to the amendment of a standard if the general manager considers the proposed amendment—

(a) is not likely to impose appreciable costs on the community or a part of the community; or



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(b) only provides for, or to the extent it only provides for, any of the following—

(i) a matter that is not of a legislative character, including, for example, a matter of a machinery, administrative, drafting or formal nature;

(ii) a matter that does not operate to the disadvantage of any person (other than a government entity) by decreasing the person's rights;

(iii) a matter that does not operate to the disadvantage of any person (other than a government entity) by imposing liabilities on the person;

(iv) an amendment to take account of current Queensland legislative drafting practice;

(v) an amendment that does not fundamentally affect the standard's application or operation;

(vi) a matter of a savings or transitional character;

(vii) a matter that is substantially uniform or complementary with legislation of the Commonwealth or another State;

(viii) a matter involving the adoption of an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, Queensland;

(ix) a matter advance notice of which would enable someone to gain unfair advantage.

## 219J Application of Acts Interpretation Act 1954

The *Acts Interpretation Act 1954*, section 24AA does not apply to the amendment or repeal of a standard under this division.



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# Part 19 Transitional provisions

## Division 1 Provisions for Act No. 14 of 1994

### 220 References to former Act etc.

A reference in an Act or document—

(a) to the former Act or the *Marine Safety Act 1994* is a reference to this Act; and

(b) to the former board, a member of the former board, the secretary to the former board or the portmaster is a reference to the chief executive; and

(c) to a vessel (within the meaning of the former Act) is a reference to a ship (within the meaning of this Act).

## Division 2 Provisions for Maritime Safety Queensland Act 2002

### 225 Definitions for div 2

In this division—

***commencement*** means the commencement of this division.

***former function of the chief executive*** means a function that, immediately before the commencement, was a function of the chief executive but that on the commencement became a function of the general manager.

### 226 Transition of chief executive's functions to general manager

(1) If—

(a) a process relating to a former function of the chief executive was started before the commencement; and



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(b) the process was not completed before the commencement;

the chief executive must complete the process.

*Example of a process—*

the process of suspending or cancelling an approval

(2) However, subsection (1) does not limit the chief executive's power to delegate a function under the *Transport Planning and Coordination Act 1994*.

## 227 Exemptions

(1) This section applies to an exemption given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

(2) The exemption continues to have effect after the commencement as if it had been given by the general manager.

## 228 Standards

(1) This section applies to a standard given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

(2) The standard continues to have effect after the commencement as if it had been given by the general manager.

## 229 Approvals

(1) This section applies to an approval given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.



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(2) The approval continues to have effect after the commencement as if it had been given by the general manager.

## 230 Appointments

(1) This section applies to an appointment made by the chief executive when performing a former function of the chief executive that is current immediately before the commencement.

(2) The appointment continues to have effect after the commencement as if it had been made by the general manager.

## 231 Agreements

(1) This section applies to an agreement made by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

(2) The agreement continues to have effect after the commencement as if it had been made by the general manager.

## 232 Fixing of speed limits for ships

(1) This section applies to a speed limit fixed for a ship by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

(2) The speed limit continues to have effect after the commencement as if it had been fixed by the general manager.

## 233 Notices

(1) This section applies to a notice made, given or signed by the chief executive when performing a former function of the



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chief executive that is in force immediately before the commencement.

(2) The notice continues to have effect after the commencement as if it had been made, given or signed by the general manager.

### 234 Other things done by chief executive

(1) This section applies to anything done, made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement and is not otherwise provided for under this part.

(2) The thing continues to have effect after the commencement as if it had been done, made, given or signed by the general manager.

### 235 Particular references to chief executive

A reference in an Act or document to the chief executive may, if the context permits, be taken to be a reference to the general manager.

## Division 3 Provisions for Maritime and Other Legislation Amendment Act 2006

### 236 References in other legislation to words defined in s 4

(1) This section applies to a reference in another Act or statutory instrument, that is in force at the commencement of this section, to a word or expression as defined in this Act (however the reference is worded) that includes a reference to section 4.

*Example—*

The *Transport Infrastructure (Public Marine Facilities) Regulation 2000*, schedule 4 includes a definition of ship as follows—



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***ship*** see *Transport Operations (Marine Safety) Act 1994*, section 4.

(2) If the context permits, the reference is taken to be a reference to that word or expression as defined in the schedule.

(3) In this section—

***section 4*** means section 4 of this Act as the section was in force immediately before the commencement of this section.

## 237 Provisions relating to the power of harbour masters before the commencement to give directions

(1) If a direction was given under part 7, division 2 before the commencement of this section and continued to have effect immediately before the commencement—

(a) the direction continues to have effect; and

(b) this Act, as in force immediately before the commencement, continues to apply to the direction and the obligations of any person arising out of the direction.

*Examples for paragraph (b)—*

1 If, before the commencement of this section, the master of a ship is taken to have been given a direction that, under section 86(3), was given to a crew member, after the commencement the master continues to have an obligation to comply with the direction.

2 If, before the commencement of this section, a person is given a direction under section 89, after the commencement the person continues to have an obligation to comply with the direction even though it was not in writing.

(2) If a harbour master had started to carry out a direction or proposed direction as mentioned in section 93 as in force immediately before the commencement, the harbour master may continue to carry out the direction or proposed direction.

(3) Section 94, as in force immediately before the commencement, continues to apply to an expense incurred before the commencement and also applies to an expense incurred by a harbour master who, under subsection (2), continues to carry out a direction or proposed direction.



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(4) Subsections (2) and (3) do not limit subsection (1).

## 238 Reasonable excuse for not reporting marine incident

Section 125(4) and (5) apply in relation to a marine incident even if it happened before the commencement of this section.

## 239 Direction or notice given by shipping inspector before the commencement

(1) This section applies to any of the following given by a shipping inspector before the commencement of this section that continues to have effect immediately before the commencement—

(a) a direction under section 171 or 172, as in force before the commencement;

(b) a notice under section 172A, as in force before the commencement.

(2) This Act, as in force immediately before the commencement, continues to apply to—

(a) the direction or notice; and

(b) the obligations of any person arising out of the direction or notice.

## 240 Property seized under s 175A before the commencement

If property is seized by a shipping inspector under section 175A before the commencement of this section, that section as in force immediately before the commencement continues to apply in relation to the property and its seizure.

## 241 Enforcement order or interim enforcement order only if offence committed after the commencement

An enforcement order or interim enforcement order may not be made under part 13A, division 2 in relation to an offence committed entirely before the commencement of this section.



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## 242 Disqualification under s 202A only if offence committed after the commencement

Section 202A does not apply to a person if the person committed an offence mentioned in section 202A(1)(a) before the commencement of this section.

## 243 Decisions made before the commencement

(1) If a person whose interests were affected by a pre-commencement decision started an appeal under previous part 16 against the decision—

(a) previous part 16 continues to apply to the appeal; and

(b) previous part 16 applies in relation to any decision made on appeal about the pre-commencement decision.

(2) If a person whose interests were affected by a pre-commencement decision had not started an appeal under previous part 16 against the decision before the commencement of this section, the person may not start an appeal under previous part 16 but may take action in relation to the pre-commencement decision under new part 16.

(3) In this section—

***new part 16*** means part 16 as in force immediately after the commencement of this section.

***pre-commencement decision*** means a decision made under this Act before the commencement of this section that may be appealed under previous part 16.

***previous part 16*** means part 16 as in force immediately before the commencement of this section.

## 244 Existing licences to drive speedboats and other recreational ship master's licences

(1) This section applies to a person—



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(a) who, immediately before the commencement of this section, was taken to be the holder of a licence under this Act that was a licence to drive a speedboat; or

*Editor's note—*

Repealed section 224 previously dealt with this issue.

(b) who, on or after 3 June 1994, became the holder of a recreational ship master's licence.

(2) If, before the commencement, a licence mentioned in subsection (1) had not been cancelled or surrendered under this Act, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act.

(3) If, before the commencement, a licence mentioned in subsection (1) had been suspended under this Act for a period, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act but suspended until the period expires.

(4) To remove any doubt, it is declared that a recreational ship master's licence granted on or after 3 June 1994 and before the commencement, has not expired even if the licence included an expiry date on the licence.

## Division 4 Provision for Transport Legislation Amendment Act 2008, part 6

### 245 Making orders under s 199B

An order may not be made under section 199B in relation to an offence committed entirely before the commencement of that section.



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## Division 5 Provision for Gold Coast Waterways Authority Act 2012

### 246 Fixing of speed limits for ships for Gold Coast waters

(1) This section applies if, immediately before the commencement of the *Gold Coast Waterways Authority Act 2012*, section 129, a speed limit was fixed under section 206A for ships for Gold Coast waters.

(2) The speed limit is taken to have been fixed by the Gold Coast Waterways Authority under section 206AA.

## Division 6 Provision for Holidays and Other Legislation Amendment Act 2015

### 247 Digital photos and digitised signatures

A digital photo or digitised signature of a person kept under this Act by the chief executive or the general manager immediately before the commencement is, on the commencement, taken to be kept under the TPC Act by the chief executive of the department in which that Act is administered.

## Division 7 Provisions for Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016

## Subdivision 1 Preliminary

### 248 Definitions for division

In this division—



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***amended Act*** means this Act as in force after the commencement.

***amendment Act*** means the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016*.

***old regulation*** means the *Transport Operations (Marine Safety) Regulation 2004* as in force before the commencement.

***relevant ship*** see section 249.

***unamended Act*** means this Act as in force before the commencement.

## Subdivision 2 Provisions about registration of relevant ships

### 249 Purpose of subdivision

The purpose of this subdivision is to transition matters about the registration under the unamended Act of a commercial ship that, on the commencement, is an other Queensland regulated ship (a ***relevant ship***).

*Note—*

For a ship that, on the commencement, is a domestic commercial vessel, see the national regulation, section 16 and the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*.

### 250 Existing registration

(1) This section applies to a relevant ship that, immediately before the commencement, was registered under the unamended Act as a commercial ship.

(2) From the commencement, the ship is taken to be registered under the amended Act as an other Queensland regulated ship.

(3) The registration—



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(a) continues for the remaining term of the registration unless it is earlier cancelled or surrendered; and

(b) is subject to the conditions to which it was subject immediately before the commencement; and

(c) if, immediately before the commencement, the registration is suspended under the unamended Act—continues to be subject to the suspension; and

(d) may be amended, suspended, cancelled or surrendered under the amended Act.

(4) However, the registration can not be renewed under the amended Act.

(5) Also, the registration is subject to the following conditions—

(a) if the old regulation, section 108 applied to the ship immediately before the commencement—a condition that a person who is the owner or master of the ship must not operate the ship in waters other than the following waters—

(i) the waters stated in the USL code for a ship of the ship's class;

(ii) the waters in any other operational area stated for the ship in the old regulation, section 108;

(b) if, immediately before the commencement, under the unamended Act, a person must not operate the ship as its master or act as a crew member unless the person holds a particular licence—a condition that a person must not operate the ship as its master or act as a crew member unless the person holds that licence;

*Examples—*

1 If, under the old regulation, section 88(2), a person must not operate the ship as its master unless the person holds a licence of at least a particular class of certificate, the registration is subject to the condition that a person must not operate the ship as its master unless the person holds a licence of at least that class of certificate.

2 If, under an exemption under the unamended Act, section 18A, a person must not operate the ship as its master



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unless the person holds a recreational marine driver licence, the registration is subject to the condition that a person must not operate the ship as its master unless the person holds a recreational marine driver licence.

(c) a condition that a person who is the owner or master of the ship must not carry on the ship, or on a part of the ship, more persons than is stated for the ship, or for the part of the ship, in the ship's registration certificate, unless the person has a reasonable excuse.

## 251 Existing applications for registration

(1) This section applies to an application for registration of a relevant ship made under the unamended Act but not decided before the commencement.

(2) The application—

(a) is taken to be an application for registration of the ship under the amended Act as an other Queensland regulated ship; and

(b) must be decided under the amended Act.

## 252 Reviews of decisions about registration made before the commencement

(1) This section applies to a review relating to a decision about the registration of a relevant ship—

(a) started but not decided before the commencement; or

(b) started after the commencement.

(2) The review must be decided under the unamended Act as if the amendment Act had not been enacted.

(3) If the effect of the review is that the ship must be registered as a commercial ship under the unamended Act, the ship must be registered under the amended Act as an other Queensland regulated ship.

(4) If the effect of the review is that the registration of the ship as a commercial ship under the unamended Act must be



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amended or the suspension of the registration of the ship as a commercial ship under the unamended Act must be lifted, the amendment or lifting of the suspension must be given effect in relation to the registration of the ship as continued under section 250.

(5) If the effect of the review is that the registration of the ship as a commercial ship under the unamended Act should not have been cancelled—

(a) from the relevant day, the ship is taken to be registered under the amended Act as an other Queensland regulated ship; and

(b) the registration is subject to the conditions to which it was subject immediately before it was cancelled; and

(c) section 250(3)(a), (c) and (d) and (4) and (5) apply to the ship's registration.

(6) In this section—

***relevant day*** means—

(a) if the decision of the review takes effect on a day before commencement—the commencement; or

(b) otherwise—the day the decision of the review takes effect.

***review*** means—

(a) a review of an original decision under section 203B; or

(b) a review of a reviewed decision under section 203C.

## Subdivision 3 Other transitional provisions

### 253 Existing certificate of compliance for Queensland regulated ship

(1) This section applies to a certificate of compliance for a Queensland regulated ship in force under the unamended Act immediately before the commencement.



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(2) From the commencement, the certificate of compliance is taken to be a survey report issued for the ship by a competent person.

## 254 Protection of persons continued

The unamended Act, sections 70C and 139 continue to apply in relation to acts done or omissions made before the commencement, despite their repeal.

## 255 Existing investigations

(1) This section applies if—

(a) a marine incident happened before the commencement, or the general manager believes that a marine incident may have happened before the commencement even though it has not been reported; and

(b) the matter does not involve a Queensland regulated ship; and

(c) at the commencement, an investigation of the matter has not been started, or has been started but not finished, under the unamended Act, section 126.

(2) The general manager may require a shipping inspector to—

(a) investigate the matter; or

(b) if a shipping inspector has started but not finished investigating the matter—continue to investigate the matter.

(3) The amended Act, section 126(2) to (4) apply in relation to the investigation despite section 123A.

## 257 Commercial ship references

A reference in an instrument under this Act to a commercial ship is, if the context permits, taken to be—



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(a) if the ship is a domestic commercial vessel—a reference to a domestic commercial vessel; or

(b) otherwise—a reference to an other Queensland regulated ship.



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# Schedule 1 Dictionary

section 4

***aid to navigation*** see section 104.

***approval*** means any of the following under this Act—

(a) registration of a Queensland regulated ship;

(b) licensing of a person as a master, crew member or pilot;

(c) accreditation of an entity to license a person as a master, crew member or pilot;

(d) approval of an entity to conduct training programs relating to the operation of Queensland regulated ships;

(e) permission for a person—

(i) to operate a Queensland regulated ship as its master; or

(ii) to have the conduct of a ship as its pilot.

***approved form*** see section 206B.

***Australian legal practitioner*** see the *Legal Profession Act 2007*, schedule 2.

***authorised action***, for part 13A, for a prescribed applicant, means action the prescribed applicant is authorised to take by a District Court order made under section 183GA(1).

***building***, in relation to a ship, includes altering the ship, or replacing a part of the ship, if the alteration or replacement may affect marine safety.

***buoy mooring*** means something, other than the ship's own equipment, used, or intended to be used, for mooring a ship, that consists of each of the following—

(a) a device attached to or sitting on the seabed or the bed of other Queensland waters;

(b) a system involving cables, chains or ropes that is attached to the device mentioned in paragraph (a);



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(c) a buoy or other float on the surface of the water, that is attached to the system mentioned in paragraph (b) and marks the location of the device and system.

***causes*** includes—

(a) for a marine incident—substantially contributing to the marine incident; and

(b) for the death of, or grievous bodily harm to, a person—substantially contributing to the death of, or grievous bodily harm to, the person.

***Commonwealth Navigation Act*** means the *Navigation Act 2012* (Cwlth).

***competent person***, for the issue of a survey report for a ship or a part of a ship, means—

(a) an individual accredited under the national law as a marine surveyor to survey in a category that covers a ship's, or a part of a ship's, seaworthiness in relation to the aspects mentioned in the report; or

(b) another individual who is able to competently decide a ship's, or a part of a ship's, seaworthiness in relation to the aspects mentioned in the report because of the individual's training, qualifications or experience in relation to the aspects.

***compulsory pilotage area*** means a pilotage area, or part of a pilotage area, declared under a regulation to be a compulsory pilotage area.

***connected with Queensland***, for a ship, see section 6.

***convicted***, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

***criminal history***, of a person—

(a) means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and

(b) despite that Act, includes a charge or pending charge made against the person for an offence, whether made in



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Queensland or elsewhere, other than a charge the proceedings for which have ended without a conviction being recorded.

***delegate***, of the chief executive or general manager, for part 16, see section 203.

***digital photo***, of a person, see the TPC Act, schedule 1.

***digitised signature***, of a person, see the TPC Act, schedule 1.

***disclosing person***, for part 15A, see section 202P(1).

***disqualified person*** means a person for whom there is an order of a court under section 202A(2) disqualifying the person from holding or obtaining a licence, either absolutely or for a period ordered by the court.

***disqualifying court*** see section 202A(3).

***division 3 undertaking***, for part 13A, means an undertaking under part 13A, division 3.

***domestic commercial vessel*** see the national law, section 7.

***domestic commercial vessel national law*** see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

***domestic commercial vessel national regulation*** see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

***electronic communication*** see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

***enforcement order*** means an order of the District Court under part 13A, division 2—

(a) to remedy or restrain the commission of a notice offence; or

(b) to ensure compliance with a division 3 undertaking.

***general direction*** see section 86A(2).

***general manager*** means the general manager under the *Maritime Safety Queensland Act 2002*.



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***Gold Coast waters*** see the *Gold Coast Waterways Authority Act 2012*, section 7(1).

***Gold Coast Waterways Authority*** means the Gold Coast Waterways Authority established under the *Gold Coast Waterways Authority Act 2012*.

***government legal officer*** see the *Legal Profession Act 2007*, schedule 2.

***grievous bodily harm*** has the meaning given by the Criminal Code.

***harbour master*** means a person who is appointed under this Act as a harbour master.

***holder***, of a marine licence indicator, means the person to whom the marine licence indicator has been given under this Act.

***interim enforcement order*** means an order under section 183D.

***interstate voyage*** means an inter-State voyage as defined under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cwlth).

***licence*** means—

(a) a licence provided for under section 60(1) or 61B(1); or

(b) a restricted licence.

***licensing entity*** see section 202G(2).

***lost***, in relation to a ship or part of a ship, includes sunk and wrecked.

***managing pilotage entity***, for a compulsory pilotage area, means—

(a) the responsible pilotage entity for the pilotage area; or

(b) if the responsible pilotage entity for the pilotage area has entered into a written agreement with another entity for the other entity to supply pilotage services in the pilotage area—each party to the agreement.



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***marine history***, of a person, means the history of the contraventions for which the person has been dealt with under this Act or the *Transport Operations (Marine Pollution) Act 1995*.

***marine incident*** see section 123.

***marine incident area***, for a provision in part 7, division 2 under which a harbour master is authorised to give a direction in relation to a marine incident area, means an area where the harbour master reasonably believes a marine incident has happened or is likely to happen.

***marine licence*** means a licence to operate a recreational ship, or an other Queensland regulated ship that is a personal watercraft, as its master.

***marine licence indicator*** means a written notice of the granting of a licence to operate a recreational ship, or an other Queensland regulated ship that is a personal watercraft, as its master given to the person to whom the licence has been granted.

***master*** see section 7.

***MSQ*** means Maritime Safety Queensland established under the *Maritime Safety Queensland Act 2002*.

***national law*** means the domestic commercial vessel national law.

***national regulation*** means the domestic commercial vessel national regulation.

***national regulator*** see the national law, section 9.

***notice offence*** means an offence against any of the following provisions involving a person contravening a direction or requirement under this Act—

- section 87B(3)
- section 88(2)
- section 89(2)
- section 90(3)
- section 91(3)



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- section 92(4)
- section 171(3)
- section 172(4)
- section 172AA(3)
- section 172AA(6)
- section 172A(4)
- section 175(2)
- section 191A(8)
- section 191B(3).

***obstruct*** includes hinder, resist and attempt to obstruct.

***official***, for part 15A, see section 202N.

***operates***, a ship, see section 8.

***original decision***, for part 16, see section 203.

***other Queensland regulated ship*** see section 10C.

***overseas voyage*** means an overseas voyage as defined under the Commonwealth Navigation Act.

***owner***, of a ship, see section 9.

***particular direction*** see section 86A(4).

***personal watercraft*** means a powered ship that—

(a) has a fully enclosed hull that does not take on water if capsized; and

(b) is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

***person in control*** includes—

(a) for a ship—the ship's master or the person who appears to be the ship's master; and

(b) for a vehicle—the vehicle's driver or the person who appears to be the vehicle's driver.



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***pilot*** means a person licensed under a regulation as a pilot and who, when on board a ship, has the conduct of it even though the person does not belong to the ship.

***pilotage area*** means an area of Queensland waters that is declared under this Act to be a pilotage area.

***pilotage services*** see the *Maritime Safety Queensland Act 2002*.

***place*** includes land and premises, but does not include a ship or vehicle.

***port***, of a port authority, has the same meaning as in the *Transport Infrastructure Act 1994*.

***port authority*** means a port authority under the *Transport Infrastructure Act 1994*.

***port operator*** has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

***premises*** includes—

(a) a building or other structure or part of a building or other structure; and

(b) land where a building or other structure is situated.

***prescribed applicant***, for part 13A, means any of the following—

(a) the chief executive;

(b) the general manager;

(c) a harbour master.

***Queensland intrastate voyage*** means a voyage beginning or ending in Queensland waters, other than an interstate voyage or overseas voyage.

***Queensland regulated ship*** see section 10A.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***reasonably considers*** means considers on grounds that are reasonable in all the circumstances.



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***reasonably satisfied*** means satisfied on grounds that are reasonable in all the circumstances.

***recreational ship*** see section 10B.

***registered***, for part 5, division 1, see section 55.

***relevant clerk***, of a court, means—

(a) if the court is a Magistrates Court—the clerk of the court; or

(b) if the court is the District Court—a registrar, within the meaning of the *District Court of Queensland Act 1967*, of the court; or

(c) if the court is the Supreme Court—a registrar of the court.

***reprisal***, for part 15A, see section 202R(3).

***responsible pilotage entity***, for a compulsory pilotage area, see section 71A.

***restricted licence*** means a licence under part 15, division 3.

***reviewed decision***, for part 16, see section 203.

***set up***, an aid to navigation, includes—

(a) build, erect or place the aid; and

(b) add to, alter or remove the aid; and

(c) change its character or the way it exhibits its lights; and

(d) maintain the aid.

***ship*** see section 10.

***shipping inspector*** means a person who is appointed under this Act as a shipping inspector, and includes a harbour master.

***smartcard marine licence indicator*** means a marine licence indicator in the form approved by the chief executive or general manager on which information may be stored electronically.

***source of interference*** see section 92(1).



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***standard*** means a standard made under section 219A and includes an interim standard.

***Sunshine Coast Waterways Authority*** means the Sunshine Coast Waterways Authority established under the *Sunshine Coast Waterways Authority Act 2026*.

***survey report***, for a ship or a part of a ship, means a report—

(a) declaring the ship's or part's seaworthiness in relation to 1 or more of the following aspects—

(i) the ship's design;

(ii) the ship's construction;

(iii) the ship's safety equipment;

(iv) the ship's stability;

(v) another aspect of the ship's condition that may affect marine safety; and

(b) containing information about the person who issued the report, including, in particular, information about the person's—

(i) accreditation as a marine surveyor under the national law; or

(ii) training, qualifications or experience relating to the matters mentioned in paragraph (a) included in the report.

***tender*** means an auxiliary ship, other than a lifeboat, that—

(a) is not longer than 6m; and

(b) is employed to attend another ship; and

(c) is smaller than the other ship; and

(d) is operated only in the proximity of the other ship.

***TPC Act*** means the *Transport Planning and Coordination Act 1994*.

***vehicle*** includes an aircraft but does not include a ship.

***waterways authority*** means—



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(a) the Gold Coast Waterways Authority; or

(b) the Sunshine Coast Waterways Authority.



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