

Authorised Version No. 014

Marine Safety Act 2010

No. 65 of 2010

Authorised Version incorporating amendments as at
15 October 2014

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Authorised Version No. 014

Marine Safety Act 2010

No. 65 of 2010

Authorised Version incorporating amendments as at
15 October 2014

The Parliament of Victoria enacts:

CHAPTER 1—PRELIMINARY

PART 1.1—PURPOSE AND COMMENCEMENT

1 Purpose

The purpose of this Act is to provide for safe marine operations in Victoria by, among other things—

- (a) imposing a range of safety duties on—
 - (i) owners, managers, designers, manufacturers, suppliers of vessels, marine safety infrastructure and marine safety equipment; and
 - (ii) marine safety workers; and
 - (iii) masters and users of recreational vessels; and
 - (iv) passengers on vessels; and
- (b) providing for the registration of recreational vessels; and
- (c) providing for the licensing of masters of recreational vessels and regulated hire and drive vessels; and

**S. 1(b)
amended by
No. 36/2013
s. 23(a).**

**S. 1(c)
amended by
No. 36/2013
s. 23(b).**

s. 2

- (d) providing for the regulation and management of the use of, and navigation of vessels on, State waters; and
- (e) requiring port management bodies to engage harbour masters and providing for the licensing of persons to act as harbour masters and the authorisation of persons to act as assistant harbour masters; and
- (f) providing for the registration of pilotage service providers and the licensing of pilots; and
- (g) requiring the use of pilots in declared parts of State waters.

S. 1(g)
amended by
No. 36/2013
s. 23(c).

S. 1(h)(i)
repealed by
No. 36/2013
s. 23(d).

* * * * *

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2012, it comes into operation on that day.

PART 1.2—INTERPRETATION

3 Definitions

(1) In this Act—

accreditation means an accreditation granted under section 271F;

S. 3(1) def. of *accreditation* inserted by No. 78/2011 s. 3(1)(a).

approved code of practice means a code of practice approved under Part 8.2 and includes an approved code of practice revised in accordance with that Part;

Australian Builders Plate Standard means the "National Standard for the Australian Builders Plate for Recreational Boats" adopted by the Australian Transport Council and notified in the Commonwealth of Australia Gazette;

* * * * *

S. 3(1) def. of *Australian fishing vessel* repealed by No. 36/2013 s. 24(1).

certificate of competency has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law;

S. 3(1) def. of *certificate of competency* amended by No. 78/2011 s. 3(1)(b), substituted by No. 36/2013 s. 24(2).

channel includes swinging basin, turning circle, an area alongside a berth or dock, fairway and anchorage;

channel operator has the same meaning as in the **Port Management Act 1995**;

close quarters situation has the meaning given by section 4;

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Part 1.2—Interpretation

s. 3

S. 3(1) def. of *commercially operated vessel* repealed by No. 36/2013 s. 24(1).

* * * * *

S. 3(1) def. of *commercial vessel* repealed by No. 36/2013 s. 24(1).

* * * * *

S. 3(1) def. of *Commonwealth Navigation Act* amended by No. 36/2013 s. 24(3).

Commonwealth Navigation Act means the Navigation Act 2012 of the Commonwealth;

corresponding authority means a person who, or body that, outside of Victoria has functions under a corresponding law that correspond with any of the functions of the Safety Director under Parts 3.1 and 3.3;

corresponding law means a law of the Commonwealth or of another State or of a Territory that corresponds to Parts 3.1 and 3.3;

S. 3(1) def. of *customs vessel* inserted by No. 36/2013 s. 24(4).

customs vessel has the same meaning as in section 17 of the Commonwealth Navigation Act;

S. 3(1) def. of *domestic commercial vessel* inserted by No. 36/2013 s. 24(4).

domestic commercial vessel has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law;

fairway means that part of an area of navigable waters that is usually used by vessels for navigation through the area;

* * * * *

S. 3(1) def. of *fishing vessel* repealed by No. 36/2013 s. 24(1).

general marine licence means a licence granted under section 53;

* * * * *

S. 3(1) def. of *government vessel* repealed by No. 36/2013 s. 24(1).

harbour master means—

- (a) a licensed harbour master; or
- (b) any person authorised under section 229 to exercise any of the functions of the harbour master, if the person so authorised is acting in accordance with the authorisation;

harbour master licence means a licence granted under section 224;

hire and drive vessel means any vessel which is let for hire or reward or for any other consideration, including vessels provided in conjunction with holiday establishments or hotels for the use of guests or tenants;

S. 3(1) def. of *hire and drive vessel* substituted by No. 36/2013 s. 24(5).

licensed harbour master means a person who is the holder of a harbour master licence;

licensed pilot means a pilot who is the holder of a pilot licence;

local knowledge certificate means a certificate issued under section 83;

local port has the same meaning as in the **Port Management Act 1995**;

local port manager means, in relation to a local port, the person or body appointed under section 44A of the **Port Management Act 1995** as the port manager of that port;

marine incident means—

- (a) a death of, or injury to, a person onboard a vessel caused by the operation or navigation of a vessel; or
- (b) the loss or presumed loss of a vessel; or
- (c) a collision of vessels; or
- (d) a collision by a vessel with an object; or
- (e) the grounding, sinking, flooding or capsizing of a vessel; or
- (f) a fire onboard a vessel; or
- (g) a loss of stability of a vessel that affects the safety of the vessel; or
- (h) the structural failure of a vessel; or
- (i) a close quarters situation; or
- (j) an event that results in—
 - (i) the death of, or injury to, a person onboard a vessel; or
 - (ii) the loss of a person from a vessel; or
 - (iii) a vessel becoming disabled and requiring assistance; or

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S. 3(1) def. of *marine incident* amended by No. 36/2013 s. 24(6).

- (k) the fouling or damaging by a vessel of—
- (i) any pipeline or submarine cable; or
 - (ii) any aid to navigation within the meaning of the Commonwealth Navigation Act;

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S. 3(1) def. of *marine infringement* repealed by No. 78/2011 s. 3(1)(c).

marine licence means—

- (a) a general marine licence; or
- (b) a restricted marine licence;

marine operations means marine safety infrastructure operations or vessel operations;

marine safety equipment means equipment designed or used to prevent or mitigate the consequences of a marine incident and includes—

- (a) personal flotation devices carried on a vessel; and
- (b) telecommunications systems carried or installed on a vessel; and
- (c) flares and other devices carried on a vessel that can be used to attract attention to the vessel or indicate the vessel's position; and
- (d) position identification systems carried or installed on a vessel; and

-
- (e) anchors and other devices carried on a vessel that may be used to maintain the vessel's position or stability; and
 - (f) oars and other alternative means of propulsion carried on a vessel; and
 - (g) fire extinguishers carried or installed on a vessel; and
 - (h) lights carried or installed on a vessel; and
 - (i) thermal protective aids carried on a vessel;

marine safety equipment design and construction activities means designing, commissioning, constructing, manufacturing, maintaining, repairing or modifying marine safety equipment;

marine safety infrastructure means the channels and facilities that are necessary to ensure the safety of marine operations and includes—

- (a) navigation aids and associated structures and works; and
- (b) signage and associated structures and works; and
- (c) lights and associated structures and works; and
- (d) telecommunications systems and associated structures and works; and
- (e) buildings used for the purpose of observing vessel operations; and
- (f) traffic management systems (including vessel traffic systems and associated structures and works); and

- (g) plant and machinery used for dredging;
and
- (h) slipways, wharves, jetties, piers and
other berthing facilities; and
- (i) boat ramps and other launching
facilities;

marine safety infrastructure operations means—

- (a) designing, commissioning,
constructing, dredging, manufacturing,
erecting, installing, operating,
maintaining, repairing, monitoring or
managing marine safety infrastructure;
or
- (b) operating communications systems
(including signals) and vessel traffic
management systems for the purpose of
directing the safe movement of vessels
in port waters;

S. 3(1) def. of
*marine safety
infrastructure
operations*
amended by
No. 29/2011
s. 3(Sch. 1
item 57.1).

marine safety matter has the same meaning as in
the **Transport Integration Act 2010**;

marine safety work means any activity that may
affect the safety of marine safety
infrastructure operations or vessel operations
in respect of a domestic commercial vessel,
including—

S. 3(1) def. of
*marine safety
work*
amended by
No. 36/2013
s. 24(7).

- (a) navigating, conducting or controlling
the movement of a domestic
commercial vessel;
- (b) facilitating the navigation, conduct or
control of the movement of a domestic
commercial vessel;

-
- (c) implementing and maintaining safe working systems for—
 - (i) marine safety infrastructure operations; or
 - (ii) vessel operations in respect of a domestic commercial vessel;
 - (d) installing, designing, constructing, supplying, repairing, modifying, maintaining, monitoring, examining or testing marine safety infrastructure;
 - (e) any work involving certification as to the safety of marine safety infrastructure or any part of marine safety infrastructure;
 - (f) any work involving the development, management or monitoring of safe working systems for marine safety infrastructure operations;
 - (g) any work connected to the removal of hazards, obstructions or dangers to the safety of—
 - (i) marine safety infrastructure operations; or
 - (ii) vessel operations in respect of a domestic commercial vessel;
 - (h) directing (including through the use of signals and signs and radio or other electronic communications) the movement of vessels in port waters;
 - (i) any other work that is prescribed as marine safety work;

marine safety worker means a person who has carried out, is carrying out or is about to carry out, marine safety work including a person who is—

- (a) engaged by any other person to carry out marine safety work;
- (b) a trainee;
- (c) a volunteer;

marine search and rescue vessel means a vessel prescribed as a marine search and rescue vessel;

master, in relation to a vessel, means a person having command or charge of the vessel;

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S. 3(1) def. of *member of the police force* repealed by No. 37/2014 s. 10(Sch. item 107.1(b)).

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S. 3(1) def. of *National Standard for Commercial Vessels* repealed by No. 36/2013 s. 24(1).

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S. 3(1) def. of *National Standard for the Administration of Marine Safety* repealed by No. 36/2013 s. 24(1).

navigation aid means a device used for navigation, and includes a beacon, buoy, marine mark, light house and light ship, but does not include a device on board a vessel;

officer of a body corporate, unincorporated body or association or partnership has the meaning given by section 9 of the Corporations Act;

operate means to facilitate or control the movement or navigation of a vessel (or a thing connected to a vessel) that is not—

- (a) at anchor; or
- (b) made fast to the shore; or
- (c) aground; or
- (d) ashore;

owner, in relation to a vessel, includes a person having a beneficial interest in the vessel, a demise or sub-demise charterer of the vessel and any person having exclusive possession of the vessel;

permission means any of the following—

- (a) a marine licence;
- (b) an endorsement on a marine licence;
- (c) a harbour master licence;
- (d) a pilot licence;
- (e) a pilot exemption;

* * * * *

- (j) a local knowledge certificate;
- (k) registration as a pilotage services provider under Chapter 7;
- (l) registration of a vessel;
- (m) an accreditation;

S. 3(1) def. of *permission* substituted by No. 78/2011 s. 3(2)(a), amended by No. 36/2013 s. 24(8).

personal watercraft means any recreational vessel that is of a kind that is required by or under this Act to be registered and that—

- (a) has an engine that is used for propulsion; and
- (b) has a fully enclosed hull; and
- (c) does not retain water on it if it capsizes; and
- (d) is designed to be operated by a person standing, sitting astride or kneeling on the vessel but not seated within the vessel;

pilot means a person who does not belong to, but has the conduct of, a vessel;

pilot exemption means an exemption granted under section 254;

pilot exempt master means a master of a vessel who is the holder of a pilot exemption;

pilot licence means a licence granted under section 252;

pilot required waters means those parts of State waters to which a declaration under section 250 applies;

pilotage services means—

- (a) the service of providing a pilot to navigate a vessel within, or into or out of, port waters; or
- (b) the service of providing transport and transfer of a pilot to and from a vessel for which services under paragraph (a) are required; or
- (c) both of the services referred to in paragraphs (a) and (b);

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 107.1(a)).

pilotage services provider means a person registered under section 241 to provide pilotage services;

police officer has the same meaning as in the **Victoria Police Act 2013**;

port includes any of the following waters, or any part of those waters—

- (a) any harbour or haven, whether natural or artificial;
- (b) any estuary, channel, river, creek or roadstead;
- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers;

S. 3(1) def. of
port management body
amended by
No. 38/2011
s. 39(2)(3).

port management body means—

- (a) in relation to the port of Melbourne, the Port of Melbourne Corporation;
- (b) in relation to—
 - (i) the waters declared under section 5 of the **Port Management Act 1995** to be the port of Geelong, the Victorian Regional Channels Authority, or, if there is an agreement with a channel operator in relation to those waters, that channel operator;
 - (ii) the waters declared under section 5 of the **Port Management Act 1995** to be the port of Portland, the Victorian Regional Channels Authority, or, if there is an agreement with a

channel operator in relation to those waters, that channel operator;

- (iii) port of Hastings waters, the Victorian Regional Channels Authority, or, if there is an agreement with a channel operator in relation to those waters, that channel operator;

port of Hastings has the same meaning as in the **Port Management Act 1995**;

S. 3(1) def. of *port of Hastings* inserted by No. 38/2011 s. 39(1).

port of Hastings waters has the same meaning as in the **Port Management Act 1995**;

S. 3(1) def. of *port of Hastings waters* inserted by No. 38/2011 s. 39(1).

port of Melbourne has the same meaning as in the **Port Management Act 1995**;

Port of Melbourne Corporation has the same meaning as in the **Transport Integration Act 2010**;

port of Melbourne waters has the same meaning as in the **Port Management Act 1995**;

port waters has the same meaning as in the **Port Management Act 1995**;

recreational hire and drive vessel has the meaning given by section 4A;

S. 3(1) def. of *recreational hire and drive vessel* inserted by No. 36/2013 s. 24(4).

S. 3(1) def. of
*recreational
vessel*
substituted by
No. 36/2013
s. 24(9).

recreational vessel has the meaning given by
section 4B;

S. 3(1) def. of
*registered
person*
amended by
No. 36/2013
s. 24(10).

registered person, in relation to—

- (a) a recreational vessel, means each of the
following—
- (i) the person in whose name the
vessel is registered or the person
recorded on a register of vessels
maintained under a corresponding
law as the person responsible for
the vessel;
 - (ii) if the Safety Director, or a
corresponding authority under a
corresponding law, has received
notice of transfer of registration of
the vessel, the person whose name
is disclosed in the records kept by
the Safety Director or the
corresponding authority (as the
case requires) as being responsible
for the vessel;
 - (iii) if the vessel displays a special
identification plate issued by the
Safety Director or by a
corresponding authority under a
corresponding law, the person to
whom the plate is assigned;

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registered recreational vessel means a
recreational vessel that is of a kind which is
required by or under Part 3.1 to be
registered;

regulated Australian vessel has the same meaning as in section 15 of the Commonwealth Navigation Act;

S. 3(1) def. of *regulated Australian vessel* inserted by No. 36/2013 s. 24(4).

regulated hire and drive vessel means—

- (a) a recreational hire and drive vessel that has an engine that is able to propel the vessel at a speed of 10 knots or more; or
- (b) a vessel that falls within any other class of recreational hire and drive vessel specified by the regulations for the purposes of this paragraph;

S. 3(1) def. of *regulated hire and drive vessel* amended by No. 36/2013 s. 24(11).

relevant marine safety law means—

- (a) a provision of this Act or of any regulations made under this Act;
- (b) a provision of the **Port Management Act 1995** or any regulations made under that Act;
- (c) section 37 of the **Pollution of Waters by Oil and Noxious Substances Act 1986** or any regulations made under that Act for the purposes of that section;
- (d) a provision of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** and any regulations made under that Act;

reportable incident means an event referred to in paragraph (b), (c), (d), (e), (f), (g), (h), (i) or (j)(ii), (j)(iii) or (k) of the definition of *marine incident*;

S. 3(1) def. of *reportable incident* amended by No. 36/2013 s. 24(12).

restricted marine licence means a licence granted under section 54;

S. 3(1) def. of *safe construction certificate* amended by No. 78/2011 s. 3(1)(d), repealed by No. 36/2013 s. 24(1).

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S. 3(1) def. of *safe operation certificate* amended by No. 78/2011 s. 3(1)(e), repealed by No. 36/2013 s. 24(1).

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Safety Director means the Director, Transport Safety within the meaning of section 3 of the **Transport Integration Act 2010**;

State waters means—

- (a) the territorial sea adjacent to the State; and
- (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
- (c) waters within the limits of the State;

supply includes—

- (a) in relation to goods—supply and resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent;
- (b) in relation to services—provide, grant or confer, whether as principal or agent;

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transport safety officer has the same meaning as
in the **Transport (Safety Schemes
Compliance and Enforcement) Act 2014**;

S. 3(1) def. of
trading vessel
repealed by
No. 36/2013
s. 24(1).

S. 3(1) def. of
*transport
safety officer*
substituted by
No. 27/2014
s. 135.

* * * * *

S. 3(1) def. of
*Uniform
Shipping
Laws Code*
repealed by
No. 36/2013
s. 24(1).

unmanaged waterways means the parts of State
waters—

- (a) in respect of which there is no person or
body declared to be the waterway
manager under section 6; or
- (b) that are not part of a local port; or
- (c) that are not part of the waters of the
port of Melbourne, port of Geelong,
port of Hastings or port of Portland;

unsafe vessel has the meaning given by section 5;

vessel means any kind of vessel that is used, or
capable of being used, in navigation by
water, however propelled or moved, and
includes—

S. 3(1) def. of
vessel
amended by
Nos 78/2011
s. 3(2)(b),
36/2013
s. 24(13).

- (a) a barge, lighter, floating restaurant or
other floating vessel; and
- (b) an air-cushion vehicle, or other similar
craft, that is used in navigation by
water; and

- (c) any aeroplane that is designed for and capable of being waterborne, for so long as that aeroplane is waterborne; and
- (d) a life boat; and
- (e) a thing being towed by a vessel; and
- (ea) a thing prescribed to be a vessel; and
- (f) an off-shore industry mobile unit within the meaning of the Commonwealth Navigation Act—

but does not include a facility within the meaning of Schedule 3 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**;

vessel design and supply activities means designing, commissioning, constructing, manufacturing, maintaining, repairing or modifying a vessel;

vessel operations means—

- (a) operating a vessel; or
- (b) actions of a pilot when the pilot has conduct of a vessel, including the navigation of the vessel;

Victorian Regional Channels Authority has the same meaning as in the **Transport Integration Act 2010**;

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses);

waterway manager means a person or body that has been declared under section 6 to be a waterway manager;

waterway rules means rules made under Part 5.1.

- (2) A reference to an engine in this Act or the regulations does not include a reference to a sail, paddle, oar, pedal or any other means of propelling a vessel that relies solely on the wind or physical human activity as a power source.
- (3) Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number, of this Act.

4 Meaning of *close quarters situation*

For the purposes of this Act, a *close quarters situation* is a situation where—

- (a) at least 2 vessels pass within proximity of each other such that a reasonable person would in all the circumstances conclude there was a risk of collision by those vessels;
- (b) one vessel passes within proximity of an object such that a reasonable person would in all the circumstances conclude there was a risk of collision by that vessel with that object.

4A Meaning of *recreational hire and drive vessel*

For the purposes of this Act, a vessel is a *recreational hire and drive vessel* if—

- (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
- (b) the master of the vessel is the hirer of the vessel.

S. 4A
inserted by
No. 36/2013
s. 25.

4B Meaning of *recreational vessel*

- (1) For the purposes of this Act, a vessel is a *recreational vessel* if—

- (a) the vessel is used or intended to be used for the purpose of recreation or sport and not for hire or reward; or

S. 4B
inserted by
No. 36/2013
s. 25.

-
- (b) the vessel is owned by—
- (i) a primary or secondary school; or
 - (ii) a community group of a kind prescribed for the purposes of section 7(3)(d) of Schedule 1 to the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth by regulations made under that Act;
- (c) the vessel is, or is of a class that is, declared under section 7 to be a recreational vessel or class of recreational vessel.
- (2) Despite subsection (1), a vessel is not a recreational vessel if the vessel is a domestic commercial vessel.
- (3) Despite subsection (1)(b), a vessel is not a recreational vessel at any time if at that time the vessel is a domestic commercial vessel.

5 Meaning of *unsafe vessel*

For the purposes of this Act, a vessel is an *unsafe vessel* if the operation of the vessel may endanger any person because of—

- (a) the condition or equipment of the vessel; or
- (b) the manner in which cargo and equipment on the vessel is stowed or secured; or
- (c) the nature of the cargo; or
- (d) the overloading of the vessel with persons or cargo; or
- (e) the number or qualifications of its crew; or
- (f) the absence of marine safety equipment that is required under this Act or the regulations to be carried or installed on the vessel.

6 Declaration of waterway managers

- (1) The Minister, by Order published in the Government Gazette, may declare—
 - (a) the Safety Director; or
 - (b) a person or a body established or constituted by or under any Act for any public purpose—

to be the waterway manager of a part of State waters that is specified in the Order.
- (2) The Minister may make an Order under subsection (1) only if the Safety Director or the person or body agrees to being declared a waterway manager.
- (3) An Order under subsection (1) has effect for the period specified in the Order.
- (4) A period specified in an Order under subsection (1) must not exceed 5 years commencing after the Order takes effect.

7 Declaration of vessels

- (1) The Safety Director, by notice published in the Government Gazette, may declare—
 - (a) a vessel to be a recreational vessel;
 - (b) a class of vessel to be a class of recreational vessel.
- (2) A declaration under subsection (1) may be for a specified period.

S. 7(1)(a)
substituted by
No. 36/2013
s. 26.

S. 7(1)(b)
substituted by
No. 36/2013
s. 26.

Note

In making a declaration under this section the Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).

Marine Safety Act 2010
No. 65 of 2010
Part 1.2—Interpretation

s. 8

S. 8
repealed by
No. 36/2013
s. 27.

* * * * *

PART 1.3—APPLICATION

9 Application of Act

- (1) Unless specifically provided otherwise by a provision of this Act, this Act applies to and in relation to the following vessels, and the owner, master and crew of any such vessel—
 - (a) a vessel within State waters; and
 - (b) a vessel connected with Victoria, wherever it may be.
- (2) The Marine Safety (Domestic Commercial Vessels) National Law prevails over this Act to the extent of any inconsistency.
- (3) For the purpose of this section, a vessel is connected with Victoria if it—
 - (a) is registered or deemed to be registered under the Shipping Registration Act 1981 of the Commonwealth with a home port in Victoria; or
 - (b) is owned by a body corporate that is established under Victorian law or that has its principal office or place of business in Victoria, or is in the possession of such a body corporate by virtue of a charter; or
 - (c) is owned by any person whose chief office or place of business in respect of the management of the vessel is in Victoria, or is in the possession of such a person by virtue of a charter; or
 - (d) is registered or licensed or required to be registered or licensed under Victorian law.

S. 9
substituted by
No. 36/2013
s. 28.

10 Act does not apply to defence force vessels

This Act does not apply to or in relation to a vessel belonging to the naval, military or air forces of the Commonwealth or of any other country.

11 Interaction with the Occupational Health and Safety Act 2004

- (1) If a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act (*OHS provision*) applies to an activity in respect of which a duty is imposed under Parts 2.2 to 2.6, the OHS provision continues to apply, and must be observed in addition to Parts 2.2 to 2.6 and any regulations made under this Act made for the purposes of those Divisions.

Note

See also section 51 of the **Interpretation of Legislation Act 1984**.

- (2) If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act, the **Occupational Health and Safety Act 2004** or the regulations made under it prevail to the extent of the inconsistency.
- (3) Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.
- (4) Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.

12 Transport Integration Act 2010

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

13 Crown to be bound

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) Nothing in this Act makes the Commonwealth or a State or Territory liable to be prosecuted for an offence.
 - (3) Subsection (2) does not affect any liability of any servant or agent of the Commonwealth or of a State or Territory to be prosecuted for an offence.
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PART 1.4—OBJECTS AND PRINCIPLES

Division 1—Objects

14 Objects

The objects of this Act are to promote—

- (a) the safety of marine operations; and
- (b) the effective management of safety risks in marine operations and in the marine operating environment; and
- (c) continuous improvement in marine safety management; and
- (d) public confidence in the safety of marine operations; and
- (e) involvement of relevant stakeholders in marine safety; and
- (f) a culture of safety among all participants in the marine operating environment.

Division 2—Principles of marine safety

15 Principle of shared responsibility

- (1) Marine safety is the shared responsibility of—
 - (a) owners of vessels; and
 - (b) marine safety workers; and
 - (c) persons involved in recreational boating activities; and
 - (d) pilots and pilotage services providers; and
 - (e) port management bodies, local port managers and waterway managers; and

- (f) other persons who—
- (i) design, commission, construct, manufacture, supply, install, maintain, repair or modify marine safety infrastructure, vessels or marine safety equipment; and
 - (ii) supply marine safety infrastructure operations to port management bodies; and

* * * * *

S. 15(1)(f)(iii)
repealed by
No. 36/2013
s. 29.

(g) the Safety Director; and

(h) the public.

- (2) The level and nature of responsibility that a person referred to in subsection (1), or falling within a class of person referred to in subsection (1), has for marine safety is dependent on the nature of the risk to marine safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate that risk.

16 Principle of accountability for managing safety risks

Managing risks associated with the carrying out of marine operations is the responsibility of the person best able to control that risk.

17 Principle of integrated risk management

If approaches to managing risks associated with any particular vessel, marine safety equipment or marine safety infrastructure have potential impacts on any other vessel, marine safety equipment or marine safety infrastructure, the best practicable marine safety outcome should be sought.

18 Principle of enforcement

Enforcement of this Act and regulations made under this Act should be undertaken for the purpose of—

- (a) protecting public safety;
- (b) promoting improvement in marine safety;
- (c) removing incentive for any unfair commercial advantage that might be derived from contravening the marine safety requirements under this Act or the regulations; and
- (d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on marine safety.

19 Principle of transparency

Marine regulatory decision making processes should be timely and transparent.

20 Principle of participation, consultation and involvement of all affected persons

The persons and classes of persons referred to in section 15 should—

- (a) participate in or be able to participate in; and
- (b) be consulted on; and
- (c) be involved in—

the formulation and implementation of measures to manage risks to safety associated with marine operations.

21 Principle of equity of use of Victorian waterways

A use of State waters will not be unduly favoured to the detriment of other uses of those waters.

Division 3—Other matters

22 Effect of objects and marine safety principles

The Parliament does not intend by this Part to create in any person any legal right or give rise to any civil cause of action.

CHAPTER 2—MARINE SAFETY DUTIES

PART 2.1—THE CONCEPT OF ENSURING SAFETY

23 The concept of ensuring safety

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety, requires the person to—
 - (a) eliminate risks to safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of Parts 2.2 to 2.6 or regulations made for the purposes of those Parts regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety—
 - (a) the likelihood of the hazard or risk concerned eventuating;
 - (b) the degree of harm that would result if the hazard or risk eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
 - (e) the cost of eliminating or reducing the hazard or risk.

PART 2.2—SAFETY DUTIES OF PORT MANAGEMENT BODIES

**Pt 2.2
(Heading)
amended by
No. 36/2013
s. 30.**

24 Duties of port management bodies to ensure safety of marine safety infrastructure operations

- (1) A port management body must, so far as is reasonably practicable, ensure the safety of marine safety infrastructure operations carried out by the port management body or supplied to that body.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (2) Without limiting subsection (1), a port management body contravenes that subsection if the port management body fails to do any of the following—
- (a) provide or maintain marine safety infrastructure that is, so far as is reasonably practicable, safe;
 - (b) provide or maintain systems related to navigation and marine safety in port waters that are, so far as is reasonably practicable, safe;
 - (c) control the provision of services related to navigation and marine safety in port waters so that those services are provided in a manner that are, so far as is reasonably practicable, safe;
 - (d) provide, so far as is reasonably practicable, information, instruction, control in matters relating to navigation and marine safety in port waters to enable users of a port under

Marine Safety Act 2010
No. 65 of 2010

Part 2.2—Safety Duties of Port Management Bodies

s. 24

the control of the port management body to undertake vessel operations safely;

- (e) provide or maintain systems of marine safety work that are, so far as is reasonably practicable, safe;
- (f) provide, so far as is reasonably practicable, such information, instruction, training or supervision to marine safety workers as is necessary to enable those workers to perform their marine safety work in a way that is safe.

(3) An offence against subsection (1) is an indictable offence.

S. 25
repealed by
No. 36/2013
s. 31.

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**PART 2.3—SAFETY DUTIES OF MARINE DESIGNERS,
MANUFACTURERS AND SUPPLIERS AND MARINE
CONTRACTORS**

**26 Safety duties in relation to design, manufacture and
supply of vessels**

- (1) A person who designs, commissions, constructs, manufactures, supplies, maintains, repairs or modifies a recreational vessel must—
- (a) ensure, so far as is reasonably practicable, that the vessel is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified;
 - (b) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section;
 - (c) in the case of a vessel to which paragraph (a) applies, take such action as is necessary to ensure that there will be available in connection with the use of the vessel adequate information about—
 - (i) the use for which the vessel was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified; and
 - (ii) the results of any testing or examination referred to in paragraph (b); and

**S. 26(1)
amended by
No. 36/2013
s. 32(1).**

- (iii) any conditions necessary to ensure the vessel is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (2) An offence against subsection (1) is an indictable offence.

- (3) For the purposes of subsection (1), if the person who supplies the recreational vessel—

- (a) carries on the business of financing the acquisition of the thing by customers; and
- (b) has, in the course of that business, acquired an interest in the vessel solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
- (c) has not taken possession of the vessel or has taken possession of it solely for the purpose of passing possession to that customer—

the reference in subsection (1) to the person who supplies that vessel is instead taken to be a reference to the third person.

27 Safety duties in relation to design, manufacture and supply of marine safety equipment

- (1) A person who—

- (a) designs, commissions, constructs, manufactures, supplies, installs, maintains, repairs or modifies any thing; and

S. 26(3)
amended by
No. 36/2013
s. 32(2).

(b) knows, or ought reasonably to know, that the thing is, or is to be used as, marine safety equipment—

must—

(c) ensure, so far as is reasonably practicable, that the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, maintained, repaired or modified;

(d) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section;

(e) in the case of a thing to which paragraph (c) applies, take such action as is necessary to ensure that there will be available in connection with the use of the thing adequate information about—

(i) the use for which the thing was designed, commissioned, constructed, manufactured, supplied, installed, maintained, repaired or modified; and

(ii) the results of any testing or examination referred to in paragraph (d); and

(iii) any conditions necessary to ensure the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, maintained, repaired or modified.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (2) An offence against subsection (1) is an indictable offence.
- (3) For the purposes of subsection (1), if the person who supplies the thing—
- (a) carries on the business of financing the acquisition of the thing by customers; and
 - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
 - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer—
- the reference in subsection (1) to the person who supplies that thing is instead taken to be a reference to the third person.
- (4) This section does not apply to a thing that is, or is to be used as, marine equipment that is solely for domestic commercial vessels.

S. 27(4)
inserted by
No. 36/2013
s. 33.

28 Duties of suppliers of marine safety infrastructure operations to port management bodies

- (1) A person who supplies marine safety infrastructure operations to a port management body must, so far as is reasonably practicable, ensure the safety of those operations.
- Penalty: In the case of a natural person,
1800 penalty units;
- In the case of a body corporate,
9000 penalty units.
- (2) Without limiting subsection (1), a person contravenes that subsection if the person fails to do any of the following—

- (a) provide or maintain marine safety infrastructure that is, so far as is reasonably practicable, safe;
 - (b) provide or maintain systems of marine safety work that are, so far as is reasonably practicable, safe;
 - (c) provide, so far as is reasonably practicable, such—
 - (i) information, instruction, training or supervision to marine safety workers as is necessary to enable those workers to perform their marine safety work in a way that is safe; and
 - (ii) information to persons (other than marine safety workers) at, or in the immediate area around, a place where marine safety work is being performed as is necessary to enable those persons to ensure their safety.
- (3) An offence against subsection (1) is an indictable offence.

29 Duties of pilotage service providers to owners of domestic commercial vessels

- (1) A person who is not a marine safety worker and who supplies pilotage services to an owner of a domestic commercial vessel must, so far as is reasonable practicable, ensure the safety of those services.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

S. 29
substituted by
No. 36/2013
s. 34.

s. 29

- (2) Without limiting subsection (1), a person contravenes that subsection if—
- (a) the person operates, or causes or allows to be operated, the domestic commercial vessel and that vessel is an unsafe vessel; or
 - (b) the domestic commercial vessel is, while in State waters, so loaded that the load line of the vessel is submerged.
- (3) An offence against subsection (1) is an indictable offence.
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PART 2.4—MARINE SAFETY WORKER DUTIES

30 Duties of marine safety workers

- (1) A marine safety worker, when carrying out marine safety work, must—
- (a) take reasonable care for his or her own safety; and
 - (b) take reasonable care for the safety of persons who may be affected by the marine safety worker's acts or omissions; and
 - (c) co-operate with the regulated entity employing or engaging them with respect to any action taken by the entity to comply with a requirement imposed by or under this Act or the regulations.

Penalty: 1800 penalty units.

- (2) A marine safety worker, when carrying out marine safety work, must not intentionally or recklessly interfere with or misuse anything provided to them by the regulated entity employing or engaging them—
- (a) in the interests of safety; or
 - (b) under this Act or the regulations.

Penalty: 1800 penalty units.

- (3) A marine safety worker, when carrying out marine safety work, must not wilfully or recklessly place the safety of another person on or in the immediate vicinity of marine safety infrastructure at risk.

Penalty: 1800 penalty units.

Marine Safety Act 2010
No. 65 of 2010
Part 2.4—Marine Safety Worker Duties

s. 30

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- (4) For the purposes of subsection (1)(a) or (b), in determining whether a marine safety worker failed to take reasonable care, regard must be had to what the marine safety worker knew about the relevant circumstances.
- (5) An offence against subsection (1), (2) or (3) is an indictable offence.
- (6) In this section *regulated entity* means a person to whom section 24, 26, 27, 28 or 29 applies.

S. 30(6)
amended by
No. 36/2013
s. 35.

**PART 2.5—SAFETY DUTIES RELATING TO
RECREATIONAL VESSEL AND RECREATIONAL HIRE AND
DRIVE VESSEL OPERATIONS**

Pt 2.5
(Heading)
amended by
Nos 78/2011
s. 4, 36/2013
s. 36.

**31 Masters of recreational vessels or recreational hire
and drive vessels must take reasonable care**

S. 31
(Heading)
amended by
Nos 78/2011
s. 5(1),
36/2013
s. 37(1).

- (1) A master of a recreational vessel or recreational hire and drive vessel must, when carrying out vessel operations—
- (a) take reasonable care for his or her own safety; and
 - (b) take reasonable care for the safety of persons who may be affected by the master's acts or omissions.

S. 31(1)
amended by
Nos 78/2011
s. 5(2),
36/2013
s. 37(2).

Penalty: 60 penalty units.

- (2) A master of a recreational vessel or recreational hire and drive vessel, when carrying out vessel operations, must not wilfully or recklessly place the safety of another person on board, or in the immediate vicinity of, the recreational vessel or recreational hire and drive vessel at risk.

S. 31(2)
amended by
No. 78/2011
s. 5(2),
36/2013
s. 37(3).

Penalty: 60 penalty units.

- (3) For the purposes of subsection (1)(a) or (b), in determining whether a master of a recreational vessel or recreational hire and drive vessel failed to take reasonable care, regard must be had to what the master knew about the relevant circumstances.

S. 31(3)
amended by
Nos 78/2011
s. 5(2),
36/2013
s. 37(4).

s. 32

S. 32
(Heading)
amended by
Nos 78/2011
s. 6(1),
36/2013
s. 38(1).

32 Persons participating in the operation of a recreational vessel must take reasonable care

S. 32(1)
amended by
Nos 78/2011
s. 6(2),
36/2013
s. 38(2).

- (1) A person (other than the master of a recreational vessel) who operates a recreational vessel must, when doing so under the direction of the master of the recreational vessel—
- (a) take reasonable care for his or her own safety; and
 - (b) take reasonable care for the safety of persons who may be affected by his or her acts or omissions; and
 - (c) comply with a direction of the master that the master has given to the person—
 - (i) in order for the master to operate the vessel safely; or
 - (ii) in order for the master or person to comply with a requirement imposed under this Act or the regulations.

Penalty: 25 penalty units.

S. 32(2)
amended by
Nos 78/2011
s. 6(2),
36/2013
s. 38(2).

- (2) A person (other than the master of a recreational vessel) who operates a recreational vessel must not intentionally or recklessly interfere with or misuse anything provided to them by the master—
- (a) in the interests of safety; or
 - (b) in accordance with this Act or the regulations.

Penalty: 60 penalty units.

Marine Safety Act 2010

No. 65 of 2010

Part 2.5—Safety Duties Relating to Recreational Vessel and Recreational
Hire and Drive Vessel Operations

s. 32

- (3) A person (other than the master of a recreational vessel) who operates a recreational vessel must not wilfully or recklessly place the safety of another person on board, or in the immediate vicinity of, the recreational vessel at risk.

S. 32(3)
amended by
Nos 78/2011
s. 6(2),
36/2013
s. 38(2).

Penalty: 60 penalty units.

- (4) For the purposes of subsection (1)(a) or (b), in determining whether a person who is subject to that subsection failed to take reasonable care, regard must be had to what the person knew about the relevant circumstances.
- (5) A person is not guilty of an offence against subsection (1)(c)—
- (a) if the master of the vessel did not warn the person that a failure to comply with a direction could result in the person being charged with an offence against that subsection; or
 - (b) if the person has a reasonable excuse for not complying with a direction of the master.

PART 2.6—SAFETY DUTIES OF PASSENGERS ON VESSELS

33 Passengers on board recreational vessels must take reasonable care

S. 33
(Heading)
amended by
No. 36/2013
s. 39(1).

- (1) A passenger on board a recreational vessel must—
- (a) take reasonable care for his or her own safety; and
 - (b) comply with a direction of the master of the vessel that the master has given to the person—
 - (i) in order for the master to operate the vessel safely; or
 - (ii) in order for the master or passenger to comply with a requirement imposed under this Act or the regulations.

Penalty: 25 penalty units.

S. 33(2)
amended by
No. 36/2013
s. 39(2).

- (2) A passenger on board a recreational vessel must not intentionally or recklessly interfere with or misuse anything provided to them by the master of the vessel—
- (a) in the interests of safety; or
 - (b) in accordance with this Act or the regulations.

Penalty: 60 penalty units.

S. 33(3)
amended by
No. 36/2013
s. 39(2).

- (3) A passenger on board a recreational vessel must not wilfully or recklessly place the safety of another person on board, or in the immediate vicinity of, the vessel at risk.

Penalty: 60 penalty units.

Marine Safety Act 2010
No. 65 of 2010
Part 2.6—Safety Duties of Passengers on Vessels

s. 33

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- (4) For the purposes of subsection (1)(a), in determining whether a passenger on board a recreational vessel failed to take reasonable care, regard must be had to what the passenger knew about the relevant circumstances.
- (5) A passenger on board a recreational vessel is not guilty of an offence against subsection (1)(b)—
- (a) if the master of the vessel did not warn the passenger that a failure to comply with a direction could result in the passenger being charged with an offence against that subsection; or
 - (b) if the passenger has a reasonable excuse for not complying with a direction of the master.
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S. 33(4)
amended by
No. 36/2013
s. 39(2).

S. 33(5)
amended by
No. 36/2013
s. 39(2).

PART 2.7—OTHER MATTERS

34 Single charge for multiple contraventions of certain duties

- (1) This section applies to—
- (a) a contravention of a provision of Parts 2.2 to 2.6 by a person; and
 - (b) a contravention of such a provision for which an officer of a body corporate, partnership or unincorporated body or association (including a body corporate, partnership or unincorporated body or association representing the Crown) is liable.

Note

For liability of officers, see Part 8.4.

- (2) Subject to any contrary court order, two or more contraventions may be charged as a single offence if they arise out of the same factual circumstances.
- (3) This section does not authorise contraventions of two or more provisions of Parts 2.2 to 2.6 to be charged as a single offence.
- (4) If two or more contraventions are charged as a single offence, a single penalty only may be imposed in respect of the contraventions.

35 Civil liability not affected by Parts 2.2 to 2.6

Nothing in Parts 2.2 to 2.6 is to be construed as—

- (a) conferring a right of action in civil proceedings in respect of a contravention of a provision of any of those Parts; or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or

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- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, with respect to breaches of duties or obligations imposed by the regulations.
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CHAPTER 3—OPERATION OF VESSELS

PART 3.1—REGISTRATION OF RECREATIONAL VESSELS

36 Purposes of registration

The purposes of registration are—

S. 36(a)
amended by
No. 36/2013
s. 40(a).

(a) to enable the operation of recreational vessels on State waters to be regulated for reasons of safety;

S. 36(b)
amended by
No. 36/2013
s. 40(a).

(b) to ensure that recreational vessels which are used on State waters meet prescribed safety standards;

S. 36(c)
amended by
No. 36/2013
s. 40(b).

(c) to provide a method of establishing the identity of each recreational vessel which is used on State waters and of the person who is responsible for it.

37 Offence if recreational vessel not registered

S. 37
(Heading)
amended by
No. 36/2013
s. 41(1).

(1) An owner of a recreational vessel must not cause or allow the vessel to be operated on State waters unless that vessel is—

(a) registered under this Part; or

(b) exempted from registration—

(i) by the regulations; or

(ii) by a notice given by the Safety Director under section 260.

Penalty: 60 penalty units.

S. 37(2)
amended by
No. 36/2013
s. 41(2).

(2) A master of a recreational vessel must not operate a recreational vessel on State waters unless that vessel—

(a) is registered under this Part; or

- (b) exempted from registration—
- (i) by the regulations; or
 - (ii) by a notice given by the Safety Director under section 260.

Penalty: 60 penalty units.

- (3) A person must not, being the owner or master of a recreational vessel—
- (a) cause or allow the vessel to be operated in breach of any condition of its registration; or
 - (b) employ or engage a person to operate the vessel in breach of any condition of its registration.

Penalty: 60 penalty units.

38 Recreational vessel may be registered in one name only

A recreational vessel may only be registered in the name of—

- (a) an individual who is of or over the age of 14 years; or
- (b) a body corporate; or
- (c) an unincorporated body.

39 Effecting registration, renewal or transfer

- (1) Registration, renewal of registration and transfer of registration may be applied for, and granted or refused, only in accordance with this Act and the regulations.
- (2) The Safety Director must register a recreational vessel in respect of which an application for registration is made if—
- (a) the vessel meets any prescribed requirements for registration; and

S. 37(3)
amended by
No. 36/2013
s. 41(2).

S. 38
(Heading)
amended by
No. 36/2013
s. 42(1).

S. 38
substituted by
No. 66/2012
s. 25,
amended by
No. 36/2013
s. 42(2).

S. 39(2)
amended by
No. 36/2013
s. 43.

s. 40

(b) the applicant complies with the provisions of this Act and the regulations relating to registration.

S. 39(3)
amended by
No. 36/2013
s. 43.

(3) Regulations made under this Act must not require the payment of any fees, rates or charges in respect of the registration of a recreational vessel that—

(a) is used or intended to be used primarily for search and rescue purposes; and

(b) is owned by an organisation approved by the Safety Director for the purposes of this subsection.

40 Safety Director may impose registration conditions

S. 40(1)
amended by
No. 36/2013
s. 44.

(1) The Safety Director may, at the time of registering a recreational vessel, make the registration subject to conditions.

S. 40(2)
amended by
No. 36/2013
s. 44.

(2) A condition of registration imposed under subsection (1) must not restrict the distance offshore that a recreational vessel may be operated based on the length of the vessel.

41 Prescribed conditions on registration

S. 41(1)
amended by
No. 36/2013
s. 45(1).

(1) In addition to any conditions imposed by the Safety Director under section 40, the registration of a prescribed class or type of recreational vessel may be subject to prescribed conditions.

S. 41(2)
amended by
No. 36/2013
s. 45(2).

(2) A prescribed condition of registration of a prescribed class or type of recreational vessel must not restrict the distance offshore that the vessel may be operated based on the length of the vessel.

42 Register of registered recreational vessels

- (1) The Safety Director must establish and maintain a register of all registered recreational vessels and previously registered recreational vessels.
- (2) The register of registered recreational vessels may contain any other information that is prescribed.
- (3) The register of registered recreational vessels does not provide evidence of title to any vessel.

S. 42
(Heading)
amended by
No. 36/2013
s. 46(1).

S. 42(1)
amended by
No. 36/2013
s. 46(2).

S. 42(2)
amended by
No. 36/2013
s. 46(2).

S. 42(3)
amended by
No. 36/2013
s. 46(2).

43 Safety Director may cancel or suspend registration of a recreational vessel

- (1) The Safety Director must cancel the registration of a recreational vessel if—
 - (a) the registered person requests the Safety Director in writing to cancel the registration of that vessel; or
 - (b) the Safety Director is satisfied that the vessel has been stolen and not recovered or has been destroyed; or
 - (c) the Safety Director is satisfied that false or misleading information has been provided in connection with the registration of the vessel; or
 - (d) the vessel is exempted from registration by the regulations.

S. 43
(Heading)
amended by
No. 36/2013
s. 47(1).

S. 43(1)
amended by
No. 36/2013
s. 47(2).

S. 43(1)(c)
amended by
No. 78/2011
s. 7(a).

S. 43(1)(d)
inserted by
No. 78/2011
s. 7(b).

s. 44

S. 43(2)
amended by
No. 36/2013
s. 47(3).

(2) The Safety Director may, by written notice served on the registered person, suspend the registration of the recreational vessel if—

S. 43(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.2).

(a) the Safety Director has considered a report in relation to the vessel prepared by a police officer or a transport safety officer; and

(b) based on the report, the Safety Director is satisfied that the vessel does not comply with this Act or the regulations.

(3) The Safety Director must specify in the notice served under subsection (2)—

(a) why the vessel does not comply with this Act or the regulations; and

(b) how the person may demonstrate to the Safety Director that the deficiencies and defects in the vessel have been remedied.

S. 43(4)
amended by
No. 36/2013
s. 47(4).

(4) If the registration of a recreational vessel has been suspended under subsection (2), the Safety Director may during the current period of registration for that vessel, by written notice served on the registered person, withdraw the notice served under subsection (2) if—

(a) the registered person has demonstrated to the Safety Director that the deficiencies and defects in the vessel have been remedied; and

(b) the Safety Director is satisfied that the vessel complies with this Act and the regulations.

44 Cancellation of registration by court

S. 44(1)
amended by
Nos 29/2011
s. 3(Sch. 1
item 57.2),
36/2013 s. 48.

(1) A court convicting a person of an offence against section 60 may, if the circumstances warrant it, order the cancellation of the registration of the recreational vessel in respect of which the offence

was committed, if that vessel is owned by that person, and order the Safety Director not to register that vessel again during the period specified by the court.

- (2) If the court considers that another person who is not present in court may be substantially affected by an order made under subsection (1), the court must issue a summons to that other person to show cause why the order should not be made.
- (3) On the return of the summons, the court may, after hearing the evidence brought before it—
 - (a) refuse to order that the registration be cancelled; or
 - (b) order that the registration be cancelled, and order the Safety Director not to register that vessel again during the period specified by the court.
- (4) The court must cause particulars of an order made under this section to be sent immediately to the Safety Director and the Safety Director must give effect to the order as soon as possible.

Pt 3.2
(Heading)
amended by
Nos 78/2011
s. 8, 36/2013
s. 49.

**PART 3.2—LICENSING OF MASTERS OF RECREATIONAL
VESSELS AND REGULATED HIRE AND DRIVE VESSELS**

Division 1—Purposes

45 Purposes of licensing

The purposes of licensing masters of recreational vessels are—

- (a) to ensure that people who are in charge of or in command of registered recreational vessels are competent masters; and
- (b) to ensure that those masters are aware of safe operating practices and relevant marine safety laws; and
- (c) to ensure that people who are, or who become, unsuited to be the master of a registered recreational vessel are not permitted to be the master of a registered recreational vessel; and
- (d) to enable the identification of masters for the purposes of law enforcement and the investigation of, and response to, marine incidents and accidents.

**Division 2—Offences for unlicensed master of certain classes
of registered recreational vessels**

**46 Offence to be a master of registered recreational
vessel without a marine licence or in breach of
conditions of marine licence**

- (1) A person must not be the master of a registered recreational vessel unless the person holds a marine licence.

Penalty: 20 penalty units.

- (2) A master of a registered recreational vessel must operate the vessel in accordance with any prescribed condition or any condition specified in the marine licence the master holds.

Penalty: 20 penalty units.

47 Offence to be a master of prescribed type of registered recreational vessel without licence endorsement

- (1) A person must not be the master of a prescribed class or type of registered recreational vessel unless the person has a licence endorsement for that class or type of vessel.

Penalty: 20 penalty units.

- (2) A master of a prescribed class or type of registered recreational vessel must operate the vessel in accordance with any prescribed condition or any condition specified in the licence endorsement for that class or type of vessel.

Penalty: 20 penalty units.

48 Offence to be the master of a registered recreational vessel undertaking prescribed activity without licence endorsement

- (1) A person must not be the master of a registered recreational vessel being used to undertake a prescribed type of activity unless the person has a licence endorsement in respect of that prescribed type of activity.

Penalty: 20 penalty units.

- (2) A master of a registered recreational vessel must operate the vessel in accordance with any prescribed condition or any condition specified in a licence endorsement referred to in subsection (1).

Penalty: 20 penalty units.

49 Offence to be the master of a regulated hire and drive vessel without a marine licence or in breach of conditions of marine licence

- (1) A person must not be the master of a regulated hire and drive vessel unless the person holds a marine licence.

Penalty: 20 penalty units.

- (2) A master of a regulated hire and drive vessel must operate the vessel in accordance with any prescribed condition or any condition specified in the marine licence the master holds.

Penalty: 20 penalty units.

50 Offence to be the master of a prescribed type of regulated hire and drive vessel without licence endorsement

- (1) A person must not be the master of a prescribed class or type of regulated hire and drive vessel unless the person has a licence endorsement for that class or type of vessel.

Penalty: 20 penalty units.

- (2) A master of a prescribed class or type of regulated hire and drive vessel must operate the vessel in accordance with any prescribed condition or any condition specified in the licence endorsement for that class or type of vessel.

Penalty: 20 penalty units.

51 Offence to be the master of a regulated hire and drive vessel undertaking prescribed activity without licence endorsement

- (1) A person must not be the master of a regulated hire and drive vessel being used to undertake a prescribed type of activity unless the person has a licence endorsement in respect of that prescribed type of activity.

Penalty: 20 penalty units.

- (2) A master of a regulated hire and drive vessel must operate the vessel in accordance with any prescribed condition or any condition specified in a licence endorsement referred to in subsection (1).

Penalty: 20 penalty units.

52 Offence to allow a non-licensed person to be the master of a registered recreational vessel

- (1) The owner of a registered recreational vessel must not cause or allow another person to be the master of that vessel unless that person is the holder of a marine licence.

Penalty: 10 penalty units.

- (2) It is a defence to a charge under this section if the owner reasonably believes that the person held the appropriate marine licence which (as the case requires) is endorsed with the appropriate licence endorsement.

Division 3—General licensing provisions

53 General marine licence

- (1) The Safety Director may, in accordance with the regulations—
- (a) grant or renew a general marine licence to a person if—
 - (i) the person is of or over the age of 16 years; and
 - (ii) the person has made an application for the licence in accordance with the regulations and the person is, in accordance with the regulations, eligible to apply for the licence; and
 - (iii) the Safety Director is satisfied that the person has met any requirement of the Safety Director under subsection (2); or
 - (b) refuse to grant or renew a general marine licence; or
 - (c) impose conditions or vary the conditions of a general marine licence; or
 - (d) refuse to vary the conditions of a general marine licence.
- (2) Before granting a general marine licence, the Safety Director may require the applicant—
- (a) to—
 - (i) pass any test of a prescribed type about the operation of recreational vessels or undergo any training of a prescribed type about the operation of recreational vessels that the Safety Director considers is appropriate, or both; or
 - (ii) have any prescribed qualification; and

S. 53(1)(c)
amended by
No. 78/2011
s. 9(1).

S. 53(2)(a)(i)
amended by
No. 78/2011
s. 9(2).

- (b) to comply with any prescribed procedures or requirements.
- (3) A general marine licence authorises the holder to be the master of the vessels to which the licence applies for the term, and subject to any conditions, specified in the licence or prescribed by the regulations.
- (4) An application for a general marine licence must be made in accordance with the regulations.

S. 53(3)
amended by
No. 78/2011
s. 9(3).

54 Restricted marine licence

- (1) The Safety Director may, in accordance with the regulations—
 - (a) grant or renew a restricted marine licence to a person if—
 - (i) the person is of or over the age of 12 years and less than 16 years; and
 - (ii) the person has made an application for the licence in accordance with the regulations and the person is, in accordance with the regulations, eligible to apply for the licence; and
 - (iii) the Safety Director is satisfied that the person has met any requirement of the Safety Director under subsection (2); or
 - (b) refuse to grant or renew a restricted marine licence; or
 - (c) impose conditions or vary the conditions of a restricted marine licence; or
 - (d) refuse to vary the conditions of a restricted marine licence.

S. 54(1)(c)
amended by
No. 78/2011
s. 10(1).

S. 54(2)(a)(i)
amended by
No. 78/2011
s. 10(2).

(2) Before granting a restricted marine licence, the Safety Director may require the applicant—

(a) to—

(i) pass any test of a prescribed type about the operation of recreational vessels or undergo any training of a prescribed type about the operation of recreational vessels that the Safety Director considers is appropriate, or both; or

(ii) have any prescribed qualification; and

(b) to comply with any prescribed procedures or requirements.

S. 54(3)
amended by
No. 78/2011
s. 10(3).

(3) A restricted marine licence authorises the holder to be the master of the vessels to which the licence applies for the term, and subject to any conditions, specified in the licence or prescribed by the regulations.

(4) An application for a restricted marine licence must be made in accordance with the regulations.

(5) If the holder of a restricted marine licence attains 16 years, the licence held by that person is taken to be a general marine licence.

55 Licence endorsement

(1) A specified person may, in accordance with the regulations, apply for an endorsement of a marine licence the Safety Director has granted, or will grant, to enable that specified person to be the master of—

(a) a prescribed class or type of vessel; or

(b) a vessel undertaking a prescribed type of activity.

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- (2) A specified person is a person—
- (a) who has applied for a marine licence; or
 - (b) who is the holder of a marine licence—
and who satisfies the Safety Director that he or she is qualified to be the master of a prescribed class or type of vessel or a vessel undertaking a prescribed type of activity.
- (3) An endorsed marine licence authorises the holder, subject to any conditions specified in the endorsement or prescribed by the regulations, to be the master of—
- (a) a prescribed class or type of vessel; or
 - (b) a vessel undertaking a prescribed type of activity.
- (4) The Safety Director may, in accordance with the regulations—
- (a) endorse the marine licence; or
 - (b) refuse to endorse a marine licence; or
 - (c) impose conditions of endorsement; or
 - (d) vary the conditions of endorsement; or
 - (e) cancel the endorsement.
- (5) Before endorsing a marine licence, the Safety Director may require the specified person—
- (a) to do either or both of the following—
 - (i) pass any test of a prescribed type about the operation of prescribed classes or types of vessel or the carrying out of prescribed types of activity that the Safety Director considers appropriate;

S. 55(5)(a)(ii)
amended by
No. 78/2011
s. 11.

- (ii) undertake any training of a prescribed type that relates to the operation of recreational vessels that the Safety Director considers appropriate; or
- (b) to have any prescribed qualification; and
- (c) to comply with any prescribed procedures and requirements.

56 Safety Director may require a person to undergo testing

- (1) The Safety Director may require—
 - (a) the holder of a marine licence (whether endorsed or not); or
 - (b) an applicant for a marine licence or an applicant for an endorsement of a marine licence; or
 - (c) an applicant for a variation of conditions of a marine licence or an endorsement of a marine licence—

to undergo a test or tests of health or competence or any other appropriate test or tests to determine the matters specified in subsection (2).

- (2) For the purposes of subsection (1), the following matters are specified—
 - (a) whether the person is unfit to be the master of—
 - (i) a registered recreational vessel; or
 - (ii) a registered recreational vessel of a prescribed class or type that may be used to undertake a prescribed activity; or
 - (b) whether it may be dangerous for the person to be the master of any recreational vessel.

- (3) A test required by the Safety Director under this section must be carried out by a person of the class prescribed in relation to that class of test.
- (4) No action may be taken against a person who carries out a test under this section and who expresses to the Safety Director an opinion formed by that person as a result of the test.
- (5) No action may be taken against a person who, in good faith, reports to the Safety Director any information which discloses or suggests that—
 - (a) the person is unfit to be the master of—
 - (i) a registered recreational vessel; or
 - (ii) a registered recreational vessel of a prescribed class or type that may be used to undertake a prescribed activity; or
 - (b) it may be dangerous for the person to be master of a recreational vessel, whether or not that vessel is a prescribed class or type of vessel or is a vessel that may be used to undertake a prescribed activity.
- (6) A marine licence obtained by a person who is disqualified from obtaining a marine licence is of no effect.

Division 4—Exemptions from requirement to hold marine licence

57 Exemptions applying to licences issued outside Victoria

- (1) A person is exempt from the requirements to hold a marine licence if the person—
 - (a) has an appropriate licence granted, or certificate or other authority issued, in another State or a Territory and who was ordinarily resident in the granting or issuing

State or Territory at the time of grant or issue; or

- (b) has an appropriate licence granted, or certificate or other authority issued, in another country and written in the English language or accompanied by an accurate English translation and who was ordinarily resident in that country at the time of grant or issue—

that authorises the person to be the master of a registered recreational vessel of that class.

- (2) A person is not exempt or ceases to be exempt under subsection (1) in any of the following circumstances—
 - (a) if the holder of the licence granted, or certificate or other authority issued, in another State or a Territory has resided in Victoria for a continuous period of more than 3 months;
 - (b) if the holder of the licence granted or other authority issued in another country has a permanent visa issued by the Commonwealth for more than 3 months;
 - (c) if the person is disqualified from operating a recreational vessel in another State or a Territory or another country or has his or her licence suspended;
 - (d) if, in the reasonable opinion of the Safety Director, it may be dangerous for the person to operate a registered recreational vessel because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things.

- (3) If the Safety Director forms an opinion on the matter set out in subsection (2)(d), the Safety Director must give the person notice in writing of the following—
- (a) that he or she is no longer exempt from the requirement to hold a marine licence;
 - (b) that he or she must not be the master of or operate a registered recreational vessel on State waters;
 - (c) the reasons why that person is no longer exempt;
 - (d) any action that may be taken by the person in order to regain the exemption;
 - (e) the date by which the person must take that action.

58 Exemption from licensing requirements for masters of non-engined vessels

A person who is the master of a registered recreational vessel that is—

- (a) engaged solely in sailing; and
- (b) is not using any mechanical means of propulsion—

is exempt from the requirement to hold a marine licence.

Division 5—Other licensing offences

59 Offence for overseas or interstate operator to fail to comply with the conditions of the licence or certificate

A person who is exempted under section 57 from the requirement to comply with Division 2 because the person holds an appropriate licence or certificate in another State, a Territory or country, must not be the master of a registered recreational

vessel in breach of any condition of that licence or certificate.

Penalty: 20 penalty units.

60 Offence to be master of a registered recreational vessel while disqualified etc.

A person must not be a master of a registered recreational vessel while any marine licence granted to the person is suspended or during a period that the person is disqualified from obtaining a marine licence.

Penalty: 60 penalty units.

61 Offence not to have marine licence in person's possession

A person who holds a marine licence granted under this Part must have the licence in his or her possession while being the master of a registered recreational vessel.

Penalty: 5 penalty units.

Pt 3.3
(Heading and
ss 62–72)
amended by
No. 78/2011
ss 12–17,
repealed by
No. 36/2013
s. 50.

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PART 3.4—LOCAL KNOWLEDGE CERTIFICATES

Pt 3.4
(Heading)
amended by
No. 36/2013
s. 51.

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Pt. 3.4 Div. 1
(Heading and
ss 73–79)
repealed by
No. 36/2013
s. 52.

Division 2—Local knowledge certificates

80 Offence to navigate vessel without local knowledge certificate in waters requiring certificate

S. 80
amended by
No. 36/2013
s. 53.

The master of a domestic commercial vessel must not—

- (a) enter or leave, or attempt to enter or leave, waters declared under section 81; or
- (b) navigate, or attempt to navigate, the vessel within waters declared under section 81—

unless the master holds a local knowledge certificate in respect of those waters.

Penalty: 120 penalty units.

81 Declaration in relation to waters requiring local knowledge certificates for navigation in those waters

S. 81
amended by
No. 78/2011
s. 18.

The Safety Director, by notice published in the Government Gazette, may declare a part of State waters as waters in respect of which a local knowledge certificate is required to navigate types or classes of vessel specified in the notice.

Note

In making a declaration under this section the Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).

S. 82(1)
amended by
Nos 78/2011
s. 19, 36/2013
s. 54.

82 Application for local knowledge certificates

- (1) A master of a domestic commercial vessel who is a holder of a certificate of competency may apply to the Safety Director for the issue of a local knowledge certificate.
- (2) An application under subsection (1) must—
 - (a) be in the form determined by the Safety Director; and
 - (b) be accompanied by—
 - (i) evidence that the applicant has a certificate of competency for the type or class of vessel that he or she may operate; and
 - (ii) evidence that the applicant has completed any training required by the Director; and
 - (iii) evidence that the applicant has suitable qualifications and experience appropriate to the State waters to which the local knowledge certificate will apply; and
 - (iv) the prescribed fee (if any).
- (3) The Safety Director—
 - (a) may require the applicant to provide further information or material in respect of the application; and
 - (b) may require the information or material to be verified; and
 - (c) may require proof of the identity of the person making the application.

83 Issue of local knowledge certificate

- (1) On receiving an application under section 82(1), the Safety Director may issue a local knowledge certificate to the applicant if the Safety Director is satisfied that the applicant is qualified to hold a local knowledge certificate.
- (2) A local knowledge certificate issued under subsection (1) may be issued subject to any condition imposed by the Safety Director.
- (3) A condition referred to in subsection (2) may provide that the master holding the certificate is not required to use the services of a pilot in pilot required waters if the vessel that the master has command or charge of—
 - (a) is a vessel of a type or class that the holder of the certificate is authorised to operate under a certificate of competency; and
 - (b) is a vessel greater than 35 metres in length and operates either permanently, or for the time being solely, within the limits of port waters.
- (4) A local knowledge certificate issued under subsection (1)—
 - (a) takes effect on the day that it is issued; and
 - (b) remains in effect for a period of 5 years after the date it is issued unless sooner suspended or cancelled.

84 Renewal of local knowledge certificate

- (1) A holder of a local knowledge certificate may apply for the renewal of the local knowledge certificate the person holds.
- (2) An application under subsection (1) must be made before the local knowledge certificate expires.

Marine Safety Act 2010
No. 65 of 2010
Part 3.4—Local Knowledge Certificates

s. 84

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- (3) Sections 82(2) and 83 apply to the renewal of a local knowledge certificate as if a reference to a master who applied for a local knowledge certificate in those sections were a reference to the master who holds the local knowledge certificate who applied for the renewal of the local knowledge certificate.
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PART 3.5—VESSEL OPERATIONAL REQUIREMENTS

Division 1—Unsafe vessels

85 Detention of unsafe vessels

- (1) The detention of an unsafe vessel under this section does not—
 - (a) prevent a prosecution for an offence against section 87;
 - (b) prevent a prosecution for breach of a safety duty by an owner or master of a vessel under Chapter 2.
- (2) The Safety Director may order a vessel that is on State waters or in any other part of the State to be provisionally detained if it appears to the Safety Director to be an unsafe vessel.
- (3) If the Safety Director makes an order under subsection (2), the Safety Director—
 - (a) must, as soon as practicable, cause to be served on the owner or master of the vessel a notice of the detention and a written statement of the reasons for the detention; and
 - (b) must request a transport safety officer to investigate and report to the Safety Director on the condition of the vessel and its equipment; and
 - (c) may, on receipt of the report referred to in paragraph (b)—
 - (i) order the release of the vessel; or
 - (ii) if of the opinion that it is an unsafe vessel, order it to be finally detained either absolutely or until the performance of such conditions as the Safety Director considers necessary to

ensure that the vessel is not an unsafe vessel; and

- (d) may at any time (and without any report) order the release of the vessel (with or without conditions) if satisfied that the vessel is not an unsafe vessel; and
- (e) must cause a copy of the report to be served on the owner or master of the vessel (if their identity and whereabouts are known to the Safety Director) before an order for final detention is made; and
- (f) must cause a copy of an order for final detention to be served on the owner and master of the vessel (if their identity and whereabouts are known to the Safety Director).
- (4) If an order for the final detention of a vessel is made, the vessel must not be released until the Safety Director is satisfied that its further detention is no longer necessary, and orders its release.
- (5) The owner of a vessel must not cause or allow the vessel to be taken on a voyage if the owner knows that the vessel has been detained under this section and has not been duly released.
Penalty: 240 penalty units.
- (6) The master of a vessel must not take the vessel on a voyage if the master knows that the vessel has been detained under this section and has not been duly released.
Penalty: 240 penalty units.

S. 85(3)(e)
amended by
No. 78/2011
s. 20.

- (7) An agent for a vessel that has been detained under this section and not duly released must not assist the owner or master of the vessel to contravene this section.

Penalty: 240 penalty units.

- (8) A person must not obstruct or fail to comply with any reasonable requirement of a person appointed by the Safety Director to take charge of a vessel detained under this section in connection with the exercise of that person's functions.

Penalty: 60 penalty units.

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S. 86
repealed by
No. 36/2013
s. 55.

Division 2—Dangerous operation and acts

87 Dangerous operation of a recreational vessel, government vessel or hire and drive vessel

- (1) A person must not operate a recreational vessel at a speed or in a manner which is dangerous to the public, having regard to all the circumstances in the case.

S. 87(1)
amended by
No. 36/2013
s. 56(1).

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply to a person who is complying with section 91.

- (2A) The master of a recreational hire and drive vessel must not operate the vessel at a speed or in a manner which is dangerous to the public, having regard to all the circumstances in the case.

S. 87(2A)
inserted by
No. 36/2013
s. 56(2).

Penalty: 240 penalty units or imprisonment for 2 years.

S. 87(2B)
inserted by
No. 36/2013
s. 56(2).

(2B) Subsection (2A) does not apply to a person who is complying with a requirement under the Marine Safety (Domestic Commercial Vessel) National Law.

S. 87(3)
amended by
Nos 78/2011
s. 21, 36/2013
s. 56(3).

(3) The owner of a recreational vessel must not operate, or cause or allow a person to operate, the vessel if the owner knows that it is an unsafe vessel.

Penalty: 240 penalty units.

S. 87(4)
amended by
Nos 78/2011
s. 21, 36/2013
s. 56(4).

(4) The master of a recreational vessel or recreational hire and drive vessel must not operate, or cause or allow a person to operate, the vessel if the master knows that it is an unsafe vessel.

Penalty: 240 penalty units.

(5) On conviction for an offence under this section, the court must—

(a) in the case of an offender who holds a marine licence under Part 2, cancel that licence and disqualify the offender from obtaining a licence for the time (not being less than 6 months) that the court thinks fit; or

(b) in the case of an offender who does not hold a marine licence under Part 2, disqualify the offender from obtaining a licence for the time (not being less than 6 months) that the court thinks fit.

88 Acts tending to endanger vessel or crew

(1) A person must not, wilfully or negligently—

(a) do any act tending to the immediate loss or destruction of, or serious damage to, a vessel or its cargo; or

(b) do any act tending immediately to endanger anyone belonging to or on board a vessel; or

- (c) fail to do any act that is reasonably necessary to protect a vessel or cargo from immediate loss, destruction or serious damage; or
- (d) fail to do any act that is reasonably necessary to protect anyone belonging to or on board a vessel from immediate danger.

Penalty: 240 penalty units.

- (2) An offence against subsection (1)(a), (b), (c) or (d) is an indictable offence.

Division 3—Other operational requirements

89 Tampering with a vessel

A person must not, without just cause or excuse, tamper with a vessel that is owned by another person.

Penalty: 60 penalty units.

90 Distress signals

- (1) A vessel must be provided in accordance with the regulations with the means of making distress signals.
- (2) A person on board a vessel must not knowingly use or display or knowingly cause or permit any person under his or her authority to use or display any recognised distress signal except in the case of a vessel being in distress.

Penalty: 20 penalty units.

- (3) For the purposes of section 86 of the **Sentencing Act 1991**, compensation for loss or destruction of, or damage to, property as a result of the offence includes compensation for—
 - (a) any work undertaken; or
 - (b) any risk incurred; or

(c) any loss sustained—

in consequence of the signal having been taken to be a distress signal.

91 Assistance to people in distress

S. 91(1)
amended by
No. 36/2013
s. 57(1).

- (1) If a master of a recreational vessel believes that any other person in the vicinity of the vessel is in distress, the master must, unless he or she is unable to do so or in the circumstances of the case he or she considers it unsafe, unreasonable or unnecessary to do so, cause his or her vessel to proceed with all practicable speed to the assistance of that other person.

Penalty: 60 penalty units.

S. 91(2)
amended by
No. 36/2013
s. 57.

- (2) If a master of a recreational vessel contravenes subsection (1) an investigation may be conducted into the conduct of the master and his or her marine licence may be cancelled or suspended and, for this purpose, the provisions of Part 4.5 with respect to investigations into accidents apply, with any necessary modifications, to investigations under this subsection.

92 Offence to fail to comply with direction of Safety Director regarding removal of vessel

A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person by the Safety Director under item 24 of Schedule 1.

Penalty: 120 penalty units.

Division 4—Reporting of incidents

93 Reporting requirements in relation to reportable incidents

- (1) This section applies if a reportable incident occurs and a person is killed or injured or there is significant damage to property, or property is lost or destroyed, as a result of the incident.
- (2) The master of the vessel involved in the reportable incident, as the case requires—
 - (a) must immediately stop the vessel, drop anchor or otherwise secure the vessel; and
 - (b) must immediately render such assistance as he or she can; and
 - (c) must at the scene of the reportable incident as soon as possible give his or her name and address and also the name and address of the owner of the vessel and the identifying mark of the vessel—
 - (i) to any person who has been injured or to the owner of any property which has been damaged, destroyed or lost; or
 - (ii) to a person representing the injured person or the owner of the property; and
 - (d) must at the scene of the reportable incident as soon as possible give those names and addresses to any police officer who is present; and
 - (e) if any person is injured and no police officer is present at the scene of the incident, must as soon as possible report in person full particulars of the incident at the police station that is most accessible from the scene of the incident if that station is open and, if it

S. 93(2)(d)
amended by
No. 37/2014
s. 10(Sch.
item 107.2).

S. 93(2)(e)
amended by
No. 37/2014
s. 10(Sch.
item 107.2).

S. 93(2)(f)
amended by
No. 37/2014
s. 10(Sch.
item 107.2).

is not open, at the next most accessible station; and

- (f) if any property is damaged or destroyed and neither the owner of the property nor any person representing the owner nor any police officer is present at the scene of the incident, must as soon as possible report in person full particulars of the incident at the police station that is most accessible from the scene of the incident if that station is open and, if it is not open, at the next most accessible station.

(3) If—

- (a) as a result of the reportable incident a person is killed or suffers serious injury; and
- (b) the master of the vessel knows or ought reasonably to have known that the reportable incident had occurred and had resulted in a person being killed or suffering serious injury; and
- (c) did not comply with subsection (2)(a) or (b) in relation to the reportable incident—

the master of the vessel is guilty of an offence and liable to a penalty not exceeding 6 months imprisonment or 60 penalty units, or both.

(4) If—

- (a) as a result of the reportable incident a person is killed or suffers serious injury; and
- (b) the master of the vessel does not comply with subsection (2)(c), (d) or (e)—

the master is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

- (5) If—
- (a) as a result of the reportable incident a person is injured; and
 - (b) the master of the vessel does not comply with subsection (2)—
- the master is guilty of an offence and liable to a penalty not exceeding 60 penalty units.
- (6) If no person is killed or suffers injury as a result of the reportable incident and the master of the vessel does not comply with subsection (2), the master of the vessel is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
- (7) On conviction of a person for, or finding a person guilty of, an offence against this section, the court may cancel any marine licence held by the person and, whether or not that person holds a marine licence, disqualify him or her from obtaining a marine licence for a period not exceeding 8 years.
- (8) The specifying by subsection (3) of fault elements for an offence against that subsection is not intended to affect the question of whether fault elements are required for any other offence against this section or any other provision of this Act.

S. 93(7)
amended by
No. 36/2013
s. 58.

94 Reporting of reportable incidents to Safety Director

The owner or master of a domestic commercial vessel or regulated Australian vessel, other than a vessel that is a customs vessel, that is involved in a reportable incident must report, in writing, the full particulars of the incident to the Safety Director as soon as possible after the incident occurs.

Penalty: 10 penalty units.

S. 94
amended by
No. 36/2013
s. 59.

Division 5—Compliance with International Conventions

Subdivision 1—Interpretation

95 Definitions

S. 95
substituted by
No. 36/2013
s. 60.

In this Division—

Prevention of Collisions Convention has the same meaning as in section 14(1) of the Commonwealth Navigation Act;

Safety Convention has the same meaning as in section 14(1) of the Commonwealth Navigation Act.

Subdivision 2—Prevention of Collisions Convention

96 Regulations giving effect to Prevention of Collisions Convention

S. 96(1)
substituted by
No. 36/2013
s. 61(1).

(1) The regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention in relation to the following vessels while those vessels are in State waters—

- (a) domestic commercial vessels;
- (b) regulated Australian vessels, other than vessels that are customs vessels.

(2) A person must not contravene a regulation made under subsection (1) that applies to that person.

Penalty: 120 penalty units.

S. 96(3)
amended by
No. 36/2013
s. 61(2).

(3) Section 9(1) does not apply in respect of this section.

Subdivision 3—Safety Convention

97 Regulations giving effect to Safety Convention

- (1) The regulations may make provision for or in relation to a provision of Chapter V of the Regulations contained in the Annex to the Safety Convention (other than Regulation 13 or 15 of that Chapter of those Regulations) with respect to—

- (a) a domestic commercial vessel; or
- (b) a recreational vessel; or
- (c) a facility within the meaning of Schedule 3 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**.

S. 97(1)
substituted by
No. 36/2013
s. 62(1).

- (2) If a provision of the Safety Convention applies only in relation to a particular class of vessel or in relation to vessels engaged on a particular class of voyage, any regulation under subsection (1) that gives effect to that provision may be applied to ships, vessels or craft of any other class mentioned in that subsection or to such ships, vessels or craft engaged in any other class of voyage other than an overseas voyage or an inter-State voyage.

S. 97(2)
amended by
No. 36/2013
s. 62(2).

Subdivision 4—General

98 Regulations under this Division

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Division to be prescribed or necessary to be prescribed to give effect to this Division.
- (2) Without limiting subsection (1), regulations may be made for or with respect to prescribing penalties not exceeding—

- (a) if the offender is a natural person—a fine of 20 penalty units or imprisonment for 12 months, or both; or
- (b) if the offender is a body corporate—a fine of 60 penalty units—

for a contravention of, or failure to comply with, a provision of the regulations or a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations.

- (3) Regulations made under this Division—
 - (a) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act of, a State or the Commonwealth, as in force at a particular time or as in force from time to time; or
 - (b) may apply, adopt or incorporate, with or without modification, any other instrument or writing made at the time the regulation is made or at any time before the regulation is made.
- (4) In subsection (3)(a), *regulations* includes orders made under section 342 of the Commonwealth Navigation Act.

S. 98(4)
substituted by
No. 36/2013
s. 63.

99 Authority of Governor in Council to make regulations in relation to powers under Conventions

- (1) This section applies if—
 - (a) under this Division, the Governor in Council is empowered to make regulations for and in relation to giving effect to any of the provisions of the Safety Convention or the Prevention of Collisions Convention; and
 - (b) the Safety Convention or the Prevention of Collisions Convention vests in the several Governments who are parties to those

Conventions a power to exercise a discretion as to whether any, and if so what, action should be taken in respect of a provision of those Conventions (a *Convention power*).

- (2) The power to make regulations is to be construed as an authority conferred on the Governor in Council to make regulations for or with respect to a Convention power.

* * * * *

Note to
s. 99(2)
repealed by
No. 36/2013
s. 64.

100 Safety Director may allow other fitting, material etc.

- (1) This section applies if a regulation made under this Division for the purpose of giving effect to any provision of the Safety Convention or the Prevention of Collisions Convention requires a particular fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus, to be fitted or carried in a vessel.
- (2) Despite the regulation, the Safety Director, if satisfied that another fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus or other provision is at least as effective as that required by the relevant Convention, may allow—
- (a) any other fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus to be fitted or carried in a vessel; or
- (b) any other provision to be made in a vessel.

PART 3.6—MISCELLANEOUS MATTERS

**101 Person not to be found guilty as owner and master
in respect of same circumstances**

A person must not be found guilty under a section in this Chapter as both a master and an owner in respect of the same circumstances.

**102 Offence to supply vessel which does not comply with
Australian Builders Plate Standard**

- (1) A person must not in trade or commerce supply a recreational vessel of a prescribed class that does not comply with the Australian Builders Plate Standard that applies (with or without modification by the regulations) to a vessel of that kind.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
600 penalty units.

- (2) In this section—

trade or commerce includes any business or professional activity whether or not carried on for profit.

CHAPTER 4—ENFORCEMENT

PART 4.1—INTERPRETATION

103 Definitions

(1) In this Chapter—

appeal period, in relation to a conviction or an impoundment or immobilisation order or a forfeiture order, means the period ending—

- (a) if the period provided for the lodging of an appeal against the conviction or order has ended without such an appeal having been lodged, at the end of that period; or
- (b) if an appeal against the conviction or order has been lodged, when the appeal is abandoned or finally determined;

authorised person means a person authorised by a police officer under section 109;

S. 103(1) def. of *authorised person* amended by No. 37/2014 s. 10(Sch. item 107.3(a)).

conviction, in relation to a relevant offence, includes a finding of guilt of the relevant offence without the recording of a conviction;

designated costs means the cost of impounding or immobilising a recreational vessel under Part 4.2 including, where relevant, the cost of—

- (a) moving the recreational vessel to a holding yard or place where the recreational vessel is to be immobilised; and

- (b) storing the recreational vessel at the holding yard or place where the recreational vessel is immobilised; and
- (c) releasing the recreational vessel from the holding yard or from immobilisation—

and includes any additional costs incurred if the recreational vessel is impounded or immobilised for longer than the designated period or the period specified under an impoundment or immobilisation order;

designated period, in relation to a recreational vessel, means the period of 48 hours beginning with the seizure or surrender of the recreational vessel under section 106 or 107, but if the period expires outside of normal business hours, the period extends to 9.00 a.m. on the next business day, being a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

disposal order means an order made by a court under section 150;

embargo notice means a notice under section 154;

forfeiture order means an order made by a court under section 119;

holding yard means a place used for the storage of recreational vessels impounded under Part 4.2;

impoundment or immobilisation order means an order made by a court under section 118;

landing place includes the following—

- (a) an intersection between land and water at which it is reasonably safe to land a vessel;

- (b) a place intended for the landing or berthing of vessels, including, but not limited to, a wharf, boat ramp, marina, pier or jetty;

member of Victoria Police personnel has the same meaning as in the **Victoria Police Act 2013**;

S. 103(1) def. of *member of police personnel* substituted as *member of Victoria Police personnel* by No. 37/2014 s. 10(Sch. item 107.3(b)).

prohibition direction means a direction to a person under section 155;

public place includes, but is not limited to—

- (a) any public place within the meaning of *public place* in the **Summary Offences Act 1966**;
- (b) State waters;

relevant court, in relation to an application made under Part 4.2, means—

- (a) the court with jurisdiction to hear and determine the relevant offence to which the application relates;
- (b) if an application is made after the sentencing of the master for a relevant offence, the Magistrates' Court;

relevant offence means—

- (a) an offence against section 87(1);
- (b) an offence against section 58(1), 77A(1), 81(2) or 81(6) of the **Wildlife Act 1975**;
- (c) an offence against regulation 7(1), 7(3), 7(4), 7(5), 7(6), 7(7), 9(1), 9(2), 9(3),

S. 103(1) def. of *relevant offence* substituted by No. 78/2011 s. 22.

9(4), 9(5) or 14(1) of the Wildlife
(Marine Mammals) Regulations 2009;

safe landing place means a landing place at which
it is safe to immobilise the relevant vessel for
the balance of the designated period, taking
into account the weather conditions and
facilities available during the designated
period;

search and seizure warrant means a warrant
issued under section 135(1);

senior police officer means a police officer of or
above the rank of Inspector.

S. 103(1) def.
of *senior
police officer*
substituted by
No. 37/2014
s. 10(Sch.
item 107.3(c)).

- (2) For the purposes of an application for an
impoundment or immobilisation order or a
forfeiture order under Part 4.2, charges for more
than one relevant offence arising out of the same
single set of circumstances are to be treated as a
charge for one relevant offence.
- (3) For the purposes of subsection (2), a single set of
circumstances is constituted by one continuous
period during which a person continues to operate
or be the master of a recreational vessel.

**PART 4.2—IMPOUNDMENT, IMMOBILISATION AND
FORFEITURE OF RECREATIONAL VESSELS**

Division 1—Part does not affect other penalties

104 Part does not affect other penalties

The impoundment, immobilisation or forfeiture of a vessel under this Part arising out of the commission of a relevant offence is in addition to, and does not limit or otherwise affect, any penalty that may be imposed on the person for the relevant offence other than under this Part.

**Division 2—Impoundment and immobilisation of
recreational vessels**

105 Powers of police

- (1) If a police officer believes on reasonable grounds that a recreational vessel is being or has been used in the commission of a relevant offence, he or she may—
- (a) seize the recreational vessel or require it to be surrendered;
 - (b) impound the recreational vessel for the designated period;
 - (c) immobilise the recreational vessel for the designated period;
 - (d) authorise any person under section 109 to assist in seizing, impounding or immobilising the recreational vessel.
- (2) If a police officer has exercised a power to seize, impound or immobilise a recreational vessel under this Part in relation to a particular relevant offence and the recreational vessel has since been released—

S. 105(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.4).

S. 105(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.4).

- (a) the power to seize, impound or immobilise that recreational vessel under this Part for that particular relevant offence may not be exercised again; and
- (b) an embargo notice must not be issued in respect of the recreational vessel for that particular relevant offence; and
- (c) a prohibition direction must not be issued to the master of the vessel at the time of the particular relevant offence in respect of that offence.

106 Seizure of recreational vessel

S. 106(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.4).

- (1) For the purposes of impounding or immobilising a recreational vessel under this Part, a police officer may seize the recreational vessel—
 - (a) from a public place; or
 - (b) from a place that is not a public place with the consent of the owner or occupier of that place; or
 - (c) from a place that is not a public place with a search and seizure warrant.
- (2) The period within which a recreational vessel may be seized under subsection (1) is—
 - (a) in the case of a seizure from a public place or a place that is not a public place with the consent of the owner or occupier of that place—
 - (i) 48 hours after the alleged commission of the relevant offence; or
 - (ii) if a notice is served under section 107(1), 10 days after the expiry of the period specified in that notice; or

- (b) in the case of a seizure from a place that is not a public place under a search and seizure warrant, the period specified in that warrant.
- (3) In order to seize a recreational vessel under subsection (1), a police officer may—
- (a) board or enter the recreational vessel using reasonable force if necessary;
 - (b) operate or move the recreational vessel by any reasonable means, including, but not limited to, by trailer, motor vehicle or vessel;
 - (c) if, after having taken reasonable steps to obtain the keys, the keys are not available, cause any locking device or other feature of the recreational vessel that is impeding the seizure of the recreational vessel to be removed, dismantled or neutralised;
 - (d) seize, operate or move a trailer, motor vehicle or other thing on which the recreational vessel is resting or by which the recreational vessel is transported by the master, owner or registered person.

S. 106(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.4).

107 Surrender of recreational vessel

- (1) If a police officer believes on reasonable grounds that a recreational vessel has been used in the commission of a relevant offence, he or she may serve a notice on the registered person or owner of the recreational vessel requiring the surrender of the recreational vessel.
- (2) A notice served under subsection (1) must—
- (a) be served within 10 days of the police officer forming the belief that the recreational vessel has been used in the commission of a relevant offence; and
 - (b) specify a period within which the recreational vessel must be surrendered

S. 107(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.5(a)).

S. 107(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.5(a)).

which must not commence less than 7 days after the notice is served.

- (3) Service of a notice under subsection (1) may be effected—
- (a) by serving it personally on the owner or registered person of the recreational vessel or, if that person is a company, on a director, secretary or other officer of the company; or
 - (b) by posting it, addressed to the person, to the registered address or the residential address of the owner or registered person of the recreational vessel.
- (4) A notice under subsection (1) must include—
- (a) a statement by a police officer that the recreational vessel is liable to impoundment or immobilisation because that police officer believes on reasonable grounds that the recreational vessel was used in the commission of a relevant offence; and
 - (b) a statement of the nature of the relevant offence and the date and time when the relevant offence is alleged to have been committed; and
 - (c) the name of the master of the recreational vessel who is alleged to have committed the relevant offence; and
 - (d) the date, time and place at which the recreational vessel is required to be surrendered to a member of Victoria Police personnel; and
 - (e) a statement that if the recreational vessel is not surrendered at the date, time and place specified in the notice a police officer may seize the recreational vessel in accordance with section 106; and

S. 107(4)(a)
amended by
No. 37/2014
s. 10(Sch.
item
107.5(b)(i)).

S. 107(4)(d)
amended by
No. 37/2014
s. 10(Sch.
item
107.5(b)(ii)).

S. 107(4)(e)
amended by
No. 37/2014
s. 10(Sch.
item
107.5(b)(iii)).

- (f) the prescribed particulars (if any).
- (5) An owner or registered person served with a notice under subsection (1) must comply with the notice, unless the owner or registered person has a reasonable excuse.

Penalty: 60 penalty units.

- (6) If the recreational vessel is not surrendered to a member of Victoria Police personnel at the date, time and place specified in a notice served under subsection (1), a police officer may, within 10 days after the period specified in the notice expires, exercise any power under section 105 or 106 to seize the recreational vessel.

S. 107(6)
amended by
No. 37/2014
s. 10(Sch.
item 107.5(c)).

108 Impoundment or immobilisation of a recreational vessel

S. 108
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

If a recreational vessel is seized or surrendered in accordance with this Part, a police officer may do any one or more of the following—

- (a) move, or cause to be moved, the recreational vessel to a holding yard by any reasonable means and impound it there for the balance of the designated period;
- (b) move, or cause to be moved, a trailer, motor vehicle or other thing by which the recreational vessel is transported by the master, owner or registered person or on which the recreational vessel is resting to a holding yard and impound it there for the balance of the designated period;
- (c) cause the recreational vessel to be immobilised at a safe landing place or on land or on anything on land (including, but not limited to, a trailer) for the balance of the designated period;

- (d) cause a trailer or other thing on which the recreational vessel is resting to be immobilised for the balance of the designated period;
- (e) do anything else reasonably necessary to impound or immobilise the recreational vessel.

S. 109
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

109 Authorised persons

In exercising powers under section 106, 108 or 130, a police officer may authorise any person to assist him or her to—

- (a) board or enter a recreational vessel, using reasonable force if necessary;
- (b) if the recreational vessel is on water—
 - (i) operate or move a recreational vessel by any reasonable means including, but not limited to, by towing the vessel;
 - (ii) move the recreational vessel on land or onto a trailer, motor vehicle or other thing on land;
- (c) if the recreational vessel is on land or on any thing that is on land, move by any reasonable means including, but not limited to, by means of a trailer or towing vehicle—
 - (i) the recreational vessel; or
 - (ii) a trailer, motor vehicle or other thing by which the recreational vessel is transported by the master, owner or registered person or on which the recreational vessel is resting—
in order to move the recreational vessel to a holding yard;
- (d) cause any locking device or other feature of the recreational vessel that is impeding the

- exercise of powers under this Part to be removed, dismantled or neutralised;
- (e) operate or move a trailer, vessel, motor vehicle or other thing on which the recreational vessel is resting or by which the recreational vessel is transported by the master, owner or registered person;
 - (f) cause a recreational vessel to be immobilised at a safe landing place or on land by any reasonable means including, but not limited to, by immobilising a trailer or other thing on which the recreational vessel is resting;
 - (g) store a recreational vessel and, if applicable, a trailer or other thing on which the recreational vessel is resting, in a holding yard;
 - (h) release a recreational vessel and, if applicable, a trailer or other thing on which the recreational vessel is resting, when authorised by a police officer to do so.

S. 109(h)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

110 Notice to master, owner or registered person

- (1) As soon as is reasonably practicable after a recreational vessel is impounded or immobilised under section 108, a police officer must serve written notice of the impoundment or immobilisation on—
 - (a) the master of the recreational vessel; and
 - (b) the registered person of the recreational vessel, if he or she is not the person referred to in paragraph (a); and
 - (c) the owner of the recreational vessel, if he or she is not a person referred to in paragraph (a) or (b).

S. 110(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

(2) A person who—

- (a) is an owner or registered person of a recreational vessel in relation to which a notice under subsection (1) has been served; and
- (b) does not have an interest or the sole interest in that recreational vessel—

must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice on any person who he or she is aware has an interest in the recreational vessel.

Note

See section 152 for how a notice may be served.

111 Content of notice

A notice under section 110 must be in a form approved by the Chief Commissioner of Police and must state—

- (a) the master's name; and
- (b) the identification mark of the recreational vessel; and
- (c) the engine number and the length, breadth and colour of the recreational vessel; and
- (d) the date and time when the recreational vessel was impounded or immobilised; and
- (e) the date of the relevant offence in respect of which the recreational vessel has been impounded or immobilised; and
- (f) the date and time when the recreational vessel is eligible for release; and
- (g) the process by which the impounded or immobilised recreational vessel may be released, including—

- (i) the location of the recreational vessel;
and
 - (ii) the designated costs payable; and
 - (iii) if relevant, the contact details of the
person who can release an immobilised
recreational vessel; and
 - (iv) that satisfactory evidence of the
entitlement of a person seeking to have
the recreational vessel released may be
required before the recreational vessel
will be released; and
- (h) that if a charge-sheet is filed containing a
charge for a relevant offence and the master
has committed one or more previous relevant
offences, the Chief Commissioner of Police
may, under section 120, apply to the relevant
court for an impoundment or immobilisation
order under section 118 or a forfeiture order
under section 119; and
- (i) if applicable, that a trailer, motor vehicle or
other thing has been impounded or
immobilised under section 108 for the
purposes of impounding or immobilising the
recreational vessel; and
 - (j) any other prescribed particulars.

S. 111(i)
amended by
No. 29/2011
s. 3(Sch. 1
item 57.3).

112 Review by a senior police officer

- (1) A police officer who impounds or immobilises a
recreational vessel under section 108, or who
authorises another person to do so, must, as soon
as is practicable and in any event within 48 hours
after the recreational vessel is impounded or
immobilised, notify a senior police officer of the
grounds on which he or she relied in forming the
belief that the recreational vessel was used in the
commission of a relevant offence.

S. 112(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

- (2) A senior police officer who is notified in accordance with subsection (1) must make inquiries into the circumstances of the impoundment or immobilisation and if, after making those inquiries, he or she is not satisfied that there were reasonable grounds to impound or immobilise the recreational vessel, must ensure that the recreational vessel is released and returned to the owner or registered person as soon as is practicable.

113 Release of recreational vessel by Victoria Police

- (1) A recreational vessel impounded or immobilised under section 108 must be released to the owner, registered person or any other person entitled to possession as soon as is practicable if—
- (a) a police officer is satisfied that, at the time the relevant offence was committed, the recreational vessel used in the commission of the relevant offence was stolen; or
 - (b) under section 112 a senior police officer is not satisfied that there were reasonable grounds to impound or immobilise the recreational vessel; or
 - (c) a senior police officer considers it reasonable or necessary to release the recreational vessel; or
 - (d) the Magistrates' Court has made an order under section 114(3).
- (2) If a recreational vessel is released in accordance with subsection (1)(a) or (b) the Crown is liable to pay the designated costs.
- (3) A senior police officer may, at his or her discretion, waive the designated costs if a recreational vessel is released in accordance with subsection (1)(c).

S. 113(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

- (4) If—
- (a) a recreational vessel is released without any designated costs payable by a person seeking the release of the recreational vessel in accordance with this section; and
 - (b) the master is subsequently found guilty of the relevant offence for which the recreational vessel was impounded or immobilised—

the Chief Commissioner of Police may apply to the relevant court for an order that the master pay to the Chief Commissioner of Police the designated costs.

114 Appeal rights

- (1) If a recreational vessel is impounded or immobilised under section 108, a person whose interests are substantially affected by the impoundment or immobilisation may apply to the Magistrates' Court for an order that the recreational vessel be released on the ground that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or any other person.
- (2) An application under subsection (1) may be made at any time while the recreational vessel remains impounded or immobilised, including when the impoundment or immobilisation continues for longer than the designated period as a result of non-payment of the designated costs.
- (3) On an application made under subsection (1), the Magistrates' Court may make an order that a recreational vessel impounded or immobilised under this Part be released to a specified person if the Court is satisfied that the impoundment or immobilisation is causing, or will cause,

exceptional hardship to the applicant or any other person.

- (4) If the Magistrates' Court makes an order under subsection (3), it may order that the applicant is not liable to pay all or part of the designated costs.

115 Offences

- (1) A person must not, except in accordance with this Part or section 267 or 268, move an impounded or immobilised recreational vessel or tamper with any equipment used to immobilise a recreational vessel.

Penalty: 60 penalty units.

- (2) It is not an offence under subsection (1) to move an impounded or immobilised recreational vessel or tamper with any equipment used to immobilise a recreational vessel—
- (a) if the impounded or immobilised recreational vessel is obstructing access to any property and it is necessary to move the recreational vessel to protect any person or property from a risk of imminent harm; or
 - (b) to protect the recreational vessel from a risk of imminent harm; or
 - (c) to comply with a direction made under this Act by a harbour master, the Safety Director, a police officer or a transport safety officer.

S. 115(2)(c)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

- (3) A person must not obstruct or hinder a police officer in the valid exercise of a power under this Part.

Penalty: 60 penalty units.

S. 115(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

116 Recovery of recreational vessel

- (1) A recreational vessel impounded or immobilised under section 108 must be released to the owner, registered person or any other person entitled to possession of it—
 - (a) subject to the provisions of this Part, on the expiration of the designated period; and
 - (b) on the payment of the designated costs; and
 - (c) on provision of satisfactory evidence, as prescribed, of that person's identity and his or her entitlement to recover the recreational vessel; and
 - (d) subject to satisfactory compliance with the prescribed particulars (if any).
- (2) If no decision or order to release the recreational vessel has been made under section 113 or 114, a police officer or an authorised person may—
 - (a) retain possession of an impounded recreational vessel; or
 - (b) continue to immobilise a recreational vessel—

S. 116(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.6).

in accordance with this Part until the designated costs are paid, even if the period during which the recreational vessel is impounded or immobilised is longer than the designated period.

117 Crown to pay costs if master found not guilty or charges not proceeded with

If—

- (a) the master of a recreational vessel is subsequently found not guilty of the relevant offence in respect of which the recreational vessel was impounded or immobilised; or

- (b) no charge-sheet is filed containing a charge for a relevant offence or such a charge-sheet is filed but not proceeded with within 12 months after the recreational vessel was impounded or immobilised—

then—

- (c) the Crown is liable to refund any designated costs paid by any person; or
- (d) the recreational vessel, if not already recovered by the owner, registered person or any other person entitled to possession of it, must be immediately released without any designated costs payable by the person seeking recovery of the recreational vessel.

Division 3—Impoundment, immobilisation or forfeiture of recreational vessels by court order

118 Impoundment or immobilisation order

- (1) On the application of the Chief Commissioner of Police under section 120(1), if a master is found guilty of a relevant offence, the relevant court may order that the recreational vessel used in the commission of the relevant offence be impounded or immobilised for a period of up to 3 months.
- (2) An order under subsection (1) must not be made unless the relevant court is satisfied—
 - (a) that the master has been found guilty of one other relevant offence committed in the period of 3 years before the commission of the relevant offence; and

- (b) that at the time the relevant offence was committed the recreational vessel was not—
- (i) a stolen recreational vessel; or
 - (ii) being used in any prescribed circumstances.
- (3) An order made under subsection (1) must specify the time and place at which the owner or registered person of the recreational vessel is required to surrender the recreational vessel to a member of Victoria Police personnel.
- (4) The owner or registered person of the recreational vessel must not, without reasonable excuse, fail to surrender the recreational vessel at the time and place specified in the order made under subsection (1).

**S. 118(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.7).**

Penalty: 60 penalty units.

119 Forfeiture order

- (1) On the application of the Chief Commissioner of Police under section 120(1), if a master is found guilty of a relevant offence the relevant court may order that the recreational vessel used in the commission of the relevant offence be forfeited to the Crown.
- (2) An order under subsection (1) may only be made if the relevant court is satisfied—
- (a) that the accused has been found guilty of 2 or more other relevant offences committed in the period of 3 years before the commission of the relevant offence; and
 - (b) that at the time the relevant offence was committed the recreational vessel was not—
 - (i) a stolen recreational vessel; or
 - (ii) being used in any prescribed circumstances.

S. 119(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.7).

- (3) An order made under subsection (1) must specify the time and place at which the owner or registered person of the recreational vessel is required to surrender the recreational vessel to a member of Victoria Police personnel.
- (4) The owner or registered person of the recreational vessel must not, without reasonable excuse, fail to surrender the recreational vessel at the time and place specified in the order made under subsection (1).

Penalty: 60 penalty units.

120 Application for an impoundment or immobilisation order or a forfeiture order

- (1) The Chief Commissioner of Police may make an application for an impoundment or immobilisation order or a forfeiture order to the relevant court if the Chief Commissioner believes on reasonable grounds that—
 - (a) the recreational vessel—
 - (i) was used in the commission of the relevant offence; and
 - (ii) at the time the relevant offence was committed, was not stolen or used in prescribed circumstances; and
 - (b) the master has been found guilty of another relevant offence or other relevant offences (as the case requires) committed within the period of 3 years before the commission of the relevant offence.
- (2) An application under subsection (1) may be made at any time after a charge-sheet is filed charging a relevant offence, but may not be made later than 28 days after the master is sentenced for that relevant offence.

121 Notice of application

- (1) If the Chief Commissioner of Police intends to make an application under section 120(1), he or she must, at least 28 days before making the application, serve notice of the intended application on—
- (a) the master of the recreational vessel in respect of which an application is to be made; and
 - (b) the registered person of the recreational vessel, if he or she is not the person referred to in paragraph (a); and
 - (c) the owner of the recreational vessel, if he or she is not a person referred to in paragraph (a) or (b); and
 - (d) any person who the Chief Commissioner of Police is aware has an interest in the recreational vessel; and
 - (e) the Safety Director.

Note

See section 152 for how a notice may be served.

- (2) A person who—
- (a) is notified under subsection (1)(a), (b) or (c); and
 - (b) does not have an interest or the sole interest in the recreational vessel in relation to which the application in the notice is to be made—
- must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice on any person who he or she is aware has an interest in the recreational vessel.
- (3) A notice under subsection (1) must specify the recreational vessel in respect of which an order is to be sought.

- (4) A notice served under subsection (1) must state—
- (a) that if the master is found guilty of a relevant offence, an application for an impoundment or immobilisation order or a forfeiture order will be made by the Chief Commissioner of Police in respect of the recreational vessel specified in the notice; and
 - (b) the identification mark of the recreational vessel; and
 - (c) that a person named in the notice may appear before the relevant court at the hearing of the application and show cause why the order should not be made; and
 - (d) that the person on whom the notice is served must not sell or otherwise dispose of his or her interest in the relevant recreational vessel without the approval of the relevant court.

122 Interest in recreational vessel not to be transferred

- (1) A person on whom a notice is served under section 121(1) must not, before the application referred to in the notice is made and determined, or if an impoundment or immobilisation order or a forfeiture order is made, before the recreational vessel is seized under this Part, without the approval of the relevant court, sell or otherwise dispose of any interest in the recreational vessel that is the subject of the notice.

Penalty: 60 penalty units.

- (2) Subsection (1) ceases to apply if—
- (a) the master is found not guilty of the relevant offence for which the application is made; or
 - (b) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the master is sentenced for a relevant offence; or

- (c) the charge for that relevant offence is withdrawn.

123 Notice in case of 2 or more charges

- (1) If a master has been charged with 2 or more relevant offences, the Chief Commissioner of Police may, before the charges are heard or determined, serve a notice on—
- (a) the master of the recreational vessel; and
 - (b) the registered person of the recreational vessel in respect of which an order is to be sought, if he or she is not the person referred to in paragraph (a); and
 - (c) the owner of the recreational vessel in respect of which an order is to be sought, if he or she is not the person referred to in paragraph (a) or (b); and
 - (d) any person who the Chief Commissioner of Police is aware has an interest in the recreational vessel in respect of which an order is to be sought; and
 - (e) the Safety Director.
- (2) A person who—
- (a) is notified under subsection (1)(a), (b) or (c); and
 - (b) does not have an interest or the sole interest in the recreational vessel in relation to which the application in the notice is to be made—
- must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice on any person who he or she is aware has an interest in the recreational vessel.

-
- (3) A notice under subsection (1) must—
- (a) specify the recreational vessel in respect of which an order is to be sought; and
 - (b) state that the Chief Commissioner of Police intends to make an application under section 120 for an impoundment or immobilisation order or a forfeiture order in relation to the recreational vessel if the master is convicted of more than one of the relevant offences in respect of which the master has been charged; and
 - (c) state that a person named in the notice may, if the Chief Commissioner makes the application, appear before the relevant court at the hearing of the application and show cause why the order should not be made; and
 - (d) state that the person on whom the notice is served must not sell or otherwise dispose of his or her interest in the recreational vessel without the approval of the relevant court.
- (4) A person on whom a notice is served under subsection (1) must not, before the application referred to in the notice is made or determined or, if an impoundment or immobilisation order or a forfeiture order is made, before the recreational vessel is seized under this Part, without the approval of the relevant court, sell or otherwise dispose of any interest in the recreational vessel that is the subject of the notice.
- Penalty: 60 penalty units.
- (5) Subsection (4) ceases to apply if—
- (a) the master is found not guilty of one or more relevant offences which results in the master being subject to only one remaining charge for a relevant offence; or

- (b) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the master is sentenced for the second or third relevant offence; or
- (c) the charges for one or more of the relevant offences specified in the notice are withdrawn which results in the master being subject to only one remaining charge for a relevant offence.

124 Direction not to transfer registration or register recreational vessel

- (1) Within 7 days after service of a notice under section 121(1) or 123(1), the Chief Commissioner of Police must direct the Safety Director—
 - (a) not to transfer the registration of the recreational vessel that is the subject of the notice from the registered person to another person; or
 - (b) not to register (other than by way of renewal) the recreational vessel that is the subject of the notice, unless the recreational vessel is to be registered in the name of the person who was the most recent registered person of that vessel—

until the Chief Commissioner notifies the Safety Director that the direction has ceased in accordance with subsection (3).

- (2) Subsection (1) applies whether or not an actual application for transfer of registration or registration has been made.
- (3) The Chief Commissioner of Police must notify the Safety Director that the direction not to transfer registration or register under subsection (1) has ceased when any of the following occurs—

S. 124(3)(b)
amended by
No. 29/2011
s. 3(Sch. 1
item 57.4).

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- (a) if a notice is served under section 121(1)—
- (i) the master is found not guilty of the relevant offence for which the application specified in the notice is made;
 - (ii) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the master is sentenced for a relevant offence;
 - (iii) the charge for the relevant offence specified in the notice is withdrawn and no other charge-sheet is filed charging for any other relevant offence arising out of the same single set of circumstances;
- (b) if a notice is served under section 123(1)—
- (i) the master is found not guilty of one or more relevant offences which results in the master being subject to only one remaining charge for a relevant offence;
 - (ii) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the master is sentenced for the second or third relevant offence;
 - (iii) the charges for one or more of the relevant offences specified in the notice are withdrawn which results in the master being subject to only one remaining charge for a relevant offence;
- (c) the court hearing the application declines to make an impoundment or immobilisation order or a forfeiture order;
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- (d) the court sets aside an impoundment or immobilisation order or a forfeiture order under section 128;
- (e) an impoundment or immobilisation order or a forfeiture order is quashed, set aside on appeal or, as a result of a conviction for a relevant offence being set aside on appeal, the order ceases to have effect;
- (f) the period of impoundment or immobilisation specified in an impoundment or immobilisation order ends;
- (g) a forfeiture order becomes effective and a police officer or an authorised person takes possession of the recreational vessel that is the subject of the forfeiture order.

S. 124(3)(g)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

Note

Section 129 sets out when an order takes effect.

125 Safety Director not to transfer registration or register recreational vessel

- (1) If directed by the Chief Commissioner of Police under section 124, and until notified by the Chief Commissioner under that section that the direction has ceased, the Safety Director must not—
 - (a) transfer the registration of the recreational vessel that is the subject of a notice under section 121(1) or 123(1) from the registered person to another person; or
 - (b) register (other than by way of renewal) the recreational vessel that is the subject of a notice served under section 121(1) or 123(1), unless the recreational vessel is to be registered in the name of the person who was the most recent registered person of that recreational vessel.

- (2) If the Chief Commissioner of Police gives a direction under section 124(1) in respect of a recreational vessel, the Safety Director must send to the registered person a notice advising that no transfer of registration will occur in relation to that recreational vessel until the Chief Commissioner gives notification under section 124(3).

126 Cessation of direction under this Act does not affect any suspension

The cessation of a direction not to transfer the registration of, or register, a recreational vessel under this Part does not affect the suspension of that registration under this Act or any other Act or law.

127 Hearing of application

- (1) The relevant court hearing an application for an impoundment or immobilisation order or a forfeiture order—
 - (a) must allow any person served with a notice under section 121(1) or 123(1) to be heard at the hearing of the application and to show cause why an impoundment or immobilisation order or a forfeiture order should not be made; and
 - (b) may allow any other person to be heard if the court is satisfied that an impoundment or immobilisation order or a forfeiture order may substantially affect that person's interests.
- (2) The court must not make an impoundment or immobilisation order or a forfeiture order if the owner or registered person of the recreational vessel that was used in the commission of the relevant offence can prove to the court's satisfaction that the relevant offence was

committed without the knowledge or consent of the owner or registered person.

- (3) The court may decline to make an impoundment or immobilisation order or a forfeiture order if the court is satisfied that such an order would cause exceptional hardship to any person.
- (4) If the court makes an impoundment or immobilisation order, the Chief Commissioner of Police must notify the master and the owner or registered person that if the recreational vessel is not collected or released within 2 months after the date that the recreational vessel first became available for collection or release, the Chief Commissioner of Police may sell or otherwise dispose of the recreational vessel and any item or thing left in or on the recreational vessel.

Note

Section 144 provides that the Chief Commissioner of Police must give 14 days notice of any intention to sell or dispose of a recreational vessel or item or thing left in or on the recreational vessel.

128 Application for variation of order

- (1) A person whose interests are substantially affected by an impoundment or immobilisation order or a forfeiture order may apply to the court that made the order for variation of the order if the applicant can demonstrate—
 - (a) that since the impoundment or immobilisation order or forfeiture order was made the applicant's circumstances have changed; and

- (b) that the impoundment or immobilisation order or forfeiture order is causing, or will cause, exceptional hardship to the applicant or any other person.
- (2) An application under subsection (1) to vary an impoundment or immobilisation order may be made at any time while the recreational vessel is impounded or immobilised.
- (3) An application under subsection (1) to vary a forfeiture order may be made at any time while the recreational vessel is vested in the Crown.
- (4) The court may make an order varying an impoundment or immobilisation order or a forfeiture order in any way, including, but not limited to—
 - (a) setting aside the impoundment or immobilisation order or forfeiture order; or
 - (b) reducing the amount of time that the recreational vessel is subject to impoundment or immobilisation.

129 When order takes effect

- (1) An impoundment or immobilisation order or a forfeiture order becomes effective on—
 - (a) the expiration of the appeal period for the master's conviction of the relevant offence; or
 - (b) the expiration of the appeal period for a sentencing order or sentence made following that conviction—whichever is the later.
- (2) If a conviction for a relevant offence is set aside on appeal, an impoundment or immobilisation order or a forfeiture order is of no effect.

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- (3) If a person convicted of a relevant offence applied for leave to appeal against the conviction for the relevant offence or the making of an impoundment or immobilisation order or a forfeiture order after the end of the relevant appeal period and such leave is granted, the appeal operates as a stay of the impoundment or immobilisation order or forfeiture order and any recreational vessel impounded or immobilised or otherwise in possession of the Crown must be released to the owner or registered person.
- (4) If a recreational vessel subject to a forfeiture order is no longer in the possession of the Crown and the conviction for the relevant offence, or the forfeiture order, is set aside on appeal, the Crown must pay to the appellant and any other person with an interest in the recreational vessel an amount commensurate with the value of the appellant's or other person's interest in the recreational vessel.
- (5) Any amount to be paid under subsection (4) is to be paid out of the proceeds (if any) of the sale of the recreational vessel.
- (6) A person with an interest in the recreational vessel may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (4) and the Court may make either or both of the following orders—
- (a) an order that compensation be paid to that person commensurate with the value of the person's interest in the recreational vessel;
 - (b) an order that the costs incurred by the Crown in executing the forfeiture order may be retained by the Crown out of the proceeds of the sale of the recreational vessel.

S. 130
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

130 Police powers

A police officer acting under an impoundment or immobilisation order or a forfeiture order made under this Part has, and may exercise the same powers to seize the recreational vessel and impound or immobilise it as are specified in sections 106(1) and (3) and 108.

131 Liability for costs of impoundment or immobilisation

If a court makes an impoundment or immobilisation order, the recreational vessel must not be released from impoundment or immobilisation until the designated costs are paid by the person seeking to collect or release the recreational vessel.

132 Ownership rights

If a person is not the registered person of a recreational vessel, but can prove ownership of the recreational vessel to a court exercising powers under this Part, that person may make any application or exercise any right that a registered person may make or exercise under this Part.

133 Third party protection from forfeiture order

- (1) A person, other than the master, who did not appear at the hearing of an application for a forfeiture order and has an interest in the recreational vessel subject to a forfeiture order may apply to the court that made the forfeiture order for an order that—
 - (a) if ownership of the recreational vessel is vested in the Crown—
 - (i) ownership of the recreational vessel be transferred to the applicant, if the applicant had, immediately before the

- forfeiture order was made, full ownership of the recreational vessel; or
- (ii) if the applicant had part ownership of the recreational vessel immediately before the forfeiture order was made, the recreational vessel be sold and the Crown pay to the applicant and any other person with an interest in the recreational vessel an amount commensurate with the value of his or her interest in the recreational vessel; or
- (b) if the recreational vessel has been sold or otherwise disposed of, the Crown pay to the applicant an amount commensurate with the value of the applicant's interest in the recreational vessel.
- (2) Leave of the court that made the forfeiture order is required to bring an application under subsection (1) if—
- (a) the person was served with a notice of the application for a forfeiture order under section 121(1) or 123(1); or
- (b) six months or more have elapsed since the date the forfeiture order was made.
- (3) The court may only grant leave under subsection (2)(b) if it is satisfied that the delay in making the application was not due to the applicant's neglect.
- (4) On an application under subsection (1), the court may make an order—
- (a) declaring the nature, extent and, if necessary for the order, the value (at the time the declaration is made) of the applicant's interest in the recreational vessel immediately before the forfeiture order was made; and

- (b) directing the Crown—
- (i) if the recreational vessel is vested in the Crown and the applicant had full ownership of the recreational vessel immediately before the forfeiture order was made, to transfer ownership of the recreational vessel to the applicant; or
 - (ii) if the recreational vessel is no longer vested in the Crown, or if the applicant did not have full ownership of the recreational vessel immediately before the forfeiture order was made, to pay to the applicant the value of the applicant's interest in the recreational vessel.
- (5) The court may only make an order under subsection (4) if it is satisfied that—
- (a) the applicant would have, apart from the forfeiture order, a relevant interest in the recreational vessel; and
 - (b) the relevant offence occurred without the knowledge or consent of the applicant.
- (6) Any amount to be paid under this section is to be paid out of the proceeds (if any) of the sale of the recreational vessel.

Division 4—Search and seizure warrants

134 Application for search and seizure warrant

S. 134(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (1) A police officer may apply to a magistrate for a search and seizure warrant to be issued under this Division in respect of a recreational vessel if—

S. 134(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (a) the recreational vessel is subject to an impoundment or immobilisation order and has not been surrendered to a police officer;
or

- (b) the recreational vessel is subject to a forfeiture order and has not been surrendered to a police officer; or
- S. 134(1)(b) amended by No. 37/2014 s. 10(Sch. item 107.8).
- (c) in accordance with section 105, a police officer believes on reasonable grounds that the recreational vessel has been used in the commission of a relevant offence and the application is made within 48 hours after the alleged commission of the relevant offence; or
- S. 134(1)(c) amended by No. 37/2014 s. 10(Sch. item 107.8).
- (d) a police officer is empowered under section 107(6) to seize the recreational vessel.
- S. 134(1)(d) amended by No. 37/2014 s. 10(Sch. item 107.8).
- (2) An application under this section may only be made if the applicant believes on reasonable grounds that the recreational vessel is, or may be within the next 72 hours, in or at a specified premises or place, including, but not limited to, a landing place.
- (3) An application for a search and seizure warrant must be made in writing.
- (4) A magistrate must not issue a search and seizure warrant unless—
- (a) the application for the warrant sets out the grounds on which the warrant is sought; and
- (b) the applicant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds on which the warrant is sought; and
- (c) the information given by the applicant is verified before the magistrate on oath or affirmation or by affidavit.

135 Search and seizure warrant

- (1) A magistrate to whom an application is made under section 134, if satisfied that there are reasonable grounds for believing the matters set out in the application, may issue a warrant to the person or persons named in the warrant to enter the specified premises or place and search for and seize the recreational vessel specified in the warrant.
- (2) A warrant issued under subsection (1) may authorise the person or persons named in the warrant to—
 - (a) enter the premises or place specified in the warrant; and
 - (b) search for the recreational vessel specified in the warrant; and
 - (c) use reasonable force to break into or open any structure on or at the premises or place specified in the warrant that may store the recreational vessel specified in the warrant; and
 - (d) seize and impound or immobilise the recreational vessel specified in the warrant, using any or all of the powers specified in sections 106(3) and 108.
- (3) A warrant issued under subsection (1) must—
 - (a) state the purpose for which the warrant is issued; and
 - (b) give a description of the recreational vessel authorised for seizure; and
 - (c) give the address or other description of the premises or place in respect of which the warrant is issued.

- (4) Every warrant issued under this section must be in the prescribed form.

136 Record of proceedings for search and seizure warrant

- (1) A magistrate who issues a search and seizure warrant must cause a record to be made of all relevant particulars of the grounds he or she has relied on to justify the issue of the warrant.
- (2) The magistrate may decline to record any matter that might disclose the identity of a person if the magistrate believes on reasonable grounds that to do so might jeopardise the safety of any person.

137 Announcement before entry

On executing a search and seizure warrant, the person executing the warrant must—

- (a) announce that he or she is authorised by the warrant to enter the premises or place; and
- (b) give any person at the premises or place an opportunity to allow entry to the premises or place before force is used to enter the premises or place.

138 Copy of search and seizure warrant to be given to occupier

A person executing a search and seizure warrant must—

- (a) if the occupier is present at the premises or place where the warrant is being executed, identify himself or herself to the occupier and give the occupier a copy of the warrant; or
- (b) if the occupier is not present at the premises or place where the warrant is being executed, identify himself or herself to any other

person at the premises or place and give that person a copy of the warrant.

139 Use of assistants to execute search and seizure warrant

A person executing a search and seizure warrant may do so with the aid of any assistants that the person considers reasonably necessary to achieve the purpose for which the warrant was issued.

140 Application of Magistrates' Court Act 1989

Except to the extent that a contrary intention appears in this Division, the provisions to be observed with respect to search warrants in the **Magistrates' Court Act 1989** extend and apply to search and seizure warrants under this Division.

141 Expiry of search and seizure warrant

- (1) A search and seizure warrant ceases to have effect if it is recalled and cancelled by the magistrate who issued it.
- (2) If subsection (1) does not apply, a search and seizure warrant ceases to have effect—
 - (a) at the end of the period of one month after its issue; or
 - (b) when it is executed—whichever occurs first.

142 Report on execution of search and seizure warrant

- (1) The person to whom a search and seizure warrant is issued must give a report to the registrar of the Magistrates' Court—
 - (a) stating whether or not the warrant was executed; and
 - (b) if the warrant was executed, setting out briefly the result of the execution of the warrant; and

- (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed; and
 - (d) stating whether or not a copy of the warrant was given to the occupier or another person at the premises or place.
- (2) A report must be—
- (a) in the prescribed form; and
 - (b) made within 10 days after the expiry of the warrant.
- (3) A person may apply to the Magistrates' Court for an order authorising the person to inspect the report given under subsection (1) if the person satisfies the Court that the person is—
- (a) the owner or occupier of premises or a place on which the warrant was executed; or
 - (b) a person who has an interest in the recreational vessel seized in the execution of the warrant.

143 Obstruction or hindrance of person executing search and seizure warrant

A person must not, without reasonable excuse, obstruct or hinder a person executing a search and seizure warrant.

Penalty: 60 penalty units.

Division 5—Disposal of recreational vessels

144 Sale or disposal of uncollected recreational vessels and items

- (1) Subject to subsection (2), the Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a recreational vessel and any item or thing left in or on the recreational vessel, if—

S. 144(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (a) a decision is made by a police officer to impound or immobilise a recreational vessel under section 105 or an impoundment or immobilisation order is made against that recreational vessel; and
 - (b) the recreational vessel is not collected or released 2 months or more after the date on which the recreational vessel first became available for collection or release.
- (2) The Chief Commissioner of Police must not sell or otherwise dispose of a recreational vessel or an item or thing left in or on a recreational vessel under subsection (1) unless—
- (a) the matters referred to in subsection (3) are satisfied; or
 - (b) a disposal order has been made for the recreational vessel.
- (3) For the purposes of subsection (2)(a), the matters that must be satisfied before the Chief Commissioner may sell or otherwise dispose of the recreational vessel or item or thing are—
- (a) all proceedings in relation to the relevant offence that led to the impoundment or immobilisation of the recreational vessel have been finalised and any appeal period has expired; and
 - (b) at least 14 days before attempting to sell or otherwise dispose of the recreational vessel, item or thing, the Chief Commissioner serves notice on the master, owner or registered person of the recreational vessel that the Chief Commissioner intends to sell or otherwise dispose of the recreational vessel, item or thing unless steps are taken to collect or release the recreational vessel, item or thing; and

- (c) at least 14 days before attempting to sell or otherwise dispose of the recreational vessel, item or thing, the Chief Commissioner, by publishing a notice in a newspaper circulating generally in the State, notifies the public that the Chief Commissioner intends to sell or otherwise dispose of the recreational vessel and any item or thing left in or on the recreational vessel; and
- (d) if the Chief Commissioner intends to sell or otherwise dispose of an item or thing left in or on the recreational vessel, all reasonable efforts have been made to return the item or thing to the person who has the ownership in that item or thing.

145 Sale or disposal of recreational vessel subject to forfeiture order

- (1) The Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a recreational vessel that is the subject of a forfeiture order, and any uncollected item or thing left in or on the recreational vessel, once the forfeiture order takes effect in accordance with section 129(1).
- (2) The Chief Commissioner of Police must not sell or dispose of an item or thing left in or on a recreational vessel that is the subject of a forfeiture order unless all reasonable efforts have been made to return the item or thing to the person who has ownership of that item or thing.

146 Application of proceeds of sale

Where a recreational vessel or item or thing is sold under section 144 or 145 the proceeds of sale are to be applied in the following order of priority—

- (a) to pay the costs of the sale;
- (b) to pay any costs of impoundment or immobilisation;
- (c) to discharge any security interest over the recreational vessel, such as a bank loan or a lease arrangement;
- (d) to pay the owner or registered person of the recreational vessel if the recreational vessel was uncollected, or if the owner or registered person cannot be reasonably located, for payment into the Consolidated Fund;
- (e) for payment into the Consolidated Fund.

147 Disposal of recreational vessel, item or thing subject to disposal order

- (1) The Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a recreational vessel that is the subject of a disposal order and any item or thing left in or on the recreational vessel.
- (2) The Chief Commissioner must not sell or dispose of an item or thing left in or on a recreational vessel that is the subject of a disposal order unless all reasonable efforts have been made to return the item or thing to the person who has ownership of that item or thing.

148 Notice to be given of intention to apply for disposal order

- (1) The Chief Commissioner of Police may give notice of an application in accordance with this section for a disposal order for a recreational vessel if—
- (a) a decision is made by a police officer to impound or immobilise the recreational vessel under section 105 or an impoundment or immobilisation order is made against the recreational vessel; and
 - (b) the relevant court adjourns proceedings in relation to a relevant offence, other than to a fixed date, because the accused fails to appear; and
 - (c) a warrant is issued for the arrest of the accused; and
 - (d) the recreational vessel has not been collected, and the designated costs are not paid, within 2 months after the day the proceedings are adjourned.
- (2) At least 28 days before making an application under section 149 the Chief Commissioner of Police must—
- (a) serve notice of the intention to make the application on—
 - (i) the master of the recreational vessel; and
 - (ii) if the master of the recreational vessel is not the registered person of the recreational vessel, the registered person; and
 - (iii) if the owner of the recreational vessel is not a person referred to in subparagraph (i) or (ii), the owner; and

S. 148(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (iv) any person who the Chief Commissioner is aware has an interest in the recreational vessel; and
 - (v) the Safety Director; and
 - (b) publish a notice in a newspaper circulating generally in the State, of the Chief Commissioner's intention to make the application.
- (3) A notice under subsection (2) must state—
- (a) that the Chief Commissioner intends to apply for an order to dispose of the recreational vessel unless the recreational vessel is collected and the designated costs paid within 28 days after the date of the notice is served; and
 - (b) information that identifies the recreational vessel, including the recreational vessel's identification mark (if applicable); and
 - (c) that a person named in the notice may appear before the relevant court at the hearing of the application and show cause why the order should not be made; and
 - (d) any person on whom notice is served must not sell or otherwise dispose of the person's interest in the recreational vessel without the approval of the relevant court.

149 Application for disposal order

The Chief Commissioner of Police may apply to the court for an order to dispose of a recreational vessel if—

- (a) the Chief Commissioner has served notice in respect of the recreational vessel in accordance with section 148(2)(a); and

- (b) within 28 days after the date notice is served, the recreational vessel is not collected or the designated costs have not been paid.

150 Hearing of application for and making of disposal order

- (1) The relevant court hearing an application for a disposal order—
 - (a) must allow a person served with a notice under section 148 to be heard at the hearing of the application and to show cause why the disposal order should not be made; and
 - (b) may allow any other person to be heard if the court is satisfied the disposal order may substantially affect the person's interests.
- (2) After hearing the application, the court may—
 - (a) make the disposal order; or
 - (b) decline to make the disposal order if the court is satisfied the order would cause exceptional hardship to a person.
- (3) If the court makes the disposal order, the Crown becomes the owner of the recreational vessel.

151 Application of proceeds of sale

- (1) If a recreational vessel, item or thing is sold under a disposal order, the proceeds of the sale are to be applied in the following order of priority—
 - (a) to pay the costs of the disposal;
 - (b) to pay any costs of impoundment or immobilisation;
 - (c) to discharge any security interest over the recreational vessel, including a bank loan or lease arrangement.

- (2) Any sum remaining after the proceeds of the sale are applied in accordance with subsection (1) is taken to be unclaimed money under the **Unclaimed Money Act 2008** as if it were a sum of money legally payable to the person who had ownership of the recreational vessel immediately before the disposal order was made and as if the sum has remained unpaid for more than 12 months.

Division 6—Miscellaneous

152 Service of notices under this Part

If under this Part a notice is required or permitted to be served on any person, the notice may, unless the contrary intention appears, be served—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of 16 years and apparently residing at that place or (in the case of a business) apparently in charge of or employed at that place; or
- (c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person; or
- (d) if the person has given to the Safety Director as his or her address an address that is not his or her place of residence or business, by sending it addressed to the person at that address.

**PART 4.3—PROHIBITION OF USE OF RECREATIONAL
VESSELS AND HIRE AND DRIVE VESSELS**

Division 1—Part does not affect other penalties

153 Part does not affect other penalties

The issue of an embargo notice under this Part arising out of the commission of a relevant offence is in addition to, and does not limit or otherwise affect, any penalty that may be imposed on the person for the relevant offence other than under this Part.

Division 2—Embargo notices and prohibition directions

154 Power to issue embargo notices

- (1) If a police officer or a transport safety officer believes on reasonable grounds that a recreational vessel is being or has been used in the commission of a relevant offence, he or she may, as soon as practicable after the commission of the relevant offence, issue a notice in the form approved by the Safety Director specifying a period not exceeding 48 hours during which the recreational vessel may not be operated by any person.
- (2) A notice under subsection (1) may be served—
 - (a) by causing a copy of the notice to be affixed to the recreational vessel in a prominent position; or
 - (b) by causing a copy of the notice to be given to—
 - (i) the master of the recreational vessel; and
 - (ii) the registered person of the recreational vessel, if he or she is not the person referred to in subparagraph (i); and

S. 154(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

(iii) the owner of the recreational vessel, if he or she is not the person referred to in subparagraph (i) or (ii).

(3) A notice under subsection (1) must specify—

- (a) the period during which the recreational vessel may not be operated; and
- (b) that it is an offence to operate or permit the operation of, a recreational vessel in breach of a notice issued under subsection (1); and
- (c) if a copy of the notice has been affixed to the recreational vessel, where and how the notice can be removed from the recreational vessel; and
- (d) any other prescribed matter.

(4) A person must not operate, or permit the operation of, a recreational vessel in contravention of a notice issued under subsection (1) in respect of that recreational vessel.

Penalty: 10 penalty units.

(5) It is a defence to a charge under subsection (4) for the person charged to prove that—

- (a) he or she did not know; and
- (b) it was not reasonable for him or her to know—

that a notice under subsection (1) was issued in respect of the recreational vessel.

(6) A person must not remove a copy of a notice affixed to a recreational vessel under this section.

Penalty: 10 penalty units.

(7) Subsection (6) does not apply to a police officer or a transport safety officer who is acting in the course of his or her duties.

S. 154(7)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (8) If a police officer or a transport safety officer has issued and served a notice under subsection (1) in respect of a vessel for a particular relevant offence—
- (a) the power to issue a notice under subsection (1) in respect of that vessel for that particular relevant offence must not be exercised again; and
 - (b) a prohibition direction must not be issued to the master of the vessel at the time of the particular relevant offence in respect of that offence; and
 - (c) the vessel must not be seized, impounded or immobilised under Part 4.2 for that particular relevant offence.

S. 154(8)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

155 Police power to prohibit operation of vessels

- (1) If a police officer or a transport safety officer believes on reasonable grounds that a recreational vessel or a recreational hire and drive vessel is being or has been used in the commission of a relevant offence, he or she may—
- (a) direct the master of the vessel at the time the relevant offence was committed not to operate any vessel for a specified period not exceeding 24 hours beginning at the time of the direction;
 - (b) direct the master of the vessel at the time the relevant offence was committed to move the vessel to the landing place that is nearest to the vessel at the time when the direction is made.

S. 155(1)
amended by
Nos 36/2013
s. 65, 37/2014
s. 10(Sch.
item 107.8).

Marine Safety Act 2010

No. 65 of 2010

Part 4.3—Prohibition of Use of Recreational Vessels and Hire and Drive
Vessels

s. 155

S. 155(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (2) A person must not contravene the direction of a police officer or a transport safety officer under subsection (1)(a).

Penalty: 10 penalty units.

S. 155(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (3) A person must not fail to comply with the direction of a police officer or a transport safety officer under subsection (1)(b).

Penalty: 5 penalty units.

S. 155(4)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (4) If a police officer or a transport safety officer has given a direction under subsection (1) to a person who was the master of a vessel at the time of a particular relevant offence—

- (a) the power to give a direction under subsection (1) to that person for that particular relevant offence may not be exercised again; and
- (b) an embargo notice must not be issued for that particular offence; and
- (c) a vessel must not be seized, impounded or immobilised under Part 4.2 for that particular relevant offence.

Pt 4.4
(Heading and
ss 156–158)
repealed by
No. 78/2011
s. 23.

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PART 4.5—GENERAL ENFORCEMENT POWERS

159 Powers of entry in relation to lights

- (1) If a notice served under item 25 of Schedule 1 is not complied with, a person authorised by the Safety Director for the purposes of this section may do all or any of the following—
- (a) enter any premises and take possession of the light;
 - (b) order that the light be forfeited;
 - (c) do anything in relation to the light that the notice required the owner or other person to do.
- (2) A person on whom a notice under item 25 of Schedule 1 is served must comply with the notice.
- Penalty: 60 penalty units.

160 Arrest without warrant

- (1) A police officer may arrest without warrant any person who—
- (a) within sight of the police officer, commits an offence against this Act or the regulations; and
 - (b) on being requested to give his or her name and address—
 - (i) refuses or fails to give his or name and address; or
 - (ii) gives a name or address that the police officer reasonably suspects to be false.

S. 160(1) amended by No. 37/2014 s. 10(Sch. item 107.8).

S. 160(1)(a) amended by No. 37/2014 s. 10(Sch. item 107.8).

S. 160(1)(b)(ii) amended by No. 37/2014 s. 10(Sch. item 107.8).

s. 161

S. 160(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (2) If a person who is arrested for an offence under this Act or the regulations was in charge of a vessel, any police officer may take charge of the vessel and may move it to an appropriate place and keep or leave it there—
- (a) pending the admission of the arrested person to bail; or
 - (b) if the arrested person is not the owner of the vessel, pending a demand for the vessel by its owner.

161 Police power to move vessel or require vessel to be moved

S. 161(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (1) This section applies if a master of a vessel has, within sight of a police officer, committed an offence against—
- (a) Part 3.2; or
 - (b) Part 4 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**.

S. 161(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

- (2) The police officer may—
- (a) take charge of the vessel and move it to an appropriate place; or
 - (b) direct another person to move the vessel to an appropriate place.

S. 162
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

162 Master of a vessel must obey directions etc.

The master of a vessel on State waters must obey any direction that is given, by any means, by a police officer or a transport safety officer.

Penalty: 60 penalty units.

162A Police power to inspect vessels

- (1) This section applies to—
- (a) a vessel that is being operated; or
 - (b) a vessel that a police officer believes on reasonable grounds—
 - (i) will be operated on State waters; or
 - (ii) has been operated on State waters within the preceding 30 days.
- (2) A police officer may—
- (a) inspect the vessel or equipment on the vessel for the purpose of determining whether the owner or master of the vessel, or person operating the vessel, is complying with this Act or the regulations;
 - (b) direct the master of the vessel, or person operating the vessel, to—
 - (i) stop or manoeuvre the vessel in a manner specified in the direction; and
 - (ii) produce, for inspection, equipment specified in the direction for the purpose of determining whether the owner or master of the vessel, or person operating the vessel, is complying with this Act or the regulations.

S. 162A
inserted by
No. 66/2012
s. 26.

S. 162A(1)(b)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

S. 162A(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

Example

A direction under subsection (2)(b)(i) may be a direction to manoeuvre a vessel to a berth.

- (3) An inspection—
- (a) must be at a reasonable time; and

s. 162B

S. 162A(3)(b)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

(b) may include any reasonable tests that the police officer decides to be appropriate.

(4) A person must not refuse or fail to allow a vessel, or equipment on a vessel, to be inspected under this section.

Penalty: 60 penalty units.

(5) A person must not refuse or fail to comply with a direction under subsection (2)(b).

Penalty: 60 penalty units.

S. 162B
inserted by
No. 66/2012
s. 26.

162B Police powers to enter vessels without consent or warrant

(1) This section does not limit section 162A.

(2) A police officer may enter and search a vessel, or inspect any equipment, builders plate or document found on a vessel, in order to determine whether this Act and the regulations are being complied with.

Example

An inspection of a document under subsection (2) may be an inspection of a licence, certificate of competency, certificate of survey, certificate of safe operation or a log book.

S. 162B(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

(3) The police officer—

(a) must do a thing mentioned in subsection (2) at a reasonable time;

S. 162B(3)(b)
amended by
No. 37/2014
s. 10(Sch.
item 107.8).

(b) may do a thing mentioned in subsection (2) with the assistance of another police officer or a transport safety officer.

162C Police may direct someone to provide certain information concerning owner or master of a vessel

S. 162C
inserted by
No. 66/2012
s. 26.

- (1) A police officer may direct a person whom the police officer believes on reasonable grounds has information concerning the identity or location of the owner or master of a vessel to provide all the information the person has regarding the identity or location of the owner or master of the vessel.
- (2) A person must not refuse or fail to comply with a direction under subsection (1).

S. 162C(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.9(a)).

Penalty: 5 penalty units.

- (3) It is not an offence for a person to fail to comply with subsection (2) if the police officer did not inform the person, at the time the direction was given, that it is an offence to fail to comply with the direction.

S. 162C(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.9(b)).

PART 4.6—DISCIPLINARY ACTION

Division 1—Interpretation

163 Definitions

In this Part—

disciplinary notice means a notice served by the Safety Director under section 167;

permission does not include registration of a vessel;

permission record means the written document recording the kind of permission a person holds under this Act.

Division 2—Disciplinary action by Safety Director

164 When Safety Director must take disciplinary action against a person holding a permission

The Safety Director must take disciplinary action against a person who holds a permission if the Safety Director is satisfied that—

- (a) the person has been convicted in another State or a Territory or another country of an offence which, if the person had been the holder of a permission or other authority in that State, Territory or country, would have enabled the relevant authority in that State, Territory or country to suspend or cancel the person's permission or other authority; or
- (b) the person is disqualified from being the master of, or operating, a vessel in another State or a Territory or another country or the person's permission in that State, Territory or country has been cancelled because of a judgment, order or decision made under, or otherwise by operation of, the law of that State, Territory or country.

165 When Safety Director may take disciplinary action against person holding a permission

(1) The Safety Director may take disciplinary action against a person who holds a permission if the Safety Director is satisfied that—

(a) the person has contravened a provision of a relevant marine safety law; or

* * * * *

S. 165(1)(b)
repealed by
No. 36/2013
s. 66.

(c) the person has failed to comply with any condition, restriction or other limitation imposed on the person under or by the permission; or

(d) the person has acted incompetently, negligently or has engaged in misconduct relating to the safe navigation, management or working of a vessel; or

S. 165(1)(d)
substituted by
No. 78/2011
s. 24(1).

(e) the person has refused to undergo, or has failed, any test the Safety Director has required the person to undergo under this Act; or

(f) it would be dangerous for the person to operate a vessel because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things; or

(g) the permission was obtained by false statement or any misrepresentation or other dishonest means; or

(h) a cheque submitted to the Safety Director as payment of a fee for a permission under the regulations has been dishonoured.

- (2) The Safety Director, when deciding whether to take disciplinary action against a person who holds a permission, may consider the following—
 - (a) the nature of the contravention or failure;
 - (b) if there is more than one contravention or failure, the number of contraventions or failures;
 - (c) whether the person has contravened or failed to comply as specified in subsection (1) on previous occasions;
 - (d) any other matter the Safety Director thinks is relevant.
- (3) The Safety Director may take disciplinary action against a person in respect of whom a court order has been made if—
 - (a) the order requires the person to pay a sum of money by way of a fine, penalty, costs or restitution; and
 - (b) the order was made in respect of an offence arising out of the use of a vessel in Victoria, including a transport safety infringement within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**; and
 - (c) the Safety Director has been notified by a person authorised by law to issue or to execute a warrant for the enforcement of the court order, that the order is wholly or partially unsatisfied.

S. 165(3)(b)
amended by
No. 78/2011
s. 24(2).

166 Disciplinary actions that may be taken by Safety Director against a person holding a permission

- (1) The Safety Director may take one or more of the following disciplinary actions against a person who holds a permission—

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- (a) cancel the permission and disqualify the person from applying for a permission of that kind—
 - (i) for a period not exceeding 5 years; or
 - (ii) until a condition imposed by the Safety Director is met;
 - (b) suspend the permission—
 - (i) for any period; or
 - (ii) until a condition imposed by the Safety Director is met;
 - (c) if the permission is already suspended, do either of the following—
 - (i) cancel the permission and disqualify the person from applying for a permission of that kind—
 - (A) for a period not exceeding 5 years; or
 - (B) until a condition imposed by the Safety Director is met; or
 - (ii) suspend the permission—
 - (A) for an additional period; or
 - (B) until a condition imposed by the Safety Director is met;
 - (d) direct the person to take particular training;
 - (e) impose a new condition, restriction or other limitation on, or vary a condition, restriction or other limitation on, the permission;
 - (f) reprimand the person;

S. 166(1)(f)
amended by
No. 78/2011
s. 25(a).

S. 166(1)(g)
inserted by
No. 78/2011
s. 25(b).

(g) if the permission is a certificate or authority recognised by the Safety Director as an equivalent to a certificate issued under this Act, withdraw recognition of that certificate or authority.

(2) If a person holds more than one kind of permission, the Safety Director may take action in relation to any one or more of the permissions.

167 Procedure for taking disciplinary action against a person holding a permission

(1) If the Safety Director proposes to take disciplinary action under section 165 against a person who holds a permission, the Safety Director must serve on that person a disciplinary notice that—

- (a) states the proposed action (including any proposed period of suspension or disqualification from applying for a permission of a particular kind); and
- (b) if the person holds more than one kind of permission—states the specific permission or permissions to which the proposed action relates; and
- (c) states the grounds for the proposed action; and
- (d) invites the person to make a written submission within a stated period as to why the proposed action should not be taken.

(2) For the purposes of subsection (1)(d), the period stated in the disciplinary notice must be—

- (a) if an immediate suspension notice is also served under section 168, a period of at least 14 days after the day on which the disciplinary notice is served on the person;

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- (b) in any other case, a period of at least 28 days after the day on which the disciplinary notice is served on the person.
- (3) In deciding whether to take disciplinary action, the Safety Director must consider any response given to the Safety Director in accordance with subsection (1)(d).
- (4) If the Safety Director is satisfied that grounds for taking disciplinary action against a person who holds a permission have been established, the Safety Director may—
- (a) take any disciplinary action of which notice was given in the disciplinary notice or any disciplinary action that is of lesser severity than that of which notice was given in the disciplinary notice; and
 - (b) in any case—
 - (i) direct the person to undertake particular training; or
 - (ii) reprimand the person.
- (5) The Safety Director must, as soon as practicable, serve written notice on the person who holds a permission of the decision with respect to taking, or not taking, disciplinary action and, if the decision is to take disciplinary action, of—
- (a) the disciplinary action being taken; and
 - (b) the date, which must not be earlier than 7 days after the day on which the notice under this subsection is served, on which any cancellation, suspension, disqualification or new or amended condition, limitation or other restriction takes effect.

168 Suspension of permission

- (1) This section applies if the Safety Director—
 - (a) has decided to serve, or has served, a disciplinary notice on a person who holds a permission; and
 - (b) believes, on reasonable grounds, that it is in the public interest that the permission held by the person be suspended as soon as practicable before a decision is made to take action under section 167(4) in relation to the person.
- (2) In forming the belief referred to in subsection (1)(b), the Safety Director must consider—
 - (a) the circumstances leading to the decision to serve the disciplinary notice; and
 - (b) the grounds stated, or proposed to be stated, in the disciplinary notice.
- (3) The Safety Director may serve on the person a notice (an *immediate suspension notice*) suspending the permission.
- (4) If an immediate suspension notice is served on the person, the permission is suspended on that service.
- (5) A suspension in relation to a permission ends—
 - (a) if the permission is cancelled or suspended under section 167(4)—when the cancellation or suspension takes effect; or
 - (b) if a condition, restriction or other limitation is imposed on the permission, or a condition, restriction or other limitation on the permission is varied—when the condition, restriction or other limitation or varied condition, restriction or other limitation, takes effect; or

- (c) in any other case—when the person is notified under section 167(5) of the decision made on the disciplinary notice.

169 Effect of suspension of permission

- (1) This section applies if the Safety Director suspends a person's permission.
- (2) During the period of suspension, the person is taken not to hold a permission of that kind and to be disqualified from applying for a permission of that kind.

170 Return of permission record

- (1) A person whose permission has been cancelled or suspended under this Part must, not later than 7 days after the cancellation or suspension takes effect—
 - (a) return the relevant permission record to the Safety Director; or
 - (b) if the permission record has been lost, stolen or destroyed, give the Safety Director a statement, verified by a statutory declaration signed by or on behalf of the person, that the permission record has been lost, stolen or destroyed.

Penalty: 10 penalty units.

- (2) If a permission held by a person is suspended and it has not expired when the suspension ends, the Safety Director must return the permission record to the person.

Division 3—Court based sanctions

171 Power of court to cancel or suspend marine licences

- (1) Subject to subsection (2), a court may suspend or cancel a marine licence held by a person and, whether or not that person holds a marine licence,

disqualify that person from obtaining a marine licence for the period specified by the court (if any) or as otherwise provided under this section, if that person is guilty of an offence against a relevant marine safety law.

- (2) On conviction for an offence against section 318(1), 319(1) or 319(1A) of the **Crimes Act 1958** in connection with the operating of a vessel, the court must—
 - (a) in the case of an offender who holds a marine licence, cancel that licence and disqualify the offender from obtaining a marine licence for the period of time (not being less than 6 months) that the court thinks fit; or
 - (b) in the case of an offender who does not hold a marine licence, disqualify the offender from obtaining a marine licence for the period of time (not being less than 6 months) that the court thinks fit.
- (3) Subsection (1) does not affect the obligation of a court to cancel a marine licence and disqualify the offender in any case in which cancellation and disqualification are mandatory under—
 - (a) section 87; or
 - (b) section 28A of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**.
- (4) A court must cause particulars of an order made under subsection (1) or (2) to be sent immediately to the Safety Director.
- (5) If under subsection (1) or (2) a court disqualifies a person from obtaining a marine licence for any period of time without expressly cancelling any marine licence held by that person, the marine licence held by the person is, unless the order

specifies otherwise, taken to have been cancelled by that order.

- (6) Subsection (1) does not apply to an offence under section 31A(6) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** unless the court is satisfied that the person convicted or found guilty of the offence was the master of or the person operating a vessel less than 3 hours before the time of the offence.
- (7) A marine licence cancelled by a court is of no effect and a person whose marine licence is cancelled is (without affecting the power of the court to impose a longer period) disqualified from obtaining a further marine licence for the period specified by the court or, if no period is specified, for 3 months.
- (8) In this section—
vessel means—
- (a) a registered recreational vessel; or
 - (b) a regulated hire and drive vessel.

172 Effect of suspension of licence

A marine licence suspended by a court is, during the suspension, of no effect and a person whose marine licence is suspended is, during the suspension, disqualified from obtaining a further marine licence.

173 Adverse publicity order

- (1) A court that finds a person guilty of an offence against a relevant marine safety law arising out of domestic commercial vessel operations may, on the application of the prosecutor or Safety Director, make an order under this section.

S. 173(1)
amended by
No. 36/2013
s. 67.

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- (2) The court may make an adverse publicity order requiring the offender to do all or any of the following—
- (a) to take either or both of the following actions within the period specified in the order—
 - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
 - (ii) to notify a specified person or specified class of person, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter;
 - (b) to give the Safety Director within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (3) The court may make an order under this section in addition to—
- (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.
- (4) This section does not limit powers of the court under any other provision of this Act.
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PART 4.7—OWNER ONUS

174 Purpose of Part

The purpose of this Part is to establish an "owner onus" system for certain offences arising out of the operation of recreational vessels based on the principle that, if the identity of the master or person in charge is not established at the time the offence is detected, the owner should generally be liable for the offence unless that person can establish that they were not responsible for the vessel at the time of the offence and provide information sufficient to identify and locate who was.

S. 174
amended by
No. 36/2013
s. 68.

175 Definitions

In this Part—

effective, in relation to an illegal user statement, a known user statement, a sold vessel statement or an unknown user statement, means a statement that is, or is accepted by an enforcement official under section 178 as, and has not ceased to be, an effective statement for the purposes of this Part;

enforcement official means—

- (a) the informant in any proceeding commenced against the owner of a vessel; or
- (b) the issuing officer (within the meaning of the **Infringements Act 2006**) in relation to an infringement notice served on the owner of a vessel; or

- (c) the enforcement agency (within the meaning of the **Infringements Act 2006**) in relation to a penalty reminder notice served on the owner under Part 2 of that Act—

in relation to being in charge of the vessel at the relevant time;

illegal user statement, in relation to an offence involving a vessel, means a statement in writing made by a person to the effect that the person believes that at the time of the offence the vessel was a stolen vessel or the identification mark displayed on the vessel was false;

known user statement, in relation to an offence involving a vessel, means a statement in writing made by a person—

- (a) to the effect that the person was not at the time of the offence the master of the vessel; and
- (b) containing sufficient information to identify and locate the person who the person making the statement knew to be the master of the vessel at the time of the offence;

nomination rejection statement means a statement in writing made by a person nominated in a known user statement or a sold vessel statement as being the responsible person in relation to a vessel to the effect—

- (a) if nominated in a known user statement, that the person had not had possession or control of the vessel before the offence, as stated in the known user statement, and the person was not the

master of the vessel at the time of the offence; and

- (b) if nominated in a sold vessel statement, that the vessel had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vessel statement;

owner, in relation to a vessel, includes a registered person;

responsible person, in relation to a vessel, means each of the following—

- (a) the owner of the vessel;
- (b) the person nominated in an effective known user statement or an effective sold vessel statement;

sold vessel statement, in relation to an offence involving a vessel, means a statement in writing made by a person—

- (a) to the effect that—
 - (i) the person had sold or otherwise disposed of the vessel before the time of the offence or that any interest in the vessel had otherwise ceased to be vested in the person before that time; and
 - (ii) the person was not at that time the master of the vessel, or had not at that time possession or control of, the vessel; and
- (b) containing sufficient information to identify and locate the person to whom the vessel was sold or disposed of, or in whom an interest in the vessel was otherwise vested, and the date and,

if relevant, the time of the sale, disposal or vesting;

unknown user statement, in relation to an offence involving a vessel, means a statement in writing made by a person to the effect that the person—

- (a) was not at the time of the offence the master of the vessel, or had not at that time possession or control of, the vessel; and
- (b) does not know and could not with reasonable diligence ascertain the identity of the person who was at that time the master of the vessel, or had at that time possession or control of, the vessel.

176 Owner onus offences

S. 176(1)
amended by
No. 36/2013
s. 69.

- (1) If this Act, the regulations or a legislative instrument that creates an offence that may be committed by the master of a recreational vessel, or any other Act or legislative instrument, expressly states that the offence is an owner onus offence for the purposes of this Part, then (except as otherwise provided by the Part) the person who at the time of the offence is the responsible person in relation to the vessel is guilty of the offence as if that person were the master of the vessel at that time.
- (2) Nothing in subsection (1) affects the liability of the master of the vessel at the time of the offence.
- (3) The owner of a recreational vessel only ceases to be the responsible person in relation to the vessel if another person is the responsible person in relation to that vessel by force of section 178 or 179.

S. 176(3)
amended by
No. 36/2013
s. 69.

- (4) A person who by force of this section is guilty of an offence is liable to the same penalties and subject to the consequences to which the person would have been liable and subject had the person been the master of the vessel at the time of the offence.

177 Effect of payment of penalty etc.

If by force of section 176 more than one person may be guilty of an offence involving a vessel and the full amount of any monetary penalty is paid (and not refunded) and any other necessary consequence is suffered by any one of them in relation to the offence, no further penalty or consequence may be imposed on or recovered from that person or any other person in relation to the offence.

178 Use of effective statement to avoid liability

- (1) A person is not guilty of an offence by force of section 176 if—
- (a) within the prescribed period the person gives one of the following statements to an enforcement official—
 - (i) an illegal user statement;
 - (ii) a known user statement;
 - (iii) a sold vessel statement;
 - (iv) an unknown user statement; and
 - (b) the statement is an effective statement for the purposes of this Part.

Notes

- 1 A statement may cease to be an effective statement under section 179.
- 2 It is an offence to provide false or misleading information in a statement: see section 182.

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- (2) Information contained in a known user statement or a sold vessel statement identifying a person is sufficient for the purposes of this Part if it contains—
- (a) in the case of an individual, his or her full name and current home address and either his or her date of birth or the number of the licence or certificate authorising him or her to be the master of a vessel and, if that licence or certificate is issued by a corresponding authority, the name of that authority; and
 - (b) in the case of a person other than an individual, its full name and current address and (where applicable) its Australian Business Number or Australian Company Number; and
 - (c) reasons for nominating the individual under paragraph (a) or person under paragraph (b); and
 - (d) in any case, any other prescribed information.
- (3) A statement containing all the information required by subsection (2) is an effective statement for the purposes of this Part.
- (4) In addition, an enforcement official may decide to accept a known user statement or a sold vessel statement as an effective statement for the purposes of this Part even if it does not contain all the information required by subsection (2) if the enforcement official is satisfied that it contains sufficient information to identify and locate the nominated person.
- (5) An enforcement official may decide to accept an illegal user statement as an effective statement for the purposes of this Part if satisfied as to the

matters, and any reasons set out in support of those matters, stated in the statement.

- (6) An enforcement official may decide to accept an unknown user statement as an effective statement if the enforcement official is satisfied that it states—
- (a) that, at the time of the offence, the person was not the master of the vessel, or had not at that time possession or control of the vessel; and
 - (b) reasons in support of the matters raised under paragraph (a) that—
 - (i) are adequate and reasonable in the circumstances; and
 - (ii) explain why the person could not, with reasonable diligence, ascertain the identity of the person who was at that time the master of the vessel or at that time was last known to have had possession or control of the vessel.
- (7) An enforcement official to whom a known user statement or sold vessel statement (not containing all the information required by subsection (2)) or an illegal user statement or an unknown user statement is given under subsection (1) must, within the prescribed period, cause a notice to be served on the person who gave the statement stating whether or not the enforcement official has decided under subsection (4), (5) or (6) (as the case requires) to accept the statement as an effective statement for the purposes of this Part.
- (8) If subsection (7) is not complied with in respect of a statement, the enforcement official must be taken to have decided to accept the statement as an effective statement for the purposes of this Part.

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- (9) A notice under subsection (7) may be served by post addressed to the person at an authorised address (within the meaning of section 163A of the **Infringements Act 2006**).
- (10) A notice under subsection (7) served in accordance with subsection (9) and returned undelivered to its sender is taken to be served 14 days after the date specified in the notice as the date of the notice, despite it being returned to its sender as undelivered.
- (11) Subsection (10) has effect despite anything to the contrary in section 308 or section 49(1) of the **Interpretation of Legislation Act 1984**.

179 Cancellation of acceptance of statement

- (1) An enforcement official may cancel the acceptance of a statement as an effective statement for the purposes of this Part (including a statement taken to have been accepted by force of section 178(8))—
- (a) if in the case of a known user statement or a sold vessel statement, the person nominated in the statement as being the responsible person gives to an enforcement official within the prescribed period a nomination rejection statement and the enforcement official is satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect; or

Note

It is an offence to provide false or misleading information in a statement: see section 182.

- (b) if in the case of a statement not containing all the information required by section 178(2), the information contained in the statement

-
- proves not to be sufficient to identify or locate the nominated person; or
- (c) in prescribed circumstances.
- (2) If the acceptance of a statement as an effective statement is cancelled under subsection (1), on that cancellation—
- (a) the statement ceases to be an effective statement for the purposes of this Part; and
- (b) the person who would, but for the statement, have continued to be the responsible person in relation to the vessel becomes again the responsible person.

180 Proceedings against nominated persons

- (1) A proceeding against a person nominated in an effective known user statement or sold vessel statement for an offence to which this Part applies may be commenced not later than 12 months after—
- (a) the day on which the statement was given to the enforcement official; or
- (b) if the statement again becomes an effective statement because of the cancellation under section 179(1) of the acceptance of a subsequent statement, the day on which the subsequent statement is cancelled.
- (2) In a proceeding referred to in subsection (1) the known user statement or sold vessel statement is evidence and, in the absence of evidence to the contrary, proof of the matters stated in it.
- (3) A proceeding against a person (other than a person nominated in an effective known user statement or sold vessel statement) who, by force of section 179(2), becomes again the responsible person in relation to the vessel at the time of the offence to which this Part applies may be

commenced not later than 12 months after the day on which that person again became the responsible person.

181 Defences to owner onus offences

In a proceeding for an owner onus offence it is a defence to the charge for the accused to prove any of the following—

- (a) that the accused had made an illegal user statement, a known user statement, a sold vessel statement or unknown user statement within the prescribed period and that the statement is, or ought to have been accepted by an enforcement official as, an effective statement for the purposes of this Part;
- (b) that the acceptance as an effective statement for the purposes of this Part of an illegal user statement, known user statement, sold vessel statement or unknown user statement made by the accused ought not to have been cancelled under section 179(1);
- (c) if the proceeding against the accused is based on a nomination made in a known user statement or sold vessel statement, that the accused had made a nomination rejection statement and that an enforcement official ought to have been satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect.

182 Offence to provide false or misleading information

A person must not in a statement given under section 178(1) or 179(1)(a) to an enforcement official provide information that the person knows to be false or misleading.

Penalty: 60 penalty units.

CHAPTER 5—MANAGEMENT OF WATERS

PART 5.1—WATERWAY RULES

Division 1—Interpretation

183 Definitions

In this Part—

mandatory considerations in relation to a proposed rule, means—

- (a) the safety risk, or the nature and level of a safety risk, that the proposed rule is intended to minimise or eliminate;
- (b) whether there are alternative ways (legislative or otherwise) to address the matter being or to be addressed by the proposed rule;
- (c) the expected benefits and costs of the proposed rule on those persons likely to be affected by the proposed rule, if made;

non-material nature, in relation to a proposed rule, includes correction of a minor error in a rule;

rule means a rule made under section 184;

specified amendment rule means—

- (a) a rule that undoes the effect of an urgent safety rule in respect of which the Safety Director has decided under section 191 that—

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- (i) the urgent safety rule was not the only means available to address the matter addressed by the rule; and
 - (ii) there is a more appropriate, non-legislative way to address the matter addressed by the urgent safety rule; or
- (b) a rule that more appropriately addresses a matter addressed by an urgent safety rule in respect of which the Safety Director has decided under section 191 that—
- (i) a rule was the only means available to address the matter addressed by the urgent safety rule; but
 - (ii) the urgent safety rule was not the most appropriate rule to be made to address that matter;

urgent safety rule means a rule relating to any matter for or with respect to the operations of vessels on waters and the other users of those waters that, if not made as a matter of urgency, will result in that matter imminently prejudicing or threatening the safety of the operations or use.

Division 2—The Safety Director's power to make waterway rules

184 Making of waterway rules

- (1) Subject to this Part, the Safety Director, by notice published in the Government Gazette, may make rules for or with respect to—

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- (a) regulating or prohibiting the operation on State waters or any part of State waters of—
 - (i) any vessels; or
 - (ii) any specified classes of vessel;
 - (b) regulating the use of State waters or any part of State waters by bathers and others, so far as that use affects any boating activity;
 - (c) regulating the carriage of charts, appliances and other equipment on vessels for the purpose of safe navigation of the vessels, and the safety of life, on State waters or any part of State waters.
- (2) Waterway rules may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the rules; or
 - (ii) as in force at a particular time or as in force from time to time.

185 Safety Director may make a rule that is consequential to a rule request

- (1) The Safety Director may, having regard to a request to make a rule under section 194 make a rule that is necessary or consequential to the rule that is to be made on that request.
- (2) For the purposes of this Part, the Safety Director must treat a rule he or she may make under subsection (1) as if it were part of the rule to be made on that request.

S. 186(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.10).

186 Waterway rules to be made on request or on initiative of Safety Director

- (1) The Safety Director may make a rule—
 - (a) at the request of a port management body, local port manager, waterway manager or police officer under section 194; or
 - (b) on the Safety Director's own initiative.
- (2) The Safety Director, on his or her own initiative, may make—
 - (a) a rule in relation to the operation of vessels on, or use by persons of—
 - (i) waters under the Safety Director's control; or
 - (ii) unmanaged waterways; or
 - (b) an urgent safety rule in relation to the operation of vessels on waters or use of waters under the control of a port management body, local port manager or waterway manager; or
 - (c) a specified amendment rule.

187 Matters that must be considered in making a rule

- (1) In making a rule, the Safety Director must have regard to—
 - (a) the mandatory considerations; and
 - (b) if the rule is being made following a request from a port management body, local port manager or waterway manager, the summary of submissions or comments received by that body or manager under section 194; and

- (c) if the rule is being made by the Safety Director on the Director's own initiative or at the request of a police officer, any submissions or comments made to the Director under section 195 by the date specified in a notice under section 195(3)(a).
- (2) This section does not apply in the case of the making of—
 - (a) an urgent safety rule; or
 - (b) a specified amendment rule; or
 - (c) a rule that is of a non-material nature.

S. 187(1)(c)
amended by
No. 37/2014
s. 10(Sch.
item 107.10).

188 Reasons must be given for making or not making a rule

- (1) The Safety Director must publish his or her decision whether to make a rule under section 184 on the Safety Director's Internet site.
- (2) A decision that is published under subsection (1) must contain a statement of the reasons of the Safety Director for making or not making the rule, including—
 - (a) a description of the matter that was addressed by the request or proposal for the making of the rule; and
 - (b) the Safety Director's conclusions after having regard to the mandatory considerations.
- (3) In the case of a decision relating to a request for the making of a rule, the Safety Director must also publish the request as part of his or her decision.

189 Operation and commencement of a waterway rule

A rule commences operation on—

- (a) the day the relevant notice is published in the Government Gazette; or
- (b) any day after that day that is provided for in the relevant notice or the rule.

190 Rules to be published on Safety Director's Internet site

On publication of a notice under section 184, the Safety Director must, without delay, publish the rule on the Director's Internet site.

191 Safety Director must assess appropriateness of urgent safety rule

- (1) This section applies if the Safety Director makes an urgent safety rule.
- (2) As soon as reasonably practicable after making the urgent safety rule, the Safety Director must assess—
 - (a) whether the making of the rule was the only means available to address the matter addressed by that rule; and
 - (b) if so, whether that rule was the most appropriate rule to be made to address that matter.
- (3) In making a decision under subsection (2), the Safety Director must have regard to—
 - (a) the mandatory considerations; and
 - (b) submissions and comments that the Safety Director receives in accordance with section 192.

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- (4) The Safety Director must publish his or her decision under subsection (2) on the Safety Director's Internet site and notice of the making of the decision must be published in the Government Gazette.
- (5) A decision that is published under subsection (4) must contain a statement of the reasons of the Safety Director including—
- (a) a description of the matter that was addressed by the making of the urgent safety rule; and
 - (b) the Safety Director's conclusions after having regard to the mandatory considerations.
- (6) If the Safety Director decides that—
- (a) the urgent safety rule was not the only means available to address the matter addressed by the rule; and
 - (b) there is a more appropriate, non-legislative way to address the matter—
- the Safety Director must, within 12 months after the making of the decision, make a rule that undoes the effect of the urgent safety rule.
- (7) If the Safety Director decides that—
- (a) a rule was the only means available to address the matter addressed by the urgent safety rule; but
 - (b) the urgent safety rule was not the most appropriate rule to be made to address that matter—
- the Safety Director must, within 12 months after the making of the decision, make a rule that more appropriately addresses that matter.

**192 Consultation for the purpose of assessing
appropriateness of urgent safety rule**

- (1) For the purpose of making a decision under section 191, the Safety Director must invite submissions and comments from the public in accordance with this section.
- (2) The Safety Director must—
 - (a) publish notice of the assessment of the urgent safety rule—
 - (i) in a newspaper circulating generally throughout the State; and
 - (ii) on the Safety Director's Internet site; and
 - (b) make copies of the urgent safety rule available to the public on the Safety Director's Internet site and at a prescribed place during business hours free of charge.
- (3) A notice under subsection (2)(a) must—
 - (a) include a summary of the urgent safety rule; and
 - (b) specify the date by when a submission or comment must be made to the Safety Director; and
 - (c) specify how a submission or comment must be made; and
 - (d) specify that copies of the urgent safety rule are available on the Safety Director's Internet site and at the prescribed place during business hours free of charge.
- (4) The period of time between publication of the notice and the date specified in the notice must not be less than 4 weeks.

**Division 3—Procedure in relation to request for making of
waterway rules**

**193 Initial consideration and advice by Safety Director
in relation to certain requests**

- (1) Before making a request for the making of a rule under section 194, a port management body, local port manager or waterway manager must notify the Safety Director of the body's or manager's intention to make the request.
- (2) A notification under subsection (1)—
 - (a) must be in writing; and
 - (b) must contain the following information—
 - (i) the name and address of the body or manager; and
 - (ii) a description of the rule that the body or manager proposes be made; and
 - (iii) a statement of the nature and scope of the matter that is proposed to be addressed and an explanation of how the proposed rule would address the matter; and
 - (c) may be accompanied by a draft of the proposed rule.
- (3) On receiving a notification under subsection (1), the Safety Director must—
 - (a) consider whether the rule that is proposed to be requested—
 - (i) appears to be within the powers conferred on the Safety Director to make the rule; and
 - (ii) is of a material nature or a non-material nature; and

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- (b) within 2 weeks after receiving a notification under subsection (1)—
- (i) advise, in writing, the port management body, local port manager or waterway manager of the matters under subsection (5), (6) or (7), as the case requires; and
 - (ii) publish notice of the advice in the Government Gazette.
- (4) An advice under this section must set out the reasons of the Safety Director as to the matters under subsection (5), (6) or (7), as the case requires.
- (5) If the Safety Director is of the view that the rule that is proposed to be requested appears to be within the powers conferred on the Safety Director to make the rule and is of a material nature, the Safety Director must advise the port management body, local port manager or waterway manager—
- (a) of that view; and
 - (b) that it must comply with section 196 before making a request for the making of the rule under section 194.
- (6) If the Safety Director is of the view that the rule that is proposed to be requested appears to be within the powers conferred on the Safety Director to make the rule and is of a non-material nature, the Safety Director must advise the port management body, local port manager or waterway manager—
- (a) of that view; and
 - (b) that it is not required to comply with section 196 before making a request for the making of the rule under section 194.
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- (7) If the Safety Director is of the view that the rule that is proposed to be requested does not appear to be within the powers conferred on the Safety Director to make the rule, the Safety Director must advise the port management body, local port manager or waterway manager of that view.

194 Requests for waterway rules

- (1) A port management body, local port manager or waterway manager or a police officer may request the Safety Director to make a waterway rule.
- (2) A request from a port management body, local port manager or waterway manager may only be in relation to the operation of vessels on waters or use by persons of waters under their respective control.
- (3) A request for the making of a rule—
- (a) must be in writing; and
 - (b) must contain the following information—
 - (i) the name and address of the body or manager making the request; and
 - (ii) a description of the rule that the body or manager proposes be made; and
 - (iii) a statement of the nature and scope of the matter that is proposed to be addressed and an explanation of how the proposed rule would address the matter; and
 - (iv) an explanation of how the proposed rule addresses the mandatory considerations; and

S. 194(1)
amended by
No. 37/2014
s. 10(Sch.
item 107.10).

S. 194
(3)(b)(v)(C)
amended by
No. 78/2011
s. 26.

- (v) in the case where a port management body, local port manager or waterway manager has been advised of the matters under section 193(5)—
 - (A) a list of submissions and comments received under section 196; and
 - (B) a summary of the matters raised in the submissions and comments received under section 196; and
 - (C) how the port management body, local port manager or waterway manager has taken into account the submissions and comments in addressing the mandatory considerations; and
- (c) must be accompanied by a draft of the proposed rule.

195 Consultation by Safety Director on proposed rules

S. 195(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.10).

- (1) This section applies if the Safety Director—
 - (a) receives a request from a police officer to make a rule that the Safety Director considers is of a material nature; or
 - (b) proposes to make a rule on his or her own initiative that the Safety Director considers is of a material nature.
- (2) Before making a rule, the Safety Director must invite submissions and comments from the public in accordance with this section.
- (3) The Safety Director must—
 - (a) publish notice of the request or proposal to make a rule—

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- (i) in a newspaper circulating generally throughout the State; and
 - (ii) on the Safety Director's Internet site; and
- (b) make copies of the request or proposal available to the public on the Safety Director's Internet site and at a prescribed place during business hours free of charge.
- (4) A notice under subsection (3)(a) must—
- (a) include a summary of the request or proposal; and
 - (b) specify the date by when a submission or comment must be made to the Safety Director; and
 - (c) specify how a submission or comment must be made; and
 - (d) specify that copies of the request or proposal are available on the Safety Director's Internet site and at the prescribed place during business hours free of charge.
- (5) The period of time between publication of the notice and the date specified in the notice must not be less than 4 weeks.

196 Port management bodies, local port managers and waterway manager must consult before requesting rule

- (1) Subject to this Part, before requesting the making of a rule under this Part, a port management body, local port manager or waterway manager must invite submissions and comments in relation to the proposed request from the public in accordance with this section.

Note

As to when this section applies, see section 193(5).

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- (2) The port management body, local port manager or waterway manager must—
- (a) publish notice of the proposal to request the making of a rule—
 - (i) in a newspaper circulating generally throughout the State; and
 - (ii) on the body's or manager's Internet site; and
 - (b) make copies of the proposal available to the public on the body's or manager's Internet site and at the body's or manager's offices or principal place of business during business hours free of charge.
- (3) A notice under subsection (2)(a) must—
- (a) include a summary of the proposal; and
 - (b) specify the date by when a submission or comment must be made to the port management body, local port manager or waterway manager; and
 - (c) specify how a submission or comment must be made; and
 - (d) specify that copies of the proposal are available on the body's or manager's Internet site and at the body's or manager's offices or principal place of business during business hours free of charge.
- (4) The period of time between publication of the notice and the date specified in the notice must not be less than 4 weeks.

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- (5) The port management body, local port manager or waterway manager must, in formulating its request for the making of a rule, take into account every submission or comment it receives by the date specified in the notice under subsection (2)(a).

Division 4—Compliance with waterway rules

197 Offence not to comply with waterway rules

A person must not operate a vessel or use any waters in contravention of a waterway rule.

Penalty: 20 penalty units.

198 Offences of waterway rule contraventions relating to vessel operation are owner onus offences

An offence for contravention of a waterway rule relating to the operation of a vessel is an owner onus offence for the purposes of Part 4.7.

**PART 5.2—STANDARDS FOR NAVIGATION AIDS AND
DREDGING**

**199 Determination of the standards for navigation aids
and dredging and maintenance of channels**

- (1) Subject to this Part, the Safety Director, by notice published in the Government Gazette, may determine standards for—
 - (a) the provision and maintenance of navigation aids in State waters;
 - (b) dredging and maintenance of channels in State waters.
- (2) A determination under subsection (1) must set out the reasons for the making of a determination.

**200 Consultation required before making a
determination**

Before the Safety Director makes a determination under section 199, the Safety Director must consult with every port management body, local port manager or waterway manager that the Director considers will need to comply with the determination.

**201 Matters that must be considered in making a
determination**

In making a determination under section 199, the Safety Director must have regard to—

- (a) the safety risk, or the nature and level of a safety risk, that the determination is intended to minimise or eliminate;
- (b) whether there are alternative ways (legislative or otherwise) to address the matter to be addressed by the determination;
- (c) the expected benefits and costs of the determination on those persons likely to be affected by the determination, if made.

202 Offence to fail to comply with standard determined under this Part

A port management body, local port manager or waterway manager must comply with a standard determined under section 199.

Penalty: 120 penalty units.

**PART 5.3—BOATING ACTIVITY EXEMPTIONS AND
EXCLUSION ZONES**

Division 1—Boating activity exemptions

**203 Declarations to exempt boating activity on certain
waters from Act or regulations**

- (1) A person who proposes to conduct boating activity on State waters may apply to the applicable regulatory entity for—
 - (a) an exemption from the application of this Act, the regulations, the waterway rules or regulations made under the **Port Management Act 1995** to the proposed boating activity;
 - (b) a modification of the application of this Act, the regulations, the waterway rules or regulations made under the **Port Management Act 1995** to the proposed boating activity.
- (2) An application under subsection (1) must—
 - (a) be in writing; and
 - (b) describe the proposed boating activity; and
 - (c) specify the period of time during which the proposed boating activity will be conducted; and
 - (d) set out the reasons for the application; and
 - (e) set out the provisions of this Act, the regulations, the waterway rules or regulations made under the **Port Management Act 1995**—

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- (i) from which the proposed boating activity is proposed to be exempted; or
 - (ii) to be modified; and
 - (f) set out an assessment of risks associated with the proposed boating activity; and
 - (g) set out the proposed risk controls to be implemented for the proposed boating activity; and
 - (h) contain any other prescribed information; and
 - (i) be accompanied by the prescribed fee.
- (3) On receiving an application under subsection (1), the applicable regulatory entity may, subject to section 204, make a declaration that provides for one or more of the following in respect of a provision of this Act, the regulations, the waterway rules or regulations made under the **Port Management Act 1995**—
- (a) that the provision does not apply to the boating activity described in the application, when conducted;
 - (b) that the provision applies, with modifications, to the boating activity described in the application when conducted;
 - (c) if the provision does not apply to the boating activity described in the application when conducted, that another requirement specified in the declaration applies to the boating activity.

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- (4) A declaration under subsection (3) must—
- (a) be in writing; and
 - (b) as the case requires, specify—
 - (i) the provision that does not apply;
 - (ii) the modifications;
 - (iii) the other requirements.
- (5) A declaration under subsection (3) must—
- (a) describe the boating activity to which the declaration applies; and
 - (b) specify the persons or classes of persons to whom the declaration will apply; and
 - (c) specify the State waters on which the boating activity may be conducted; and
 - (d) specify the time during which the declaration will apply.
- (6) A declaration under subsection (3) must be published—
- (a) in a newspaper circulating generally throughout the State; and
 - (b) on the applicable regulatory entity's Internet site.
- (7) In this section *applicable regulatory entity* means—
- (a) the Safety Director;
 - (b) if the waters on which the boating activity proposed to be conducted are under the control of a port management body, that body;
 - (c) if the waters on which the boating activity proposed to be conducted are under the control of a local port manager, that manager;
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- (d) if the waters on which the boating activity proposed to be conducted are under the control of a waterway manager, that waterway manager.

204 Safety Director to be given copy of declaration application and proposed declaration

- (1) As soon as practicable after receiving an application under section 203(1), a port management body, a local port manager or a waterway manager must give to the Safety Director—
 - (a) a copy of the application; and
 - (b) a draft of the declaration the body or manager proposes to make; and
 - (c) if the body or manager proposes to also publish a notice under section 208(2) in relation to the boating activity proposed to be conducted under the declaration, a draft of that notice.
- (2) On receiving the documents under subsection (1), the Safety Director may, within the prescribed time, direct the port management body, local port manager or waterway manager—
 - (a) not to make the declaration; or
 - (b) to change any part of the draft declaration.
- (3) A direction under subsection (2) must be in writing.
- (4) A port management body, local port manager or waterway manager that is given a direction under subsection (2) must comply with the direction.
- (5) The Safety Director cannot give a direction under subsection (2) after the end of the prescribed time.

205 Effect of a declaration

A declaration under section 203 applies despite anything to the contrary in this Act, the regulations, the waterway rules, or the regulations made under the **Port Management Act 1995**.

206 Exemption from compliance with Act, regulations or Port Management Act 1995

A person to whom a declaration under section 203 applies is exempted from complying with a provision of this Act, the regulations, the waterway rules, or the regulations made under the **Port Management Act 1995** that the declaration provides does not apply to the person.

207 Compliance with declarations that modify or provide for other requirements to apply

- (1) If a declaration under section 203 modifies the application of a provision of this Act, the regulations, the waterway rules, or the regulations made under the **Port Management Act 1995**, a person to whom the declaration applies must comply with the provision as modified.

Penalty: 60 penalty units.

- (2) If a declaration under section 203 provides for a requirement specified in the declaration to be complied with, a person to whom the declaration applies must comply with that requirement.

Penalty: 60 penalty units.

Division 2—Activity exclusion zones

208 Activity exclusion zones

- (1) The Safety Director, by notice published in the Government Gazette, may prohibit—
 - (a) a person or class of person;

S. 206
amended by
No. 29/2011
s. 3(Sch. 1
item 57.5).

- (b) a vessel or class of vessel—
from entering, or remaining in, a specified part of
State waters for the period specified by the notice.
- (2) Subject to this section and section 209, a port
management body, local port manager or
waterway manager, by notice published in the
Government Gazette, may prohibit—
- (a) a person or class of person;
- (b) a vessel or class of vessel—
from entering, or remaining in, a specified part of
waters under their control for the period specified
by the notice.
- (3) The period specified by a notice under subsection
(1) or (2) must not exceed the prescribed period of
time (if any).
- (4) A notice may only be made under subsection (1)
or (2) by the Safety Director, port management
body, local port manager or waterway manager
for the purpose of giving effect to a declaration
under section 203.
- (5) A notice under subsection (1) or (2) must—
- (a) describe the part of the waters to which the
notice applies; and
- (b) specify the person or class of person to
whom, or vessel or class of vessel to which,
the notice applies.

**209 Safety Director to be given proposed notice creating
activity exclusion zone**

- (1) Before publishing a notice under section 208(2), a
port management body, local port manager or
waterway manager must give a draft of the notice
to the Safety Director.

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- (2) On receiving a draft of a notice under subsection (1), the Safety Director may, within the prescribed time, direct the port management body, local port manager or waterway manager not to publish the notice if the Safety Director intends to give a direction to the body or manager under section 204(2) that relates to the same part of State waters.
 - (3) A direction under subsection (2) must be in writing.
 - (4) A port management body, local port manager or waterway manager that is given a direction under subsection (2) must comply with the direction.
 - (5) The Safety Director cannot give a direction under subsection (2) after the end of the prescribed time.

210 Compliance with activity exclusion zones

- (1) A person to whom a notice under section 208(1) or (2) applies must not enter or remain in the waters to which that notice applies unless the person has a reasonable excuse.

Penalty: 60 penalty units.

- (2) A master of a vessel to which a notice under section 208(1) or (2) applies must not allow the vessel to enter or remain in the waters to which that notice applies unless the person has a reasonable excuse.

Penalty: 60 penalty units.

**PART 5.4—REGULATION OF OTHER ACTIVITIES ON
CERTAIN WATERS**

**211 Control of navigation etc. in the vicinity of works
carried out on, over or under waters**

- (1) An applicable regulatory entity, may on the application of a person intending to carry out works on, over or under a part of State waters, do either or both of the following for the purpose of eliminating or reducing the risks to safety associated with the carrying out of those works—
- (a) give directions to masters of vessels in relation to the navigation and movement of those vessels in the vicinity where the works are being carried out;
 - (b) may, subject to section 212, by notice published in the Government Gazette—
 - (i) prohibit the navigation and other movement of vessels in the vicinity where the works are being carried out;
 - (ii) regulate the position and the manner in which any vessel may anchor or be secured in the vicinity where the works are being carried out.
- (2) An application under subsection (1) must—
- (a) be in writing; and
 - (b) describe the works to be carried out; and
 - (c) specify the period of time during which the works are to be carried out; and
 - (d) specify the waters on, over or under which the works are to be carried out; and
 - (e) set out an assessment of risks associated with the works to be carried out; and

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- (f) set out the proposed risk controls to be implemented for the works to be carried out, including how the person wishes the navigation of vessels in the vicinity of the works to be regulated or prohibited; and
- (g) contain any other prescribed information; and
- (h) be accompanied by the prescribed fee.
- (3) A notice under subsection (1)(b)(i) or (ii)—
- (a) may temporarily exclude a person or vessel from the part of State waters to which the notice relates;
- (b) must describe the part of State waters to which the notice applies.
- (4) In this section—
- applicable regulatory entity*** means—
- (a) the Safety Director;
- (b) if the waters on, over or under which the works are to be carried out are under the control of a port management body, that body;
- (c) if the waters on, over or under which the works are to be carried out are under the control of a local port manager, that manager;
- (d) if the waters on, over or under which the works are to be carried out are under the control of a waterway manager, that waterway manager;
- works*** includes—
- (a) the construction, maintenance or decommissioning of a facility or infrastructure; and

- (b) the dredging of a channel and related activities; and
- (c) the construction or maintenance or exterior alteration or decoration of a building or other structure; and
- (d) the demolition or removal of a building or other structure; and
- (e) the erection, maintenance and removal of signs or hoardings; and
- (f) the removal, destruction or lopping of vegetation.

212 Safety Director to be given proposed notice relating to regulation of waters around works

- (1) Before publishing a notice under section 211(1)(b), a port management body, local port manager or waterway manager must give a draft of the notice to the Safety Director.
- (2) On receiving a draft of a notice under subsection (1), the Safety Director may, within the prescribed time, direct the port management body, local port manager or waterway manager—
 - (a) not to publish the notice; or
 - (b) to change any part of the draft notice.
- (3) A direction under subsection (2) must be in writing.
- (4) A port management body, local port manager or waterway manager that is given a direction under subsection (2) must comply with the direction.
- (5) The Safety Director cannot give a direction under subsection (2) after the end of the prescribed time.

213 Compliance with a direction of applicable regulatory entity

A master of a vessel given a direction by an applicable regulatory entity under section 211(1)(a) must comply with that direction unless the master has a reasonable excuse.

Penalty: 60 penalty units.

214 Compliance with notice

A person must comply with a notice under section 211(1)(b)(i) or (ii) unless the person has a reasonable excuse.

Penalty: 60 penalty units.

215 Emergency directions

- (1) This section applies if—
- (a) the Safety Director considers that, because of an emergency, persons must not enter or remain in a part of State waters; or
 - (b) a port management body, local port manager or waterway manager considers that, because of an emergency, persons must not enter or remain in a part of waters under their control.
- (2) The Safety Director, port management body, local port manager or waterway manager may direct a person (orally or in writing) not to enter or remain in the waters.

Note

An oral direction may be given by a delegate of a port management body, local port manager or waterway manager who is a natural person.

- (3) The Safety Director, port management body, local port manager or waterway manager must, as soon as possible after giving an oral direction, make a written copy of the direction and keep a copy of

that direction for a period of 6 years after the date of the direction.

- (4) A direction under subsection (2) must specify the waters to which the direction applies.
- (5) A person given a direction under subsection (2) must comply with the direction unless the person has a reasonable excuse.

Penalty: 60 penalty units.

PART 5.5—WATERWAY MANAGEMENT

216 Functions and powers of waterway managers

- (1) A waterway manager has the following functions—
- (a) the management of vessel activities on the waters under the control of the waterway manager;
 - (b) the management and allocation of moorings and berths in the waters under the control of the waterway manager;
 - (c) the provision and maintenance, in accordance with standards developed by the Safety Director, of navigation aids, including appropriate signage as to water levels, hazards and laws applying to the waters under the control of the waterway manager;
 - (d) the control of navigation and vessel movement in the waters under the control of the waterway manager;
 - (e) the designation of areas in the waters under the control of the waterway manager in which anchorage of vessels is permitted and areas in which anchorage of vessels is not permitted;
 - (f) the altering or dredging of channels for navigation in the waters under the control of the waterway manager, in accordance with any directions or determination of the Safety Director and as so required by the Safety Director;
 - (g) the removal or marking of obstructions in the waters under the control of the waterway manager.

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- (2) A waterway manager must carry out its functions under subsection (1) in a manner that—
- (a) ensures the safe operation of vessels in the waters under the control of the waterway manager; and
 - (b) minimises the risk of environmental damage from the operation of vessels in the waters under the control of the waterway manager.
- (3) A waterway manager has the following powers—
- (a) the power to enter into contracts and agreements for the carrying out of its functions under this section;
 - (b) the power to employ persons or enter into contracts or agency agreements with persons to assist in the carrying out of its functions;
 - (c) the power to charge the fees prescribed by the regulations for any service provided by the waterway manager;
 - (d) the power to do all things necessary to enable its functions under this section to be carried out.

217 Delegation powers of waterway managers

A waterway manager may, by instrument, delegate to any person employed or engaged by the waterway manager under section 216(3) any function or power conferred on the waterway manager by or under this Act, other than this power of delegation.

218 Indemnity for waterway managers

The Crown must indemnify a waterway manager against any liability in respect of any loss or damage suffered by the waterway manager in respect of anything necessarily or reasonably done

or omitted to be done by the waterway manager in good faith—

- (a) in the exercise of a power or the performance of a function under this Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Act.

219 Safety Director may develop code of practice for waterway management

- (1) For the purpose of providing practical guidance to waterway managers as to how to manage the waters under their control, the Safety Director may develop a code of practice.
- (2) A code of practice—
 - (a) may consist of any code, standard, rule, specification or provision relating to any aspect of marine safety infrastructure operations or vessel operations; and
 - (b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.

CHAPTER 6—HARBOUR MASTERS

PART 6.1—REQUIREMENTS FOR ENGAGEMENT OF LICENSED HARBOUR MASTERS

220 Certain entities must engage harbour masters

- (1) The Port of Melbourne Corporation must ensure that a licensed harbour master is at all times engaged for the port of Melbourne waters.

S. 220(1)
amended by
No. 38/2011
s. 40(1).

Penalty: 120 penalty units.

- (1A) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for port of Hastings waters.

S. 220(1A)
inserted by
No. 38/2011
s. 40(2).

Penalty: 120 penalty units.

- (2) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for the waters declared under section 5 of the **Port Management Act 1995** to be the waters of the port of Geelong.

Penalty: 120 penalty units.

- (3) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for the waters declared under section 5 of the **Port Management Act 1995** to be the waters of the port of Portland.

Penalty: 120 penalty units.

- (4) A local port manager must ensure that a licensed harbour master is at all times engaged for any part of the waters under the control of that manager in respect of which the Safety Director has determined that a licensed harbour master is required to be engaged.

Penalty: 60 penalty units.

- (5) A waterway manager must ensure that a licensed harbour master is at all times engaged for any part of the waters under the control of that manager in respect of which the Safety Director has determined that a licensed harbour master is required to be engaged.

Penalty: 60 penalty units.

221 Identity cards

- (1) The person or body which has engaged a harbour master must issue an identity card to the harbour master.
- (2) An identity card must be in a form approved by the Safety Director and must contain—
- (a) a photograph of the person to whom it is issued; and
 - (b) the signature of the person.
- (3) A harbour master must produce his or her identity card—
- (a) before exercising a function under this Chapter, other than the giving of a direction by radio or other electronic communication device; and
 - (b) if requested to do so, in the course of exercising a function under this Chapter, other than the giving of a direction by radio or other electronic communication device.

Penalty: 5 penalty units.

- (4) Before a harbour master gives a direction by radio or other electronic communication device to another person, the harbour master must warn the person to whom the direction is given that failure to comply with the direction may constitute an offence under section 237(1).

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- (5) A person who has been issued with an identity card must return it to the Safety Director, or the person who issued it, on demand.

Penalty: 5 penalty units.

PART 6.2—LICENSING OF HARBOUR MASTERS

222 Person must not act as a harbour master without harbour master licence

A person must not act as the harbour master for any port waters or other State waters in relation to which a licensed harbour master is required to be engaged under section 220 unless he or she holds a licence that is in effect.

Penalty: 60 penalty units.

223 Application for harbour master licence

- (1) A person may apply to the Safety Director for a harbour master licence.
- (2) An application under subsection (1) must be—
 - (a) in the form determined by the Safety Director; and
 - (b) accompanied by—
 - (i) evidence of the applicant's qualifications, competencies and experience to enable the applicant to be a licensed harbour master; and
 - (ii) the prescribed fee (if any).
- (3) The Safety Director—
 - (a) may require an applicant to provide further information or material in respect of the application; and
 - (b) may require that the information or material be verified; and
 - (c) may require proof of the identity of the person making the application.

224 Grant of harbour master licence

- (1) On receiving an application under section 223, the Safety Director may, in accordance with the regulations, grant a licence to the applicant if the Safety Director is satisfied that the applicant—
 - (a) is capable of performing the functions of a harbour master; and
 - (b) meets the requirements determined by the Safety Director.
- (2) For the purposes of subsection (1), the Safety Director must have regard to any matters that are prescribed.
- (3) A harbour master licence granted under subsection (1) must specify—
 - (a) the functions the harbour master who holds the licence may perform; and
 - (b) those parts of State waters in which those functions may be performed.
- (4) A harbour master licence granted under subsection (1) may contain a condition that makes the exercise of a function of a harbour master subject to a direction given from time to time to the harbour master by the Safety Director.
- (5) The Safety Director must when granting a harbour master licence on which a condition has been imposed under section 227 set out the terms of the condition.
- (6) A harbour master licence granted under subsection (1)—
 - (a) takes effect on the day that it is granted; and
 - (b) remains in effect unless suspended or cancelled.

225 Application by harbour master for variation of conditions of harbour master licence

- (1) A harbour master may apply for a variation of a condition of the harbour master licence the harbour master holds.
- (2) An application must—
 - (a) be in the form determined by the Safety Director; and
 - (b) set out the details of the proposed variation; and
 - (c) be accompanied by the prescribed fee (if any).
- (3) The Safety Director—
 - (a) may require an applicant to provide further information or material in respect of the application; and
 - (b) may require that the information or material be verified.

226 Variation of condition of harbour master licence by Safety Director following application

On receiving an application under section 225, the Safety Director may, in accordance with the regulations, vary or refuse to vary any condition of the harbour licence that is the subject of the application.

227 Imposition or variation of condition of a harbour master licence by Safety Director

- (1) The Safety Director may, at any time, impose a condition on a harbour master licence that limits or restricts a function of the harbour master who holds that licence.

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- (2) Without limiting subsection (1), the Safety Director may, after first consulting with the person or body who has engaged a harbour master, impose a condition on the harbour master licence of that harbour master at any time during the period the licence is in effect.
 - (3) The Safety Director may, after first consulting with the person or body who engaged a harbour master, vary a condition of the harbour master licence that has been imposed under subsection (2).

228 Requirement as to notification of licence condition

The Safety Director must not impose or vary a condition under section 227 unless the Safety Director has first given written notice to the holder of the harbour master licence that he or she intends to do so.

PART 6.3—ASSISTANT HARBOUR MASTERS

229 Authorisation to act as assistant harbour master

S. 229(1)
amended by
No. 38/2011
s. 41(1).

(1) The Port of Melbourne Corporation may, having first—

S. 229(1)(a)
amended by
No. 38/2011
s. 41(1).

(a) consulted the harbour master engaged for the port of Melbourne waters; and

(b) obtained the approval in writing of the Safety Director—

authorise, in writing, a person to act as an assistant harbour master for the port of Melbourne waters.

(2) The person or body who has engaged a harbour master for the waters that have been declared under section 5 of the **Port Management Act 1995** to be part of the—

S. 229(2)(aa)
inserted by
No. 38/2011
s. 41(2).

(aa) port of Hastings; or

(a) port of Geelong; or

(b) port of Portland—

may, having first—

(c) consulted the harbour master engaged by that body; and

(d) obtained the approval in writing of the Safety Director—

authorise, in writing, a person to act as an assistant harbour master for the waters that have been so declared to be part of the port.

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- (3) A local port manager may authorise, in writing, a person to act as an assistant harbour master for any waters under the control of the manager in respect of which the manager has engaged a harbour master, if the manager has first—
- (a) consulted the harbour master so engaged; and
 - (b) obtained the approval in writing of the Safety Director.
- (4) A waterway manager may authorise, in writing, a person to act as an assistant harbour master for any waters under the control of the manager in respect of which the manager has engaged a harbour master, if the manager has first—
- (a) consulted the harbour master so engaged; and
 - (b) obtained the approval in writing of the Safety Director.
- (5) An authorisation under this section may be general or may be limited to the exercise of the functions and powers that are specified in the authorisation.
- (6) A person authorised to act as a harbour master under this section has all the functions and may exercise all the powers that are specified in his or her instrument of authorisation and, when carrying out any such function or exercising any such power, the person acts as the harbour master.
- (7) The authorisation of a person under this section to carry out a function or exercise a power does not prevent the harbour master from carrying out that function or exercising that power.
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**PART 6.4—FUNCTIONS AND POWERS OF HARBOUR
MASTERS**

230 Functions of harbour masters

- (1) The functions of a harbour master are as follows—
- (a) to control and direct vessels entering and leaving the waters for which he or she has been engaged, including the time and manner of doing so;
 - (b) to control and direct the navigation and other movement of vessels in those waters;
 - (c) to control and direct the position where and the manner in which any vessel may anchor or be secured in those waters;
 - (d) to control and direct the time and manner of the taking in or discharging from any vessel of cargo, stores, fuel, fresh water and water ballast in those waters;
 - (e) to control and direct the securing or removal of any vessel in those waters in, from or to any position the harbour master thinks fit;
 - (f) any other functions that are conferred on harbour masters by or under this or any other Act.
- (2) A harbour master must carry out his or her functions under subsection (1) in a manner—
- (a) that ensures the safety of persons and the safe operation of vessels; and
 - (b) that minimises the effect of vessel operations on the environment.

231 Powers of harbour masters

A harbour master has all the powers that are necessary and convenient to enable him or her to carry out the functions given to the harbour master under this or any other Act.

232 Power of harbour masters to give written and oral directions

- (1) A harbour master may from time to time give written directions for or with respect to vessels entering or within waters for which he or she has been engaged, including all or any of the following matters—
- (a) prohibiting entry by any vessel to or requiring the removal of any vessel from the waters for which he or she has been engaged, if the harbour master has reasonable cause to believe that the vessel—
 - (i) is unseaworthy; or
 - (ii) is in imminent danger of sinking and causing an obstruction to navigation in those waters; or
 - (iii) is in imminent danger of causing serious damage to the marine environment or property in those waters;
 - (b) to control and direct the navigation and other movement of vessels in those waters;
 - (c) to control and direct the position where and the manner in which any vessel may anchor or be secured in those waters;
 - (d) to control and direct the time and manner of the taking in or discharging from any vessel of cargo, stores, fuel, fresh water and water ballast in those waters;

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- (e) to control and direct the securing or removal of any vessel in those waters in, from or to any position the harbour master thinks fit;
 - (f) any other thing for or with respect to the management of the operation of vessels in those waters.
- (2) Before giving a direction under subsection (1), a harbour master must take into account—
- (a) the safety risk, or the nature and level of a safety risk, that the direction is intended to minimise or eliminate;
 - (b) whether there are alternative ways (legislative or otherwise) to address the matter to be addressed by the direction;
 - (c) the expected benefits and costs of the direction on those persons likely to be affected by the direction, if given.
- (3) Directions given under subsection (1) must be published in a manner that makes them readily accessible to users of the port.
- (4) A harbour master may, if it is reasonable to do so, give an oral direction about any matter on which a written direction can be given under subsection (1) for or with respect to a vessel entering or within waters for which he or she has been engaged.
- (5) A harbour master who has given a direction under subsection (4), must, as soon as possible after giving the direction, make a written copy of the direction and cause the copy to be kept at the business office of the person or body who has engaged the harbour master for a period of 6 years from the date of the direction.

- (6) A harbour master may, as a condition of allowing a vessel to be anchored or secured within any part of the waters for which he or she has been engaged, being waters in which a licensed pilot is required to be engaged, direct that a pilot remain on board the vessel while it is so anchored or secured, whether or not pilotage is compulsory under section 248.

233 Specific provisions as to directions relating to the entry and removal of vessels

- (1) A harbour master must not give any direction prohibiting the entry of a vessel to the waters for which he or she has been engaged or requiring the removal of a vessel from those waters under section 232 if the direction would endanger the life of any person on the vessel.
- (2) A direction given by a harbour master prohibiting the entry of a vessel to the waters for which he or she has been engaged or requiring the removal of a vessel from those waters under section 232 may be revoked by order of the Safety Director.

234 General provisions relating to harbour master directions

- (1) A harbour master must not give any direction under section 232 that would result in a contravention of any law relating to the State waters or vessel concerned or that would impede the proper administration of the customs or quarantine services within those waters.
- (2) If a direction given by a harbour master under section 232 is inconsistent with a direction given by the Safety Director under item 24 of Schedule 1, the direction given by the Safety Director prevails and the harbour master's direction is, to the extent of the inconsistency, of no effect.

S. 234(2)
amended by
No. 78/2011
s. 27.

235 Amendment and revocation of directions

- (1) A direction given by a harbour master under section 232 may be amended or revoked by any harbour master who has been engaged for the waters in respect of which the direction applies.
- (2) The Safety Director, by written notice, may direct a harbour master who has been engaged for the waters in respect of which a direction given under section 232 applies to amend or revoke the direction if the Safety Director considers the direction to be unsafe or unreasonable.
- (3) A harbour master given a direction under subsection (2) must comply with the direction without delay.

236 Harbour master may carry out direction

- (1) If—
 - (a) there is no person on board any vessel to whom a harbour master may give a direction under this Chapter and there are reasonable grounds for the harbour master to act urgently without giving a direction; or
 - (b) a direction under this Chapter or under the regulations is not complied with—the harbour master may cause the vessel to be dealt with as required by the harbour master.
- (2) For the purposes of subsection (1), the harbour master (or a person authorised by the harbour master for the purposes of this section) may board a vessel and move, secure or otherwise operate the vessel.
- (3) The person or body which has engaged the harbour master may recover from the master or owner of a vessel referred to in subsection (1) as a civil debt in any court of competent jurisdiction the reasonable charges and expenses incurred in

the exercise of the harbour master's functions under that subsection.

237 Offence to fail to comply with direction or obstruct, harbour master

- (1) The master of a vessel must not, without reasonable excuse, refuse or fail to comply with—
- (a) any direction given under this Chapter to the master by a harbour master; or
 - (b) any direction in the regulations.

Penalty: 120 penalty units.

- (2) A person must not, without reasonable excuse, obstruct a harbour master (or a person acting under the direction of a harbour master) performing a function or exercising any power under this Chapter.

Penalty: 60 penalty units.

PART 6.5—OTHER MATTERS

238 Protection from liability

- (1) A harbour master, or any other person exercising the functions of a harbour master, is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance of a function under or in connection with this Chapter or a direction in the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with this Chapter or a direction in the regulations.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a harbour master or person exercising the functions of a harbour master, attaches instead to the port management body, local port manager or waterway manager by which the harbour master or person is engaged.

CHAPTER 7—PILOTAGE

PART 7.1—PROVISION OF PILOTAGE SERVICES

239 Offence to provide pilotage services without registration

A person must not provide pilotage services unless that person is, or is employed or engaged by, a pilotage services provider registered under this Part.

Penalty: In the case of a natural person,
20 penalty units;

In the case of a body corporate,
60 penalty units.

240 Application for registration as a pilotage services provider

- (1) A person who proposes to provide pilotage services may apply to the Safety Director to be registered as a registered pilotage services provider.
- (2) An application under subsection (1) must—
 - (a) be in the form determined by the Safety Director; and
 - (b) contain—
 - (i) the name and address of the applicant; and
 - (ii) the name and identification number of any vessel to be used in connection with the provision of pilotage services; and

- (iii) the name and licence number of each pilot employed or engaged by the applicant, or if the applicant holds a pilot licence, the number of that licence; and
 - (iv) details of arrangements by the applicant to transport pilots other than by vessel; and
 - (c) be accompanied by the prescribed fee (if any).
- (3) The Safety Director—
- (a) may require an applicant to provide further information or material in respect of the application; and
 - (b) may require that the information or material be verified; and
 - (c) may require proof of the identity of the person making the application.

241 Registration as a pilotage service provider

On receiving an application under section 240, the Safety Director must register the person as a pilotage services provider.

242 Duration of registration

The registration of a pilotage services provider—

- (a) takes effect at the time of issue of a certificate under section 243; and
- (b) remains in effect unless sooner suspended or cancelled.

243 Certificates of registration

The Safety Director, on registering a person under this Part, must issue a certificate of registration to that person.

244 Register of pilotage service providers

- (1) The Safety Director must establish and maintain a register of all pilotage services providers registered under this Part.
- (2) The register must contain the following information—
 - (a) the name and address of the pilotage services provider; and
 - (b) the name and identification number of any vessel to be used in connection with the provision of pilotage services; and
 - (c) the date of commencement of the provision of pilotage services by the provider; and
 - (d) the name and licence number of each pilot employed or engaged by the provider, or if the provider holds a pilot licence, the number of that licence; and
 - (e) details of arrangements by the provider to transport pilots other than by vessel; and
 - (f) any other information determined by the Safety Director to be included in the register.
- (3) The register may be inspected at the office of the Safety Director by any person during business hours free of charge.
- (4) A person may obtain a copy of, or an extract from, the register on payment of the prescribed fee (if any).

245 Requirement to notify the Safety Director of changes to registration information

A pilotage services provider must notify the Safety Director within 14 days after any change to information recorded in a certificate of registration.

Penalty: 5 penalty units.

246 Records to be kept

A pilotage services provider must keep records containing the following information—

- (a) the name and licence number of each pilot employed or engaged by the provider, or if the provider holds a pilot licence, the number of that licence; and
- (b) the number of hours worked by each pilot in any period of 24 hours, indicating the starting and finishing times for work and rest; and
- (c) the annual recreation leave taken by each pilot; and
- (d) any other information that is prescribed.

Penalty: 20 penalty units.

247 Offence to fail to comply with safety standards

A pilotage services provider must comply with the prescribed safety standards that apply to the provider.

Penalty: 60 penalty units.

PART 7.2—PILOTS

Division 1—General requirement to use pilots

248 Offence not to use a pilot

- (1) The master of a vessel must not—
- (a) enter or leave pilot required waters or attempt to enter or leave pilot required waters; or
 - (b) navigate the vessel within pilot required waters or attempt to do so—

without using the services of a licensed pilot.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply to—
- (a) State waters for which no pilot is licensed; or
 - (b) a pilot exempt master; or
 - (c) a master who holds a local knowledge certificate for port waters in relation to those port waters; or
 - (d) a vessel that is less than 35 metres long.

249 Offence to act as a pilot without a pilot licence or pilot exemption

A person must not act as a pilot unless that person—

- (a) holds a pilot licence granted by the Safety Director under this Part that is in effect; or
- (b) is a master who holds a pilot exemption granted under this Part that is in effect.

Penalty: 120 penalty units.

Division 2—Declaration of pilot required waters

250 Declaration

The Safety Director, by notice published in the Government Gazette, may declare a part of State waters as waters in which a licensed pilot is required to be engaged.

Note

In making a declaration under this section the Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).

Division 3—Pilot licences

251 Application for pilot licence

- (1) A person may apply to the Safety Director for a pilot licence.
- (2) An application under subsection (1) must be—
 - (a) in the form determined by the Safety Director; and
 - (b) accompanied by—
 - (i) evidence of the applicant's qualifications, competencies and experience to enable the applicant to be a licensed pilot; and
 - (ii) the prescribed fee (if any).
- (3) The Safety Director—
 - (a) may require an applicant to provide further information or material in respect of the application; and
 - (b) may require that the information or material be verified; and
 - (c) may require proof of the identity of the person making the application.

252 Grant of pilot licence

- (1) On receiving an application under section 251(1), the Safety Director may grant a pilot licence to the applicant if the Safety Director is satisfied that the applicant—
 - (a) has the appropriate qualifications, competencies and experience to hold a pilot licence; and
 - (b) meets the requirements determined by the Safety Director.
- (2) A pilot licence granted under subsection (1) may be granted subject to a condition imposed by the Safety Director.
- (3) A pilot licence granted under subsection (1)—
 - (a) takes effect on the day that it is granted; and
 - (b) remains in effect unless suspended or cancelled.

Division 4—Pilot exemptions

253 Application for pilot exemption

- (1) A master of a vessel may apply to the Safety Director for an exemption from the requirement to use the services of a pilot in pilot required waters.
- (2) An application under subsection (1) must be—
 - (a) in the form determined by the Safety Director; and
 - (b) accompanied by—
 - (i) evidence of the applicant's qualifications, competencies and experience to enable the applicant to hold a pilot exemption; and
 - (ii) the prescribed fee (if any).

(3) The Safety Director—

- (a) may require an applicant to provide further information or material in respect of the application; and
- (b) may require that the information or material be verified; and
- (c) may require proof of the identity of the person making the application.

254 Grant of pilot exemption

- (1) On receiving an application under section 253(1), the Safety Director may grant a pilot exemption to the applicant if the Safety Director is satisfied that the applicant—
 - (a) has the appropriate qualifications, competencies and experience to hold a pilot exemption; and
 - (b) meets the requirements determined by the Safety Director.
- (2) A pilot exemption granted under subsection (1) may be granted subject to any condition imposed by the Safety Director, including a condition limiting the exemption to a particular port.
- (3) A pilot exemption granted under subsection (1)—
 - (a) takes effect on the day that it is granted; and
 - (b) remains in effect for a period of 2 years after the date it is granted unless sooner suspended or cancelled.

255 Effect of pilot exemption

A master who holds a pilot exemption for a particular port is exempted from the requirement to engage a pilot with respect to that port.

256 Renewal of pilot exemption

- (1) A pilot exempt master may apply for the renewal of the pilot exemption the master holds.
 - (2) An application under subsection (1) must be made before the pilot exemption expires.
 - (3) Section 254 applies to the renewal of a pilot exemption as if a reference to a master who applied for a pilot exemption in that section were a reference to the pilot exempt master who applied for the renewal of the pilot exemption the master holds.
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PART 7.3—MISCELLANEOUS MATTERS

257 Liability of pilots and pilotage service providers

- (1) A pilot who has the conduct of a vessel in State waters is subject to the authority of the master of the vessel and the master is not relieved from responsibility for the conduct and navigation of the vessel by reason only of the vessel being under pilotage.
- (2) Despite any law of the State, the owner or master of a vessel navigating in State waters under circumstances in which pilotage is compulsory under such a law is answerable for any loss or damage caused by the vessel, or by a fault of the navigation of the vessel, in the same manner as the master or owner would if pilotage were not compulsory.
- (3) If a pilot—
 - (a) does an act, issues an instruction, or provides information or advice in or in relation to the pilotage of a vessel in State waters; and
 - (b) that act is done, that instruction is issued, or that information or advice is provided, in the course of the pilot's duty and in good faith; and
 - (c) that act, instruction, information or advice affects the navigation of the vessel in State waters so that loss or damage is caused to or by the vessel—

neither the pilot nor any pilotage services provider responsible for the provision of the pilot's services is liable in civil proceedings for that loss or damage.

CHAPTER 8—GENERAL

PART 8.1—ADMINISTRATION OF ACT

Division 1—The Safety Director

258 Functions of the Safety Director

- (1) The functions of the Safety Director are—
- (a) to register vessels; and
 - (b) to license masters of recreational vessels and regulated hire and drive vessels; and
 - (c) to test, and approve the testing of, masters of registered recreational vessels and regulated hire and drive vessels; and
 - (d) to develop appropriate standards for the safe construction, equipment and operation of recreational vessels, and to take steps to ensure that those standards are maintained; and
- * * * * *
- (f) to issue local knowledge certificates; and
 - (g) to determine the fitness of a person to hold a marine licence; and
 - (h) to licence harbour masters and determine standards for the training of harbour masters; and
 - (i) to license pilots and to develop appropriate standards for the training of pilots and pilot exempt masters, and to ensure that those standards are maintained; and
 - (j) to register pilotage services providers; and

S. 258(1)(d)
substituted by
No. 36/2013
s. 70(1)

S. 258(1)(e)
repealed by
No. 36/2013
s. 70(2).

S. 258(1)(g)
amended by
No. 36/2013
s. 70(3).

-
- (k) to approve appropriate alternative safety standards for the provision of pilotage services by pilotage services providers; and
 - (l) to make waterway rules; and
 - (m) to develop and enforce standards and procedures for navigation and maritime safety on State waters; and
 - (n) to develop appropriate standards for the provision and maintenance of navigation aids for State waters; and
 - (o) to develop appropriate standards for the dredging and maintenance of channels in State waters; and
 - (p) to direct the removal of impediments or obstructions to navigation on State waters; and
 - (q) to determine the parts of State waters (other than port waters of the port of Melbourne, the port of Geelong, the port of Portland or the port of Hastings) with respect to which a licensed harbour master is required to be engaged; and
 - (r) to investigate incidents adequately in order to identify deficiencies in operational procedures, vessel standards or crew training; and
 - (s) to provide vessel survey and consultancy services; and
 - (t) monitor compliance with a relevant marine safety law; and

- (u) to investigate alleged breaches of a relevant marine safety law and to prosecute for them.

Note

The Safety Director may also have functions as a delegate under the Marine Safety (Domestic Commercial Vessel) National Law.

Note to s. 258(1) inserted by No. 36/2013 s. 70(4).

- (2) The Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010** in making—
 - (a) a declaration under section 7, 81 or 250;
 - (b) a determination under subsection (1)(q).

Note

See also section 173 of the **Transport Integration Act 2010**.

259 Powers of the Safety Director

- (1) Without derogating from any other functions or powers of the Director under any other Act, the Safety Director may do all things that are necessary or convenient to enable him or her to carry out his or her functions, including, but not limited to, the powers specified in Schedule 1.
- (2) Despite subsection (1), the Safety Director must not exercise any of his or her powers in a way that is inconsistent with the regulations.

260 Exemptions

- (1) The Safety Director may, by notice in writing to any person affected, exempt any person or vessel or any class of person or vessel from any requirement of this Act if the Safety Director decides—
 - (a) that the requirement has been substantially complied with; or
 - (b) that the purpose of the requirement has been adequately achieved; or

- (c) that compliance would, in the particular circumstances, be impracticable, unnecessary, or inappropriate.
- (2) An exemption may be either indefinite or for a specified period and either absolute or on specified conditions.
- (3) The Safety Director may at any time suspend or cancel an exemption, or alter its period or its terms and conditions, by notice in writing to any person affected.

261 Provision or maintenance of navigation aids by Safety Director

- (1) This section applies if a port management body, a local port manager or a waterway manager does not comply with a standard developed by the Safety Director under Part 5.2 for—
 - (a) the provision and maintenance of navigation aids in State waters which are under the control of the port management body, local port manager or waterway manager; or
 - (b) dredging and maintenance of channels which are under the control of the port management body, local port manager or waterway manager.
- (2) The Safety Director may—
 - (a) provide or maintain (as the case requires) the navigation aids in accordance with that standard;
 - (b) carry out the dredging and maintenance of channels.

262 Safety Director may cause vessel to be boarded, moved, secured or operated in certain cases

- (1) This section applies if—
- (a) there is no person on board a vessel to whom the Safety Director may give a direction under item 24 of Schedule 1 and there are reasonable grounds for the Director to act urgently without giving the direction; or
 - (b) a direction given by the Safety Director under item 24 of Schedule 1 is not complied with.
- (2) The Safety Director may cause a person authorised by the Director to board the vessel and move, secure or otherwise operate it.

263 Recovery of costs

The Safety Director may recover as a civil debt in any court of competent jurisdiction—

- (a) the cost of doing something under section 261 from the port management body, the local port manager or the waterway manager to which that section applies;
- (b) the reasonable charges and expenses incurred by the Safety Director from the master or owner of the vessel to which section 262 applies.

264 Inquiries into marine safety matters

- (1) The Safety Director may conduct an inquiry into a marine safety matter.
- (2) The Safety Director, for the purposes of conducting an inquiry into a marine safety matter, may require—
 - (a) a vessel to remain in port waters for a period not exceeding 24 hours; and

- (b) a person to give written or oral information to the Safety Director; and
 - (c) a person to give to the Safety Director any documents relevant to the inquiry.
- (3) If the Safety Director commences an inquiry under this section, the Safety Director—
- (a) may suspend a permission or exemption granted or issued under this Act for a period not exceeding 14 days; and
 - (b) must notify the person holding the permission or exemption under this Act that the permission or exemption has been suspended for the period specified in the notice.
- (4) An inquiry must be conducted in a manner that any person against whom an allegation of incompetence or breach of this Act or the regulations or a condition of a permission or exemption granted or issued under this Act is made is given an opportunity—
- (a) to be heard; and
 - (b) to show why their permission or exemption should not be suspended or cancelled.
- (5) In conducting an inquiry the Safety Director has the powers conferred by sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, on a board appointed by the Governor in Council.

S. 264(5)
amended by
No. 67/2014
s. 147(Sch. 2
item 25).

265 Extension of suspension pending inquiry

- (1) VCAT may extend the period of a suspension imposed—
- (a) by the Safety Director under section 264(3);
or

- (b) by VCAT under this section.
- (2) VCAT may only extend the period of a suspension—
 - (a) on the application of the Safety Director; and
 - (b) if it is satisfied that there is reasonable cause to do so.
- (3) In extending a period of suspension, VCAT must specify the period for which the extension applies.

266 Accountability for damage

- (1) The Safety Director may recover damages in any court of competent jurisdiction from a person who removed or damaged a light house, light ship, buoy, beacon, navigation aid or other land or sea mark used for the safety or convenience of navigation.
- (2) Nothing in subsection (1) prejudices any other rights which the Safety Director may have or limits any liabilities to which a person may be subject in respect of any such removal or damage as is referred to in that subsection.

267 Order to remove obstructions in navigable waters

- (1) In this section and section 268—

obstruction to navigation means anything in, over or on navigable waters (including a vessel, whether wrecked or not) that—

- (a) is a danger to the safe navigation of vessels; or
- (b) is moored, berthed or placed in contravention of this Act or the regulations—

but does not include anything lawfully erected in, over or on navigable waters.

- (2) The Safety Director may direct the owner of, or a person responsible for, an obstruction to navigation to remove the obstruction.
- (3) The direction must be given in writing and must specify by when the obstruction must be removed.
- (4) The person to whom the direction is given must comply with the direction within the time specified in the direction, unless the person has a reasonable excuse for not doing so.

Penalty: 60 penalty units.

268 Safety Director may remove obstructions to navigation

- (1) The Safety Director may remove, or authorise the removal of, any obstruction to navigation.
- (2) The Safety Director may take action under this section regardless of—
 - (a) whether or not a direction for the removal of the obstruction has been given under section 267; or
 - (b) if a direction has been made under section 267, whether or not the time specified in the direction for compliance with the direction has expired.
- (3) Action taken under this section may include the removal of the obstruction by its destruction if it is reasonable to do so in the circumstances.
- (4) The Safety Director may dispose of anything removed under this section.
- (5) The Safety Director may recover any reasonable costs incurred in taking action under this section as a debt due and payable by the owner of, or the person responsible for, the obstruction.

269 Power to prohibit operation of particular vessel

- (1) The Safety Director may, in accordance with the regulations, direct that a particular vessel (whether registered or not)—
 - (a) must not be operated on State waters; or
 - (b) may only be operated on State waters on specified conditions for a specified period.
- (2) A direction made by the Safety Director under subsection (1) may be indefinite or for a specified period.
- (3) A police officer may, in accordance with the regulations, direct that a particular vessel (whether registered or not)—
 - (a) must not be operated on State waters; or
 - (b) may only be operated on State waters on specified conditions for a specified period.
- (4) A person must not operate a vessel in contravention of a direction made under subsection (1) or (3).

S. 269(3)
amended by
No. 37/2014
s. 10(Sch.
item 107.10).

S. 269(4)
amended by
No. 36/2013
s. 79.

Penalty: 60 penalty units.

Division 2—Functions and powers of other entities

270 Chief Commissioner of Police may disclose reportable incidents to Safety Director

The Chief Commissioner of Police may disclose to the Safety Director any information in the possession of the Chief Commissioner concerning any reportable incident involving a vessel on State waters.

271 Acquisition of land

- (1) The Minister may purchase or compulsorily acquire any land which is or may be required, whether by the Safety Director, a port management body, a local port manager or a waterway manager, for or in connection with, or as incidental to, the provision of a navigation aid for State waters.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this section and for that purpose—
 - (a) the **Marine Safety Act 2010** is the special Act; and
 - (b) the Minister is the Authority.

Division 3—Accreditation

Pt 8.1 Div. 3
(Heading and
ss 271A–
271F)
inserted by
No. 78/2011
s. 28.

271A Definition

In this Division—

prescribed service means a service prescribed for the purposes of this Division.

S. 271A
inserted by
No. 78/2011
s. 28.

271B Offence to provide prescribed service unless accredited

A person must not provide a prescribed service unless that person is accredited under this Division.

Penalty: 60 penalty units.

S. 271B
inserted by
No. 78/2011
s. 28.

271C Offence to breach condition of accreditation

A person must not breach the conditions of an accreditation granted to that person.

Penalty: 60 penalty units.

S. 271C
inserted by
No. 78/2011
s. 28.

271D Application for accreditation

- (1) A person may apply to the Safety Director for accreditation to provide a prescribed service.
- (2) An application under subsection (1) must—
 - (a) be in writing; and
 - (b) specify the name, address and contact details of the applicant; and
 - (c) be accompanied by—
 - (i) evidence of the competence and capacity of the applicant to provide the prescribed service; and
 - (ii) the prescribed fee.

S. 271D
inserted by
No. 78/2011
s. 28.

271E Guidelines in relation to competence and capacity

- (1) The Safety Director must issue guidelines specifying how an applicant may demonstrate that the applicant has the competence and capacity to provide a prescribed service.
- (2) Guidelines issued under this section must be published on the Safety Director's Internet site.

S. 271E
inserted by
No. 78/2011
s. 28.

271F Accreditation

- (1) Subject to subsection (2), the Safety Director may grant an accreditation to provide a prescribed service to a person who has made an application under section 271D.
- (2) The Safety Director must not grant an accreditation to a person to provide a prescribed service unless the Safety Director is satisfied that the person has the competence and capacity to provide the prescribed service.

S. 271F
inserted by
No. 78/2011
s. 28.

Marine Safety Act 2010
No. 65 of 2010
Part 8.1—Administration of Act

s. 271F

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- (3) An accreditation granted under this section may be subject to conditions—
- (a) imposed by the Safety Director;
 - (b) prescribed by the regulations.
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PART 8.2—CODES OF PRACTICE

272 Codes of practice—safety duties

- (1) For the purpose of providing practical guidance to a person who may be placed under an obligation by or under Chapter 2, the Minister may, subject to section 276, approve one or more codes of practice.
- (2) A code of practice—
 - (a) may consist of any code, standard, rule, specification or provision relating to any aspect of marine operations, marine safety equipment design and supply activities, or vessel design and supply activities; and
 - (b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.
- (3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or on any later day specified in the notice.

Note

A code of practice approved under this section is disallowable by either House of Parliament: see section 278.

273 Revisions to approved codes of practice

- (1) Subject to section 276, the Minister may—
 - (a) approve any revision of the whole, or any part, of an approved code of practice;
 - (b) revoke the approval of a code of practice.

- (2) The approval of a revision to an approved code of practice takes effect on the day on which notice of the approval of the revision is published in the Government Gazette, or on any later day specified in the notice.

274 Revocation of approvals of codes of practice

The approval of an approved code of practice ceases to be of effect at the end of the day on which notice of the revocation of the approval is published in the Government Gazette, or on any later day specified in the notice.

275 Availability of approved codes of practice

The Minister must cause—

- (a) a current copy of every approved code of practice; and
- (b) a copy of every document applied, incorporated or referred to in an approved code of practice (in the form in which that document has effect in the approved code of practice)—

to be made available for inspection by members of the public at a prescribed place during business hours free of charge.

276 Minister may consult before approving code of practice or revision to code of practice

Before the Minister approves a code of practice or any revision of the whole, or any part, of an approved code of practice under section 272 or 273, the Minister may consult with any person or body that may be affected by the approved code of practice, or revision of an approved code of practice, to be approved.

S. 275
amended by
No. 29/2011
s. 3(Sch. 1
item 57.6).

277 Effect of approved code of practice

A person is not liable to any civil or criminal proceedings by reason only that he, she or it has failed to observe any provision of an approved code of practice.

Note

A person who complies with a compliance code may however, be taken to have complied with this Act (see section 299).

278 Tabling and disallowance of approved codes of practice

- (1) On or before the 6th sitting day after notice of an approved code of practice is published in the Government Gazette, the Minister must ensure that a copy of that code is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the approved code of practice but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) An approved code of practice may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to an approved code of practice as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to an approved code of practice; and
 - (b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).

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- (5) A reference to an approved code of practice in this section includes a reference to any amendment to, or revision of the whole or any part of, an approved code of practice.
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PART 8.3—MARINE ENFORCEMENT POLICY

**279 Safety Director to develop, maintain and review
Marine Enforcement Policy**

- (1) The Safety Director must develop, maintain and review a Marine Enforcement Policy in accordance with this Part.
- (2) The purpose of a Marine Enforcement Policy is to support and promote maintaining compliance and enforcement of a relevant marine safety law throughout the State by—
 - (a) specifying cost effective and efficient options in respect of monitoring compliance with, and enforcing, relevant marine safety laws in the State; and
 - (b) specifying how options will be utilised by enforcement agencies to monitor compliance and enforcement of relevant marine safety laws consistently throughout the State.
- (3) The Safety Director must cause the Marine Enforcement Policy developed under this section to be published on the Internet no later than 12 months after the commencement of this section.
- (4) The Marine Enforcement Policy must be reviewed every 3 years in accordance with section 281.

**280 Safety Director must co-ordinate and support
implementation**

- (1) The Safety Director must co-ordinate and support the implementation of the Marine Enforcement Policy by—
 - (a) police officers;

S. 280(1)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 107.11).

- (b) transport safety officers;
 - (c) any person employed or engaged by port management bodies, local port managers and waterway managers.
- (2) For the purposes of co-ordinating and supporting the implementation of the Marine Enforcement Policy under subsection (1), the Safety Director must provide training, guidance and support to transport safety officers who monitor compliance with, and enforce, a relevant marine safety law.
- (3) In addition to subsection (2), the Safety Director may co-ordinate and support the implementation of the Marine Enforcement Policy in any other manner the Safety Director determines to be appropriate.

S. 281
(Heading)
amended by
No. 29/2011
s. 3(Sch. 1
item 57.7).

281 Safety Director must consult when developing or reviewing Marine Enforcement Policy

- (1) The Safety Director must develop and review the Marine Enforcement Policy in consultation with—

- (a) police officers;
- (b) transport safety officers;
- (c) port management bodies, local port managers and waterway managers;
- (d) owners and masters of domestic commercial vessels;
- (e) representatives of owners and masters of recreational vessels.

S. 281(1)(d)
amended by
No. 36/2013
s. 71.

- (2) The Safety Director may consult with marine safety regulators in other jurisdictions when developing and reviewing the Marine

Enforcement Policy if the Safety Director considers that it would be useful to do so.

282 Content of Marine Enforcement Policy

- (1) The Marine Enforcement Policy must provide guidance on the exercise of—
 - (a) investigation powers; and
 - (b) enforcement powers.
- (2) The Marine Enforcement Policy may provide guidance on other matters relevant to monitoring compliance with and enforcing relevant marine safety laws.

283 Marine Enforcement Policy to be had regard to

Persons involved in compliance monitoring and enforcement activities under relevant marine safety laws, the **Transport (Compliance and Miscellaneous) Act 1983** or the regulations under that Act must, so far as is reasonably practicable, have regard to the Marine Enforcement Policy when performing duties and exercising functions under those laws, that Act or those regulations.

PART 8.4—OFFENCES BY BODIES CORPORATE

284 Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

285 Liability of officers of bodies corporate

- (1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.
- (2) An offence against subsection (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.
- (3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—
 - (a) what the officer knew about the matter concerned; and

-
- (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
 - (c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
 - (d) any other relevant matter.
- (4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with subsection (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.
- (5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

- 1 **Officer** of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a person who has the capacity to affect significantly the body corporate's financial standing (see section 3).
 - 2 For **volunteer**, see section 3.
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PART 8.5—OFFENCES BY PARTNERSHIPS AND UNINCORPORATED BODIES OR ASSOCIATIONS

286 Liability of officers of partnerships and unincorporated bodies or associations

- (1) Subject to subsection (2), if—
- (a) this Act imposes a duty on a person or provides that a person is guilty of an offence; and
 - (b) the person is a partnership or an unincorporated body or association (including a partnership or an unincorporated body or association representing the Crown)—

the reference to the person is taken to be instead a reference to each officer of the partnership, body or association (as the case may be).

- (2) If an offence against this Act is committed by an officer of a partnership or an unincorporated body or association because of the effect of subsection (1), the officer is only guilty of the offence if the commission of the offence is attributable to the officer failing to take reasonable care.
- (3) The penalty to which an officer of a partnership or an unincorporated body or association is liable for an offence committed by him or her because of the effect of subsection (1) is a fine not exceeding the maximum fine that could be imposed by a court on a natural person found guilty of the same offence committed at the same time (otherwise than because of the effect of subsection (1)).
- (4) In determining whether an officer of a partnership or unincorporated body or association is guilty of an offence, regard must be had to—
- (a) what the officer knew about the matter concerned; and

- (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the partnership, body or association in relation to the matter concerned; and
 - (c) whether the commission of the offence is also attributable to an act or omission of any other person; and
 - (d) any other relevant matter.
- (5) An officer of a partnership or unincorporated body or association who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

- 1 **Officer** of a partnership or unincorporated body or association includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the business of the partnership, body or association and a person who has the capacity to affect significantly the financial standing of the partnership, body or association (see section 3).
 - 2 For **volunteer**, see section 3.
-

PART 8.6—PROCEEDINGS AGAINST THE CROWN

287 Responsible agency for the Crown

- (1) If proceedings are brought against the Crown for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the *responsible agency* in respect of an offence is the agency of the Crown—
 - (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

PART 8.7—REVIEW OF DECISIONS

288 Definitions

(1) In this Part—

eligible person means a person who—

- (a) has applied for a permission; or
- (b) has held, or holds, a permission; or
- (c) has been given a direction by the Safety Director;

reviewable decision means the decision of the Safety Director to—

- (a) not grant or issue a permission;
 - (b) suspend, cancel or revoke a permission;
 - (c) impose or vary a condition of a permission;
 - (d) issue a written direction.
- (2) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Act.

Note

Under section 4 of the **Victorian Civil and Administrative Tribunal Act 1998**, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

289 Internal review

- (1) An eligible person in relation to a reviewable decision, may apply to the Safety Director for review of the decision within—
- (a) 28 days after the day on which the decision first came to the eligible person's notice; or

-
- (b) such longer period as the Safety Director allows.
- (2) The application must be in the form approved (in writing) by the Safety Director.
- (3) If an application is made to the Safety Director in accordance with this section, the Safety Director must make a decision—
- (a) to affirm or vary the reviewable decision; or
 - (b) to set aside the reviewable decision and substitute another decision that the Safety Director considers appropriate.
- (4) The Safety Director must give a written notice to the applicant setting out—
- (a) the decision of the Safety Director under subsection (3) and the reasons for the decision; and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—
- and must do so within 28 days after the application is made.
- (5) If the Safety Director has not notified an applicant of a decision in accordance with subsection (4), the Safety Director is taken to have made a decision to affirm the reviewable decision.
- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Safety Director, on his or her own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.

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- (7) The Safety Director must make a decision on an application for a stay within 24 hours after the making of the application.
 - (8) If the Safety Director has not made a decision in accordance with subsection (7), the Safety Director is taken to have made a decision to grant a stay.
 - (9) The Safety Director may attach any conditions to a stay of the operation of a reviewable decision that he or she considers appropriate.

290 Review by VCAT

- (1) A person may apply to VCAT for review of—
 - (a) a reviewable decision; or
 - (b) a decision made, or taken to have been made, by the Safety Director under section 289 in respect of a reviewable decision—

if the person is an eligible person in relation to the reviewable decision.
 - (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the person is notified of the decision; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 8.8—COURT PROCESSES

291 Jurisdiction

For the purpose of giving jurisdiction under this Act, an offence must be treated as having been committed, and a cause of complaint as having arisen, either in the place where it was committed or arose or in any place where the alleged offender or person claimed against, is.

292 Power to prosecute

S. 292(1)
amended by
No. 66/2012
s. 27(1).

- (1) Proceedings for any offence against marine and port legislation may be brought by—

S. 292(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.13).

- (a) any police officer; or
- (b) any person who is authorised by the Safety Director in writing to do so generally or in any particular case; or
- (c) any person or body authorised in writing to do so either generally or in any particular case by a public authority or other person prescribed for the purposes of this subsection, if the offence occurs on land, waters or premises which are vested in, or under the control of, that public authority or person prescribed.

S. 292(2)
amended by
No. 37/2014
s. 10(Sch.
item 107.13).

- (2) If proceedings are brought by a police officer, or by a person authorised by the Safety Director, or by a person or body authorised by a public authority, the proceedings may be conducted before the court by—

- (a) any other police officer; or
 - (b) any other person authorised by the Safety Director; or
 - (c) any other person or body authorised by the public authority.
- (3) In this section, *marine and port legislation* means—
- (a) this Act or the regulations;
 - (b) the **Marine (Drug, Alcohol and Pollution Control) Act 1988** or regulations made under that Act;
 - (c) the **Port Management Act 1995** or regulations made under that Act.

S. 292(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 107.13).

S. 292(3)
inserted by
No. 66/2012
s. 27(2).

293 Evidence of speed

If in any criminal proceedings the speed at which a vessel travelled on any occasion is relevant, evidence of the speed of the vessel as indicated or determined on that occasion by a prescribed measuring device when tested, sealed and used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the vessel on that occasion.

294 General evidentiary provisions

- (1) A certificate in the prescribed form purporting to be issued by the Safety Director certifying as to any matter that appears in or can be calculated from the records kept by the Safety Director or a delegate of the Safety Director is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

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- (2) Without limiting any provision of the **Evidence (Miscellaneous Provisions) Act 1958** or the **Evidence Act 2008**, a certificate or document that purports to be issued under any Act of the Commonwealth, or of a State or Territory of the Commonwealth, and that purports to relate in any way to—
- (a) the registration or non-registration of a vessel; or
 - (b) the person who is the owner of a vessel or in whose name a vessel is registered; or
 - (c) the qualifications of people crewing a vessel; or
 - (d) any other matter relating to the use of vessels—

is, for the purposes of this Act, admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (3) A certificate in the prescribed form purporting to be issued by the Safety Director certifying that on a particular date a vessel was registered in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the registered person.
- (4) In any proceedings for a contravention of section 37, proof that a vessel was operated on State waters without having affixed to it any identification number or identifying mark, and any appropriate registration label, required by or under this Act is, in the absence of evidence to the contrary, proof that the vessel was operated in contravention of that section.

- (5) A certificate in the prescribed form to the effect that a prescribed speed measuring device has been tested or sealed in the prescribed manner, signed or purporting to be signed by a person authorised to do so by the regulations is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof that the device has been so tested or sealed.

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S. 295
repealed by
No. 36/2013
s. 72.

296 Act presumed to apply to vessels

If in any proceedings under this Act the application of this Act to a vessel is in question, this Act must, in the absence of evidence to the contrary, be taken to apply to the vessel.

297 Seizure and sale of vessel and equipment

A court which orders the payment of any amount recoverable summarily under this Act may, if the amount is not paid at the time and in the manner specified in the order and if the person ordered to pay is the owner of a vessel, order that the amount outstanding be levied by distress and sale of the vessel and equipment.

298 Summary jurisdiction in indictable offences

The provisions of Part 3.1 of Chapter 3 of the **Criminal Procedure Act 2009** enabling the hearing of charges for certain indictable offences in a summary way has effect with respect to indictable offences under this Act subject to the following provisions—

- (a) any consent required by those provisions to be given by the person charged may, in the absence of that person, be given on that person's behalf by the owner, charterer,

manager or operator or the agent of the vessel in respect of which the offence is alleged to have occurred;

- (b) if the person charged is for the time being out of the jurisdiction, service of any documents relating to the offence is sufficiently served on that person by being served on the agent (if any) of the owner, charterer, manager or operator of the vessel in respect of which the offence is alleged to have occurred.

PART 8.9—MISCELLANEOUS MATTERS

299 Effect of compliance with regulations or approved codes of practice

If—

- (a) the regulations or an approved code of practice make provision for or with respect to a duty or obligation imposed by Chapter 2 or the regulations; and
- (b) a person complies with the regulations or the approved code of practice to the extent that it makes that provision—

the person is, for the purposes of that Chapter and the regulations, taken to have complied with that Chapter or the regulations in relation to that duty or obligation.

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S. 300
repealed by
No. 36/2013
s. 73.

301 Forgery etc. of documents and identification marks

(1) A person must not—

- (a) forge; or
- (b) fraudulently alter or use; or
- (c) fraudulently lend or allow to be used by another person—

any notice, certificate, licence or other document, or any identification number or identifying mark, that is authorised, issued or required by or under this Act.

Penalty: 60 penalty units.

- (2) A person must not, otherwise than in accordance with this Act, make, use, knowingly have custody or possession of, sell or alter any paper or other material purporting to be a notice, certificate, licence or other document, or any identification number or identifying mark, that is authorised, issued or required by or under this Act.

Penalty: 60 penalty units.

302 Offence to interfere etc. with navigation aid

- (1) A person must not, without lawful authority, wilfully or negligently interfere or tamper with, or obstruct the use or operation of, a navigation aid.

Penalty: 1200 penalty units.

- (2) An offence against subsection (1) is an indictable offence.

303 Offence to obstruct authorised person

- (1) In this section—

authorised person means the Safety Director, a person appointed, employed or engaged by the Safety Director (other than a transport safety officer) or an officer of a port management body, a local port manager or a waterway manager.

- (2) A person must not—

- (a) obstruct, hinder, impede or oppose an authorised person who is performing a duty or function, or exercising a power, under this Act or the regulations, or induce or attempt to induce any other person to do so; or
- (b) prevent or attempt to prevent any other person from assisting an authorised person.

Penalty: 60 penalty units.

304 Offence to offer or accept bribes

(1) In this section—

bribe means anything that provides, or that would provide, a benefit or advantage, whether pecuniary or non-pecuniary to a relevant person;

relevant person means a person who is employed or engaged to provide services for the Safety Director, a port management body, a local port manager or a waterway manager.

(2) A person must not, directly or indirectly, give or offer to give, cause to be given or attempt to give any bribe to a relevant person for the purpose of influencing the relevant person to perform or exercise his or her duties in a manner that he or she would not usually perform his or her duties.

Penalty: 1200 penalty units.

(3) A relevant person must not accept a bribe to perform his or her duties in a manner that he or she would not usually perform his or her duties.

Penalty: 1200 penalty units.

(4) An offence against subsection (2) or (3) is an indictable offence.

305 Obtaining licence etc. by false statements

(1) A person must not—

(a) by any false statement or any misrepresentation or other dishonest means obtain or attempt to obtain any notice, certificate, licence, registration or other document, or any identifying number or general identification mark that is authorised, issued or required by or under this Act; or

- (b) without lawful authority or excuse possess any notice, certificate, licence, registration or other document so obtained.

Penalty: 60 penalty units.

- (2) Any notice, certificate, licence, registration or other document or identifying mark obtained as specified in subsection (1)(a) is of no effect.

306 Disclosure of information

- (1) Subject to this section, the Safety Director or a relevant person must not—
 - (a) disclose information gained by the Safety Director or in the course of the delegation, employment or engagement of the relevant person that is information of a personal nature or that has commercial sensitivity for the person about whom it is kept; or
 - (b) use the person's knowledge of any such information.

Penalty: 120 penalty units.

- (2) Despite subsection (1), the Safety Director or a relevant person may disclose or use information referred to in subsection (1)(a)—
 - (a) in connection with the administration of this Act or the regulations; or
 - (b) for the purposes of monitoring compliance with a relevant marine safety law or enforcing the requirements of this Act or the regulations; or
 - (c) if the disclosure or use is to the National Regulator within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law or any delegate of the National Regulator, for a purpose relating to the

S. 306(2)
amended by
Nos 78/2011
s. 29,
36/2013 s. 74,
substituted by
No. 55/2013
s. 10.

- administration or enforcement of that law or marine safety; or
- (d) for the purposes of any legal proceedings arising out of this Act or the regulations or for the purposes of any report of such proceedings; or
 - (e) at the direction of the Minister; or
 - (f) in circumstances in which the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious or imminent threat to the life or health of one or more persons; or
 - (g) if the disclosure or use is required or authorised by law.
- (2A) Despite subsection (1), the Roads Corporation may use or disclose information referred to in subsection (1)(a) in the course of using or disclosing relevant information, within the meaning of section 90I of the **Road Safety Act 1986**, in accordance with Part 7B of that Act.
- (3) In this section, *relevant person* means a person who is or has been a delegate of or employed by or engaged to provide services for—
- (a) the Safety Director; or
 - (b) any other person or body engaged to provide services for the Safety Director.

S. 306(2A)
inserted by
No. 55/2013
s. 10.

307 Safety Director may vary or cancel permission record to correct error or omission

- (1) The Safety Director may vary a permission record to correct any error or omission in it and issue a replacement permission record.
- (2) The Safety Director may cancel a permission record if the permission record was issued or renewed in error.

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- (3) In this section, *permission record* has the same meaning as it has in section 163.

308 Service

- (1) If under this Act, the regulations, or regulations made under the **Port Management Act 1995**, a notice, summons or other document is required or permitted to be served on a person, it may be served, in or out of the State—
- (a) by leaving it on board a vessel in a secure manner, having regard to the circumstances, in a conspicuous position near the controls of the vessel; or
 - (b) by leaving it with a member of the crew of the vessel.
- (2) If under this Act, the regulations, or regulations made under the **Port Management Act 1995**, a notice, summons or other document is required to be served on a person in respect of a recreational vessel, it may be served by posting it, addressed to the person, to the registered address, or the residential address of the owner of the vessel.
- (3) If under this Act, the regulations, or regulations made under the **Port Management Act 1995**, a notice, summons or other document is required or permitted to be served on the owner or master of a vessel, it may be served by serving it on the agent for the vessel or on the agent for the owner or operator of the vessel.
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PART 8.10—REGULATIONS

Division 1—General regulation-making powers

309 General regulation-making powers

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the matters and things specified in Schedule 2;
 - (b) prescribing the application and renewal process for granting, issuing or transferring a permission;
 - (c) prescribing the requirements to be complied with for the purposes of granting, issuing or transferring a permission;
 - (d) prescribing conditions, including the process for varying conditions, of a permission;
 - (e) prescribing information to be provided as part of the process for applying or renewing a permission;
 - (f) prescribing examination requirements (including for the purposes of determining the medical fitness of a person or the person's competency) that must be undertaken for the purposes of a permission;
 - (g) prescribing grounds for suspension or cancellation of a permission;
 - (h) prescribing the information to be included in a permission that is granted or issued;
 - (i) providing for the issue of duplicate or replacement copies of a record of a permission;

S. 309(1)
amended by
No. 29/2011
s. 3(Sch. 1
item 57.8).

S. 309(1)(b)
amended by
No. 78/2011
s. 30(1).

S. 309(1)(c)
amended by
No. 78/2011
s. 30(2).

s. 309

S. 309(1)(j)
amended by
No. 78/2011
s. 30(3).

- (j) providing for the prohibition or regulation of recreational vessels, government vessels and hire and drive vessels in State waters based on the subject matter of the Prevention of Collisions Convention within the meaning of Division 5 of Part 3.5;
- (k) any waters in respect of which a person has been engaged as a harbour master, including regulations as to the entry, departure or movement of any vessels in such waters or any of the following matters—
 - (i) the entering or leaving of those waters by any vessels;
 - (ii) the movement and navigation of any vessels in those waters;
 - (iii) the securing and anchorage of any vessels in those waters;
 - (iv) the taking into any vessel or discharging from any vessel of cargo, stores, fuel, fresh water or water ballast in those waters;
 - (v) the removing of any vessels in those waters;
 - (vi) any other thing for or with respect to the management of the operation of any vessels in those waters;
- (l) prescribing the application and renewal process for an accreditation to provide a prescribed kind of service and any conditions of that accreditation;
- (la) services that may be prescribed for the purposes of Division 3 of Part 8.1;

S. 309(1)(la)
inserted by
No. 78/2011
s. 30(4).

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- (m) requiring notice of, reports and information about, prescribed activities, matters or things to be given to the Safety Director or a transport safety officer;
 - (n) the content, manner and form of a notice, reports and information referred to in paragraph (m) to be given to the Safety Director or a transport safety officer;
 - (o) prescribing forms;
 - (p) fees for the purposes of this Act and the refund and waiver of such fees;
 - (q) prescribing offences to be owner onus offences for the purposes of Part 4.7;
 - (r) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
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- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstances; and
 - (c) require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (d) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (e) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
 - (f) provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions

- and either wholly or to such an extent as is specified; and
- (g) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) If under subsection (3)(d)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Safety Director causes notice to be published in the Government Gazette of that amendment the document, code, standard, rule, specification or method is to be taken to have not been so amended.

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S. 309(5)
repealed by
No. 36/2013
s. 75.

Division 2—Fees, rates and charges

310 Fees, rates and charges

- (1) The Governor in Council may make regulations for or with respect to fees, rates or charges to be imposed—
- (a) by the Safety Director for the grant or issue of a permission or the supply of equipment, goods or materials; and
- (b) by the Safety Director for the provision of services or the control of navigation or management of vessel movement in State waters outside ports; and
- (c) by any other person or body that is empowered under this Act to charge fees, rates or charges.

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- (2) The owner, agent, charterer and person in charge of a vessel at the time any fees, rates or charges are imposed under this Act on or in respect of the vessel are jointly and severally liable for those fees, rates or charges.
- (3) Regulations made under subsection (1), may provide for all or any of the following matters—
- (a) specific fees, rates and charges;
 - (b) maximum or minimum fees, rates and charges;
 - (c) maximum and minimum fees, rates and charges;
 - (d) ad valorem fees, rates and charges;
 - (e) the payment of fees, rates and charges either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees, rates and charges.
- (4) If under subsection (3)(f) the Governor in Council provides for a reduction, waiver or refund, in whole or in part, of a fee, rate or charge, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions;
 - (b) in respect of certain documents or classes of documents;
 - (c) when an event happens;
 - (d) in respect of certain persons or classes of persons;

- (e) in respect of any combination of such matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

311 Fees for waterway managers

- (1) The Governor in Council may make regulations for or with respect to the fees that may be charged by waterway managers for services provided by waterway managers.
- (2) Regulations made under subsection (1) may provide for all or any of the following matters—
- (a) amounts of fees;
 - (b) fixing fees by reference to a maximum or minimum fee or both;
 - (c) the persons who are liable to pay the fees;
 - (d) the exemptions from the requirement to pay fees;
 - (e) requirements as to notices to be given by waterway managers as to the fees.
- (3) Section 310 does not apply to regulations made under this section.

312 Fee for boating facilities and safety education

- (1) The Governor in Council may make regulations for or with respect to a fee or other amount to be imposed on licence holders, applicants for licences, persons in whose names vessels are registered or any other class of persons—
- (a) for the provision and maintenance of boating facilities and services for the public; and

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- (b) for the conduct of boating safety, boating education and boating promotion programs from the public.
- (2) The person in whose name a vessel is registered must pay in accordance with the regulations any fee imposed by the Governor in Council under this section, unless—
- (a) the person or vessel is exempted under section 260; or
 - (b) the vessel is a vessel referred to in section 39(3).
- (3) Any money available for the purposes of this section must be used for the purposes specified in subsection (1) and may, for those purposes, be paid to any person, authority or organisation approved by the Minister.
- (4) Section 310(3) and (4) apply to and in relation to a fee imposed under this section.
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CHAPTER 9—SAVINGS AND TRANSITIONAL PROVISIONS

PART 9.1—DEFINITIONS

313 Definitions

In this Chapter—

commencement day means the day on which section 3 comes into operation;

Director has the same meaning as in the Marine Act;

general operator licence has the same meaning as in the Marine Act;

Marine Act means the **Marine Act 1988**, as in force immediately before the commencement day;

Marine Act vessel means a vessel within the meaning of the Marine Act;

Marine Regulations means the Marine Regulations 2009, as in force immediately before the commencement day;

personal watercraft endorsement has the same meaning as in the Marine Act;

restricted operator licence has the same meaning as in the Marine Act.

PART 9.2—OPERATIVE PROVISIONS

314 General transitional provision

- (1) This Chapter does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) This Chapter applies despite anything to the contrary in any other provision in this Act.

315 Savings and transitional regulations

- (1) The Governor in Council may make regulations in relation to matters of a savings or transitional nature consequent on the enactment of this Act and the amendment of the Marine Act and the **Transport (Compliance and Miscellaneous) Act 1983** by this Act.
- (2) A provision of regulations under this section may be retrospective in operation to the commencement day or a day after the commencement day.
- (3) Regulations under this section have effect despite anything to the contrary in any Act other than this Act or in any subordinate instrument.
- (4) This section is **repealed** on 1 July 2017.

316 Hoon boating provisions re-enacted

- (1) Parts 4.2 and 4.3 re-enact Part 10AA of the Marine Act with certain modifications.
- (2) Without limiting section 314(1), in declaring that Parts 4.2 and 4.3 re-enact with certain modifications Part 10AA of the Marine Act, this Chapter must not be taken to—
 - (a) limit the operation of any provision of the **Interpretation of Legislation Act 1984** relating to the re-enactment; or

- (b) be an exhaustive list of the provisions of Part 10AA of the Marine Act re-enacted by Parts 4.2 and 4.3.

317 Declaration of waterway managers

- (1) An Order made under section 3(3)(b) of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be—
- (a) if the Order declares the Director to be a waterway manager, an Order under section 6(1)(a);
 - (b) if the Order declares another person or a body to be a waterway manager, an Order under section 6(1)(b).
- (2) For the purposes of subsection (1)(a), every reference in an Order referred to in that subsection to the Director is to be read as a reference to the Safety Director.

318 Declaration of vessels

An Order made under section 3(3)(c) of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a declaration under section 7.

319 Determinations in relation to requirements to use a pilot taken to be declaration of pilot required waters

A determination made under section 65(jc) of the Marine Act that is in force immediately before the commencement day is, on that day, taken to be a declaration under section 250.

S. 320
amended by
No. 78/2011
s. 31.

320 Registered vessels

A registration of a Marine Act vessel granted under Part 2 of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a registration of a vessel granted under Part 3.1 until registration of that vessel is transferred to another person.

321 Applications for registration of vessels

An application for the registration of a Marine Act vessel under Part 2 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for registration of a vessel under Part 3.1.

322 Applications for the renewal or transfer of the registration of a vessel

- (1) An application for the renewal of the registration of a Marine Act vessel under Part 2 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for the renewal of the registration of a vessel under Part 3.1.
- (2) An application for the transfer of the registration of a Marine Act vessel under Part 2 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for the transfer of the registration of a vessel under Part 3.1.

323 Suspensions of registration of vessels

- (1) A suspension of the registration of a Marine Act vessel under section 11 of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a suspension under Part 4.6.

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- (2) On the day after the day that suspension ends, the registration of a Marine Act vessel to which it relates is taken to be a registration of a vessel granted under Part 3.1.

324 Processes for suspensions of registrations of vessels

- (1) This section applies if—
- (a) the Director has, before the commencement day, commenced a process to suspend the registration of a Marine Act vessel under section 11 of the Marine Act and the Marine Regulations; and
 - (b) the registration has not been suspended in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the suspension of the registration in accordance with that Act and those regulations as if they were in force.
- (3) A suspension of a registration of a vessel to which this section applies is, on that suspension taking effect, taken to be a suspension under Part 4.6.
- (4) To avoid doubt, section 320 applies to a registration of a vessel to which this section applies.

325 Processes for cancellations of registrations of vessels

- (1) This section applies if—
- (a) the Director has, before the commencement day, commenced a process to cancel the registration of a Marine Act vessel under section 11 of the Marine Act and the Marine Regulations; and
 - (b) the registration has not been cancelled in accordance with that process before that day.

- (2) On and after the commencement day, the Safety Director must complete the process for the cancellation of the registration in accordance with that Act and those regulations as if they were in force.
- (3) If the Safety Director decides to cancel the registration of the vessel, the registration of the vessel to which this section relates, is taken to be cancelled on the day the decision takes effect.
- (4) To avoid doubt, section 320 applies to a registration of a vessel to which this section applies.

326 Prohibitions in relation to operation of particular vessels

- (1) A direction under section 14(1) of the Marine Act that is in effect immediately before the commencement day, is on that day, taken to be a direction made under section 269(1).
- (2) A direction under section 14(2) of the Marine Act that is in effect immediately before the commencement day, is on that day, taken to be a direction made under section 269(3).

327 Operator licences

- (1) A general operator licence (within the meaning of the Marine Act) that is in effect immediately before the commencement day is, on that day, taken to be a general marine licence.
- (2) A restricted operator licence (within the meaning of the Marine Act) that is in effect immediately before the commencement day is, on that day, taken to be a restricted marine licence.

328 Personal watercraft endorsements

An endorsement on a general operator licence (within the meaning of the Marine Act) made under section 118 of that Act that is in effect immediately before the commencement day—

- (a) is on that day, taken to be an endorsement under section 55 on the marine licence to which it relates; and
- (b) to avoid doubt, expires on the same day as that marine licence expires.

Note

In relation to general operator licences, see section 327(1).

329 Applications for operator licences

- (1) An application for the granting of a general operator licence made under section 116 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for a general marine licence under section 53.
- (2) An application for the granting of a restricted operator licence made under section 117 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for a restricted marine licence under section 54.

330 Applications for personal watercraft endorsements

An application for the making of a personal watercraft endorsement under section 118 of the Marine Act in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for an endorsement under section 55.

331 Renewals of operator licences

- (1) An application for the renewal of a general operator licence made under regulation 708 of the Marine Regulations in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for the renewal of a general marine licence to which section 53(4) applies.
- (2) An application for the renewal of a restricted operator licence made under regulation 708 of the Marine Regulations in respect of which the Director has not made a decision before the commencement day is, on and after that day, taken to be an application for the renewal of a restricted marine licence to which section 54(4) applies.

332 Variations to operator licences on initiative of Director

- (1) This section applies if—
 - (a) the Director has before the commencement day, commenced a process to vary—
 - (i) a general operator licence or a condition on a general operator licence under section 116(5) or 119 of the Marine Act and the Marine Regulations; or
 - (ii) a restricted operator licence (within the meaning of the Marine Act) or a condition on a restricted operator licence under section 117(5) or 119 of that Act and the Marine Regulations; and

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- (b) the licence or condition has not been varied in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the variation of the general operator licence or restricted operator licence or condition on the general operator licence or restricted operator licence, as the case requires, in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *complete the process* includes any internal review under regulation 738 of the Marine Regulations if applied for.
- (4) A variation that is made as provided under this section is, on the day that variation takes effect, taken to be a variation of the general marine licence to which the variation relates.

Note

See also section 327.

- (5) A variation that is made as provided under this section is, on the day that variation takes effect, taken to be a variation of the restricted marine licence to which the variation relates.

Note

See also section 327.

- (6) A condition on a general operator licence varied as provided under this section is, on that variation taking effect, taken to be a condition on a general marine licence to which the variation relates.

Note

See also section 327.

- (7) A condition on a restricted operator licence varied as provided under this section is, on that variation taking effect, taken to be a condition on a

restricted marine licence to which the variation relates.

Note

See also section 327.

333 Variations to personal watercraft endorsements on application by holder of a personal watercraft endorsement

- (1) This section applies if—
 - (a) the holder of an operator licence has, before the commencement day, applied to the Director for a variation to a personal watercraft endorsement or a condition on a personal watercraft endorsement under section 118(5) or 119 of the Marine Act and the Marine Regulations; and
 - (b) the Director has not made a decision in respect of the application before that day.
- (2) On and after the commencement day, the Safety Director must make a decision in respect of the application in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *make a decision* includes make a decision on an internal review under regulation 738 of the Marine Regulations if applied for.
- (4) A variation of a personal watercraft endorsement or to a condition of a personal watercraft endorsement that is made as provided under this section is, on the day that variation takes effect, taken to be a variation of the licence endorsement on the marine licence to which the endorsement relates.

Note

See also sections 327 and 328.

334 Variations to personal watercraft endorsements on initiative of Director

- (1) This section applies if—
- (a) the Director has commenced a process to vary a personal watercraft endorsement or a condition on a personal watercraft endorsement under section 118(5) or 119 of the Marine Act and the Marine Regulations; and
 - (b) the endorsement or condition has not been varied in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the variation of the personal watercraft endorsement or condition of a personal watercraft endorsement in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *complete the process* includes any internal review under regulation 738 of the Marine Regulations if applied for.
- (4) A variation of a personal watercraft endorsement or to a condition of a personal watercraft endorsement that is made as provided under this section is, on the day that variation takes effect, taken to be a variation of the licence endorsement on the marine licence to which the endorsement relates.

Note

See also sections 327 and 328.

335 Requests for cancellation of personal watercraft endorsements

S. 335(1)(a)
amended by
No. 78/2011
s. 32.

- (1) This section applies if—
 - (a) the holder of an operator licence has, before the commencement day, applied to the Director for the cancellation of a personal watercraft endorsement under regulation 732 of the Marine Regulations; and
 - (b) the Director has not made a decision in respect of the application before that day.
- (2) On and after the commencement day, the Safety Director must make a decision in respect of the application in accordance with those regulations as if they were in force.
- (3) In subsection (2), *make a decision* includes make a decision on an internal review under regulation 738 of the Marine Regulations if applied for.
- (4) If the Safety Director decides to cancel the personal watercraft endorsement—
 - (a) the decision is taken to be a decision to cancel the licence endorsement on the marine licence to which section 328 applies; and
 - (b) the licence endorsement is, on the day that decision takes effect, cancelled; and
 - (c) that cancellation is taken to be a cancellation under Part 4.6.

Note

See also section 327.

336 Suspension of operator licences

- (1) A suspension of an operator licence under section 119 of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a suspension under Part 4.6.
- (2) On the day after the day that suspension ends, the operator licence to which the suspension relates is taken to be a marine licence.

337 Processes for suspensions of operator licences

- (1) This section applies if—
 - (a) the Director has, before the commencement day, commenced a process to suspend an operator licence under section 119 of the Marine Act and the Marine Regulations; and
 - (b) that licence has not been suspended in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the suspension of that licence in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *complete the process* includes any internal review under regulation 738 of the Marine Regulations if applied for.
- (4) If the Safety Director decides, or confirms his or her decision following internal review, to suspend the operator licence—
 - (a) the decision is taken to be a decision to suspend the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that decision takes effect, suspended; and
 - (c) that suspension is taken to be a suspension under Part 4.6.

338 Processes for cancellations of operator licences

- (1) This section applies if—
 - (a) the Director has, before the commencement day, commenced a process to cancel an operator licence under section 119 of the Marine Act and the Marine Regulations; and
 - (b) that licence has not been cancelled in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the cancellation of that licence in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *complete the process* includes any internal review under regulation 738 of the Marine Regulations if applied for.
- (4) If the Safety Director decides, or confirms his or her decision following internal review, to cancel the operator licence—
 - (a) the decision is taken to be a decision to cancel the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that decision takes effect, cancelled; and
 - (c) that cancellation is taken to be a cancellation under Part 4.6.

339 Processes for revocation of personal watercraft endorsements

- (1) This section applies if—
 - (a) the Director has, before the commencement day, commenced a process to revoke a personal watercraft endorsement under section 119 of the Marine Act and the Marine Regulations; and

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- (b) that endorsement has not been revoked in accordance with that process before that day.
- (2) On and after the commencement day, the Safety Director must complete the process for the revocation of that endorsement in accordance with that Act and those regulations as if they were in force.
- (3) In subsection (2), *complete the process* includes any internal review under regulation 738 of the Marine Regulations if applied for.
- (4) If the Safety Director decides, or confirms his or her decision following internal review, to revoke the personal watercraft endorsement—
- (a) the decision is taken to be a decision to cancel the licence endorsement on the marine licence to which section 328 applies; and
 - (b) the licence endorsement is, on the day that decision takes effect, cancelled; and
 - (c) that cancellation is taken to be a cancellation under Part 4.6.

Note

See also section 327.

340 Court suspensions of operator licences

The suspension of an operator licence (within the meaning of the Marine Act) under section 121 of that Act by a court that is in effect immediately before the commencement day is, on that day, taken to be a suspension under section 171.

341 Disqualifications from obtaining operator licences

- (1) This section applies if—
- (a) before the commencement day—
 - (i) a person's operator licence (within the meaning of the Marine Act) has been suspended under that Act or cancelled under section 121 of that Act; and
 - (ii) the person is disqualified from obtaining a further licence by operation of section 122 of that Act or by a court under section 121(1) of that Act; and
 - (b) the period of disqualification ends after the commencement day.
- (2) The person is disqualified from obtaining a marine licence for the period commencing on the commencement day and ending on the day the period of disqualification ends.

S. 342
amended by
No. 78/2011
s. 33.

342 Waterway rules

A notice made under section 15(1) or (2) of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be waterway rules.

343 Boating activities

A notice made under section 16 of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a declaration under section 203.

344 Harbour master identity cards

An identity card issued to a harbour master under section 26HC of the Marine Act before the commencement day is on that day taken to be an identity card issued under section 221.

345 Harbour master licences

- (1) A harbour master licence (within the meaning of the Marine Act) that is in effect immediately before the commencement day is, on that day, taken to be a harbour master licence under this Act.
- (2) To avoid doubt, a harbour master licence to which subsection (1) applies remains in effect unless suspended or cancelled under this Act.

346 Applications for harbour master licences

An application for a harbour master licence under the Marine Regulations that is not determined by the Director before the commencement day is, on and after that day, taken to be an application under Part 6.2.

347 Authorisation of assistant harbour masters

An authorisation under section 26B(1), (2), (3) or (4) of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be an authorisation under section 229(1), (2), (3) or (4), as the case requires.

348 Written directions of harbour masters

A written direction given under section 26E of the Marine Act that is in effect immediately before the commencement day is, on that day, taken to be a written direction under section 232.

349 Pilotage services provider registration

- (1) A pilotage services provider who was registered under section 26K of the Marine Act and whose registration is in effect immediately before the commencement day is, on that day, taken to be registered under section 241.

- (2) In addition, a certificate of registration issued to a person referred to in subsection (1) under section 26N of the Marine Act is, on the commencement day, taken to be a certificate of registration issued under section 243.

350 Register of pilotage services providers

The register kept under section 26O of the Marine Act is, on and after the commencement day, taken to be the register under section 244.

351 Pilot licences

- (1) A pilot licence (within the meaning of the Marine Regulations) that is in effect immediately before the commencement day is, on that day, taken to be a pilot licence under this Act.
- (2) To avoid doubt, a pilot licence to which subsection (1) applies remains in effect unless sooner suspended or cancelled under this Act.

352 Applications for pilot licences

An application for a pilot licence under the Marine Regulations that is not determined by the Director before the commencement day is, on and after that day, taken to be an application under Division 3 of Part 7.2.

353 Pilot exemptions

A pilot exemption (within the meaning of the Marine Regulations) that is in effect immediately before the commencement day is, on that day, taken to be a pilot exemption under this Act.

354 Applications for pilot exemptions

An application for a pilot exemption under the Marine Regulations that is not determined by the Director before the commencement day is, on and after that day, taken to be an application under Division 4 of Part 7.2.

355 Local knowledge certificates

A local knowledge certificate (within the meaning of the Marine Regulations) that is in effect immediately before the commencement day is, on that day, taken to be a local knowledge certificate under this Act.

356 Applications for local knowledge certificates

An application for a local knowledge certificate under the Marine Regulations that is not determined by the Director before the commencement day is, on and after that day, taken to be an application under Division 2 of Part 3.4.

357 Specified standards of the Director

- (1) In this section a *specified standard* means—
- (a) a standard, that is in force immediately before the commencement day, made under sections 26S(2) and 65(gb) of the Marine Act;
 - (b) a standard, that is in force immediately before the commencement day, made under section 65(a) of the Marine Act;
 - (c) a standard, that is in force immediately before the commencement day, made under section 65(b) of the Marine Act;
 - (d) a standard, that is in force immediately before the commencement day, made under section 65(g) of the Marine Act;
 - (e) a standard, that is in force immediately before the commencement day, made under section 65(i) of and item 18B of Schedule 4 to the Marine Act;

- (f) a standard, that is in force immediately before the commencement day, made under section 65(j) of and item 18G of Schedule 4 to the Marine Act;
 - (g) a standard, that is in force immediately before the commencement day, made under section 65(je) of the Marine Act.
- (2) On the commencement day, a specified standard is taken to be a standard made by the Safety Director under section 258 and Schedule 1.

358 Specified approvals and determinations of the Director

- (1) In this section a *specified approval or determination* means—
- (a) an approval, that is in force immediately before the commencement day, made under section 65(jf) of the Marine Act;
 - (b) a determination, that is in force immediately before the commencement day, made under section 65(jd) of the Marine Act;
 - (c) a determination, that is in force immediately before the commencement day, made under item 9 of Schedule 4 to the Marine Act;
 - (d) a determination, that is in force immediately before the commencement day, made under item 15 of Schedule 4 to the Marine Act;
 - (e) a determination, that is in force immediately before the commencement day, made under item 15A of Schedule 4 to the Marine Act;
 - (f) a determination, that is in force immediately before the commencement day, made under item 16 of Schedule 4 to the Marine Act;

- (g) a determination, that is in force immediately before the commencement day, made under item 18 of Schedule 4 to the Marine Act.
- (2) On the commencement day, a specified approval or determination is taken to be, as the case requires, an approval or determination made by the Safety Director under section 258 and Schedule 1.

359 Exemptions of Director

An exemption under section 67 of the Marine Act that is in effect immediately before the commencement day, is on that day, taken to be an exemption under section 260.

360 Certificates of competency

A certificate of competency issued under section 99C of the Marine Act that is in force immediately before the commencement day is, on that day, taken to be a certificate of competency under section 78.

S. 360
amended by
No. 78/2011
s. 34.

361 Applications for certificates of competency

An application for a certificate of competency under the Marine Regulations that is not determined by the Director before the commencement day is, on and after that day, taken to be an application under Division 1 of Part 3.4.

362 Certificates of survey

A certificate of survey issued under section 99E of the Marine Act that is in force immediately before the commencement day is, on that day, taken to be—

- (a) a safe construction certificate in respect of that part of the certificate of survey that deals with the matters a safe construction certificate would deal with;

- (b) a safe operation certificate in respect of that part of the certificate of survey that deals with the matters a safe operation certificate would deal with.

363 Investigations by Director

- (1) This section applies if the Director has commenced an investigation under section 84 of the Marine Act before the commencement day that has not been completed before the commencement day.
- (2) Despite the repeal of section 84 of the Marine Act, the Director may complete that investigation as if that section 84 were in force.
- (3) In addition, sections 84A to 85 of the Marine Act apply to the investigation as if they were in force.

364 Investigations by inspectors

- (1) This section applies if an inspector (within the meaning of the Marine Act) has commenced an investigation under section 82D of the Marine Act before the commencement day and in respect of which the inspector has not reported to the Director in accordance with that section before the commencement day.
- (2) Despite the repeal of section 82D of the Marine Act, the inspector may complete that investigation as if section 82D were in force, and report to the Safety Director on that investigation.
- (3) In addition, sections 83 to 83D of the Marine Act apply to the investigation as if they were in force.
- (4) For the purposes of this section, the inspector remains an inspector until he or she reports to the Safety Director on that investigation.

365 Improvement notices

An improvement notice served under section 85AA of the Marine Act before the commencement day that is in effect immediately before that day is, on that day, taken to be an improvement notice served under section 228ZZC of the **Transport (Compliance and Miscellaneous) Act 1983**.

366 Prohibition notices

A prohibition notice served under section 85AH of the Marine Act before the commencement day that is in effect immediately before that day is, on that day, taken to be a prohibition notice served under section 228ZZJ of the **Transport (Compliance and Miscellaneous) Act 1983**.

367 Internal reviews in relation to applications

- (1) This section applies if—
 - (a) an application for internal review of a decision of the Director has been made under regulation 738 of the Marine Regulations before the commencement day in relation to a refusal of an application—
 - (i) for an operator licence; or
 - (ii) for a personal watercraft endorsement on an operator licence; or
 - (iii) to vary or renew an operator licence or a personal watercraft endorsement on an operator licence; and
 - (b) the internal review as provided under that regulation has not been completed before the commencement day.

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- (2) On and after the commencement day, the internal review must be completed in accordance with the Marine Act and Marine Regulations as if they were in force and for that purpose—
- (a) a reference in regulation 738 of the Marine Regulations to the Director is to be read as a reference to the Safety Director; and
 - (b) section 329, 330, 331, 332 or 333 (as the case requires) does not apply to the relevant application while the internal review is on foot.
- (3) If the effect of the decision of the Safety Director is that the decision to refuse the application is revoked—
- (a) the application is taken to be an application to which section 329, 330, 331 or 332 (as the case requires) applies; and
 - (b) section 329, 330, 331 or 332 (as the case requires) applies as if a reference in that section to the commencement day were a reference to the day on which the decision of the Safety Director takes effect.

368 Appeals commenced in relation to refusal of applications in relation to licences and endorsements

- (1) This section applies if—
- (a) a proceeding has been commenced before the commencement day in the Magistrates' Court under section 125 of the Marine Act in relation to a decision of the Director to refuse an application—
 - (i) for an operator licence; or
 - (ii) for a personal watercraft endorsement on an operator licence; or

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- (iii) to vary or renew an operator licence or a personal watercraft endorsement on an operator licence; and
 - (b) that proceeding has not been finally determined before that day.
- (2) Despite anything to the contrary in this Act, the proceeding must be heard and determined as if the Marine Act and Marine Regulations were in force.
- (3) If the court determines that the application should not be refused, on the day the determination of the court takes effect—
- (a) the application is taken to be an application to which section 329, 330, 331 or 332 (as the case requires) applies; and
 - (b) section 329, 330, 331 or 332 (as the case requires) applies as if a reference in that section to the commencement day were a reference to the day on which that determination takes effect.

369 Appeals commenced in relation to decisions to suspend or cancel operator licences or revoke endorsements

- (1) This section applies if—
- (a) a proceeding has been commenced before the commencement day in the Magistrates' Court under section 125 of the Marine Act in relation to a decision to—
 - (i) suspend or cancel an operator licence; or
 - (ii) revoke a personal watercraft endorsement; and
 - (b) that proceeding has not been finally determined before that day.

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- (2) Despite anything to the contrary in this Act, the proceeding must be heard and determined as if the Marine Act and Marine Regulations were in force.
- (3) If the effect of the determination of the Magistrates' Court is that the operator licence is suspended—
- (a) the determination of the court is taken to be a determination to suspend the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that determination takes effect, taken to be suspended for the period determined by the court.
- (4) If the effect of the determination of the Magistrates' Court is that the operator licence is cancelled—
- (a) the determination of the court is taken to be a determination to cancel the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that determination takes effect, taken to be cancelled.
- (5) If the effect of the determination of the Magistrates' Court is that the personal watercraft endorsement is revoked—
- (a) the determination of the court is taken to be a determination to cancel the licence endorsement on the marine licence to which section 328 applies; and
 - (b) the licence endorsement is, on the day that decision takes effect, taken to be cancelled.

Note

See also section 327.

370 Appeals commenced in relation to decisions to vary operator licences or vary conditions on licences or endorsements

- (1) This section applies if—
- (a) a proceeding has been commenced before the commencement day in the Magistrates' Court under section 125 of the Marine Act in relation to a decision to—
 - (i) impose or vary a condition on an operator licence or personal watercraft endorsement; or
 - (ii) vary an operator licence; and
 - (b) that proceeding has not been finally determined before that day.
- (2) Despite anything to the contrary in this Act, the proceeding must be heard and determined as if the Marine Act and Marine Regulations were in force.
- (3) If the effect of the determination of the Magistrates' Court is that a condition be imposed on the operator licence—
- (a) the determination of the court is taken to be a determination to impose a condition on the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that determination takes effect, taken to be varied to include the condition imposed.
- (4) If the effect of the determination of the Magistrates' Court is that a condition on the operator licence be varied—
- (a) the determination of the court is taken to be a determination to vary the condition of the marine licence to which section 327 applies; and

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- (b) the condition of the marine licence is, on the day that determination takes effect, taken to be varied in accordance with that determination.
- (5) If the effect of the determination of the Magistrates' Court is that a condition be imposed on the personal watercraft endorsement—
- (a) the determination of the court is taken to be a determination to impose a condition on the licence endorsement on the marine licence to which section 328 applies; and
- (b) the licence endorsement is, on the day that determination takes effect, taken to be varied to include the condition imposed.

Note

See also section 327.

- (6) If the effect of the determination of the Magistrates' Court is that a condition on the personal watercraft endorsement be varied—
- (a) the determination of the court is taken to be a determination to vary the condition of the licence endorsement on the marine licence to which section 328 applies; and
- (b) the condition of the licence endorsement is, on the day that determination takes effect, taken to be varied in accordance with that determination.

Note

See also section 327.

- (7) If the effect of the determination of the Magistrates' Court is that an operator licence be varied—

- (a) the determination of the court is taken to be a determination to vary the marine licence to which section 327 applies; and
- (b) the marine licence is, on the day that determination takes effect, taken to be varied in accordance with that determination.

371 Appeals against disqualifications by order of a court

- (1) This section applies if—
 - (a) a proceeding has been commenced before the commencement day under section 126 of the Marine Act by a person or child who is disqualified from obtaining an operator licence by order of the Magistrates' Court or the Children's Court; and
 - (b) that proceeding has not been finally determined before that day.
- (2) Despite anything to the contrary in this Act, the proceeding must be heard and determined as if the Marine Act and Marine Regulations were in force.
- (3) If the effect of the decision of the court hearing the appeal is that the person or child is disqualified from obtaining an operator licence, that person is taken to be disqualified from obtaining a marine licence for the period of that disqualification.

372 Appeals against cancellation or suspension of operator licence by order of a court

- (1) This section applies if—
 - (a) a proceeding has been commenced before the commencement day under section 126 of the Marine Act by a person or child whose operator licence has been cancelled or suspended by order of the Magistrates' Court or the Children's Court; and

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- (b) that proceeding has not been finally determined before that day.
- (2) Despite anything to the contrary in this Act, the proceeding must be heard and determined as if the Marine Act and Marine Regulations were in force.
- (3) If the effect of the decision of the court hearing the appeal is that the person's or child's operator licence is suspended—
- (a) the order of the court is taken to be an order to suspend the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that order takes effect, taken to be suspended for the period determined by the court.
- (4) If the effect of the decision of the court hearing the appeal is that the person's or child's operator licence is cancelled—
- (a) the order of the court is taken to be an order to cancel the marine licence to which section 327 applies; and
 - (b) the marine licence is, on the day that order takes effect, taken to be cancelled.

373 Delegations of waterway managers

On the commencement day every instrument of delegation made under section 112 of the Marine Act is taken to be an instrument of delegation made under section 217.

**374 References to Director to be read as references to
Safety Director**

On and after the commencement day, every reference in a document whatsoever made or created under the Marine Act or Marine Regulations to the Director is to be read as the Safety Director unless the context otherwise requires.

Marine Safety Act 2010

No. 65 of 2010

Part 9.3—Transitional and Saving Provisions—Marine (Domestic
Commercial Vessel National Law Application) Act 2013

s. 374A

Pt 9.3
(Heading and
ss 374A–
374C)
inserted by
No. 36/2013
s. 76.

**PART 9.3—TRANSITIONAL AND SAVING PROVISIONS—
MARINE (DOMESTIC COMMERCIAL VESSEL NATIONAL
LAW APPLICATION) ACT 2013**

S. 374A
inserted by
No. 36/2013
s. 76, expired
by force of
No. 65/2010
s. 374A(2).

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S. 374B
inserted by
No. 36/2013
s. 76, expired
by force of
No. 65/2010
s. 374B(2).

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S. 374C
inserted by
No. 36/2013
s. 76, expired
by force of
No. 65/2010
s. 374C(2).

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Ch. 10
(Headings
and ss 375–
421)
amended by
Nos 65/2010
s. 421, 78/2011
ss 35–41, 43,
43/2012
s. 3(Sch.
item 29),
repealed by
No. 70/2013
s. 3(Sch. 1
item 31).

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SCHEDULES

SCHEDULE 1

Section 259

PARTICULAR POWERS OF THE SAFETY DIRECTOR

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Sch. 1
heading
preceding
item 1
repealed by
No. 36/2013
s. 77(a).

Sch. 1
items 1–3
repealed by
No. 36/2013
s. 77(b).

PILOTS AND PILOT EXEMPT MASTERS

4. To issue, cancel or suspend the licences of pilots and of pilot exempt masters.
5. To inquire into the conduct of pilots and pilot exempt masters.
6. To impose conditions on licences of pilots or pilot exempt masters and to vary any conditions so imposed.

HARBOUR MASTERS

7. To issue, cancel or suspend the licences of harbour masters and to amend, vary or revoke licences of harbour masters.
8. To inquire into the conduct of harbour masters.

PILOTAGE SERVICES PROVIDERS

9. To register or renew the registration of pilotage services providers.
10. To issue certificates of registration to pilotage services providers.

Marine Safety Act 2010
No. 65 of 2010

Sch. 1

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11. To cancel or suspend the registration of pilotage services providers.
 12. To inspect vessels and equipment of pilotage services providers to ensure compliance with safety standards.

Sch. 1 heading preceding item 13 repealed by No. 36/2013 s. 77(c).

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Sch. 1 item 13 repealed by No. 36/2013 s. 77(d).

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Sch. 1 heading preceding item 14 substituted by No. 36/2013 s. 77(e).

SURVEY OF VESSELS

Sch. 1 item 14 repealed by No. 36/2013 s. 77(f).

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Sch. 1 item 15 amended by No. 36/2013 s. 77(g).

15. To survey and register all recreational vessels.

16. To cause vessels to be inspected to make sure that the vessels and their equipment comply with this Act and the regulations.

17. To cause unseaworthy vessels to be detained.

Sch. 1 heading preceding item 18 repealed by No. 36/2013 s. 77(h).

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Sch. 1
items 18, 19
repealed by
No. 36/2013
s. 77(i).

TONNAGE

20. To determine the tonnage of vessels.

NAVIGATION

21. To detain vessels not equipped as required.
22. To determine the requirements for preventing collisions and with respect to lights, fog-signals and sailing rules.
23. To provide and maintain, in accordance with the standards developed by the Safety Director, navigation aids in State waters for which the Safety Director is the waterway manager.
24. To give directions (not being directions that would endanger the life of any person on the vessel) prohibiting the entry into, or requiring the removal from, any State waters of any vessel that the Safety Director has reasonable cause to believe is unseaworthy or in imminent danger of sinking and causing an obstruction to navigation or is in imminent danger of causing serious damage to the marine environment or property in State waters.
25. If the Safety Director considers it desirable to do so for the safety or convenience of navigation in State waters, by notice served on the owner or person in possession or control of a light (including a fire, lamp, illuminated sign, street light or other illuminating device) to require that owner or person to extinguish, remove, relocate, alter or modify the light as specified in the notice or do or refrain from doing any specified thing in relation to the light.
26. To control navigation and vessel movements in State waters for which the Safety Director is the waterway manager.

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27. To designate anchorage areas in State waters for which the Safety Director is the waterway manager.
 28. To develop standards for the dredging and maintenance of channels the navigation of which is under the control of the Victorian Regional Channels Authority or a channel operator or any other port management body, local port manager or any waterway manager.
 29. To direct persons who manage and control channels to publish information about the depths and configurations of the channels.

AGREEMENTS

30. To enter into agreements or contracts with government departments or other public statutory bodies with respect to—
 - (a) the exercise by the Safety Director and the government department or other public statutory body of their respective functions or the carrying out or providing by the Safety Director for the government department or other public statutory body of any works or services; or
 - (b) the use or joint use by the Safety Director and the government department or other public statutory body of their respective facilities or the services of their respective staff.
 31. To enter into agreements on marine safety matters with a department or public statutory body of the Commonwealth or of another State or a Territory.
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SCHEDULE 2

Sections 309, 310,
311 and 312

SUBJECT MATTER FOR REGULATIONS

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Sch. 2
heading
preceding
item 1
repealed by
No. 36/2013
s. 78(a).

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Sch. 2
items 1–3
repealed by
No. 36/2013
s. 78(b).

LOCAL KNOWLEDGE CERTIFICATES

4. The examination of masters as to their local knowledge and the issuing of local knowledge certificates.
5. The geographic locations in which a local knowledge certificate is required.
6. The type of circumstances in respect of which a master with a local knowledge certificate is not required to use the services of a pilot.

PILOTS AND PILOT EXEMPT MASTERS

7. The examination of people as to their competency to act as pilots.
8. The examination of masters as to their competency to act as pilot to the vessels of which they are masters.
9. Fixing the age at which licensed pilots must retire from service.

PILOTAGE SERVICE PROVIDERS

10. Safety standards that must be complied with by a pilotage service provider registered under Chapter 7.

Sch. 2

HARBOUR MASTERS

11. The qualifications and experience required on the part of licensed harbour masters and the examination of people as to their competency to be licensed harbour masters.

Sch. 2 heading preceding item 12 repealed by No. 36/2013 s. 78(c).

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Sch. 2 items 12–15 repealed by No. 36/2013 s. 78(d).

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Sch. 2 heading preceding item 16 substituted by No. 36/2013 s. 78(e).

SURVEY OF VESSELS

16. The survey of recreational vessels.

Sch. 2 item 16 amended by No. 36/2013 s. 78(f).

Sch. 2 item 17 repealed by No. 36/2013 s. 78(g).

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Sch. 2 item 18 amended by No. 78/2011 s. 42(1), repealed by No. 36/2013 s. 78(g).

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CONSTRUCTION AND EQUIPMENT OF VESSELS

19. The construction of recreational vessels, including prescribing the materials to be used in the construction of recreational vessels, the handling of those materials and the standards for them.

Sch. 2 item 19 amended by No. 36/2013 s. 78(h).

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| 20. The machinery and other equipment that must be carried or installed in vessels. | Sch. 2 item 20 amended by No. 78/2011 s. 42(2). |
| 20A. The safety equipment that must be carried in vessels. | Sch. 2 item 20A inserted by No. 78/2011 s. 42(3). |
| 21. The use and maintenance of machinery and other equipment that must be carried or installed in vessels. | Sch. 2 item 21 amended by No. 78/2011 s. 42(4). |
| 22. Requirements to ensure that machinery and other equipment that must be carried or installed in vessels is accessible. | Sch. 2 item 22 amended by No. 78/2011 s. 42(5). |
| 23. The division of vessels into classes having regard to length, gross tonnage or propulsion power. | |
| 24. The measurement of vessels, including determination of tonnage. | |
| REGISTRATION OF RECREATIONAL VESSELS | Sch. 2 heading preceding item 25 amended by No. 36/2013 s. 78(i). |
| 25. The categories of recreational vessels for registration purposes. | Sch. 2 item 25 amended by No. 36/2013 s. 78(j). |
| 26. The exemption of classes of recreational vessel from the requirement to be registered. | Sch. 2 item 26 amended by No. 36/2013 s. 78(k). |
| 27. The duration the registration of a recreational vessel remains in effect after it has been issued. | Sch. 2 item 27 amended by No. 36/2013 s. 78(k). |
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Sch. 2 item 28
amended by
No. 36/2013
s. 78(l).

28. Procedures for achieving a common registration expiry date for two or more recreational vessels registered in the same name.

29. The grounds on which registration may be cancelled or suspended and the procedures to be followed in those cases.

Sch. 2 item 30
amended by
No. 36/2013
s. 78(l).

30. The inspection and testing of recreational vessels.

Sch. 2 item 31
amended by
No. 36/2013
s. 78(m).

31. The grounds on which, and the procedures by which, the use of a recreational vessel may be prohibited and the conditions on which a prohibition may be made or revoked.

Sch. 2 item 32
amended by
No. 36/2013
s. 78(n).

32. Requiring the Safety Director to be notified of alterations or damage to registered recreational vessels.

Sch. 2 item 33
amended by
No. 36/2013
s. 78(n).

33. Requiring the Safety Director to be notified of changes in the ownership or description of registered recreational vessels.

Sch. 2 item 34
amended by
No. 78/2011
s. 42(6).

34. The issue of identification numbers, identification marks, registration labels and plates, and certificates of registration, including the issue of duplicates, the circumstances in which registration labels and plates must be returned and the procedures for their return.

35. The issue of special plates or marks, the circumstances in which they may be issued, the information that is to be contained on them and the conditions on which they may be used.

SAFE NAVIGATION

36. The safe operation and navigation of vessels.

37. The safe anchoring, mooring, riding and securing of vessels.

38. The stability, direction and control of vessels.

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39. The slipping, careening and repairing of vessels.
 40. Ballast and ballast water.
 41. The removal of wrecks and obstructions to navigation.
 42. Requirements concerning the disposal of obstructions to navigation removed under section 268.
 43. The regulation and control of the use of lights and fire on board any vessel.
 44. Fire-fighting on board vessels.
 45. Access to and from vessels and the safety of persons embarking or disembarking from such vessels.
 46. Bunkering operations or refuelling of vessels.
 47. The provision, use and maintenance of navigation lights or shapes.
 48. The provision, use and maintenance of sound signalling devices.
 49. The carriage of stability data.
 50. Requiring masters and other persons operating vessels, and passengers, to wear or carry marine safety equipment.
 51. The use of State waters by bathers and others, to the extent that the use affects the operation of vessels.

Sch. 2 item 42
amended by
No. 78/2011
s. 42(7).

CARRIAGE OF GOODS

52. The safe carriage of goods.

PASSENGERS

53. Regulating the conduct of passengers, including empowering the master of a vessel to require people to leave the vessel.
54. The maximum number of passengers to be carried on particular vessels or classes of vessel.

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55. Prohibiting passengers from doing anything (including smoking) that might create a risk of explosion while a vessel is being refuelled.

Sch. 2 heading preceding item 56 repealed by No. 36/2013 s. 78(o). * * * * *

Sch. 2 items 56–65 repealed by No. 36/2013 s. 78(p). * * * * *

Sch. 2 heading preceding item 66 amended by No. 36/2013 s. 78(q).

RECREATIONAL HIRE AND DRIVE VESSELS

Sch. 2 item 66 amended by No. 36/2013 s. 78(r).

66. The operation and use of recreational hire and drive vessels.

Sch. 2 items 67, 68 repealed by No. 36/2013 s. 78(s). * * * * *

Sch. 2 item 69 amended by No. 36/2013 s. 78(t).

69. Requiring the masters of recreational hire and drive vessels to operate the vessels in accordance with any conditions or restrictions specified in the regulations and to have any documents required by the regulations in their possession while operating the vessels.

Sch. 2 item 70 repealed by No. 36/2013 s. 78(u). * * * * *

71. Making provision for the audit of any documents required by the regulations.

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74. Requiring the master of a recreational hire and drive vessel to provide information to the owner (or agent of the owner) of a hire and drive vessel concerning any licence or certificate the master holds or has held.

Sch. 2
items 72, 73
repealed by
No. 36/2013
s. 78(u).

Sch. 2 item 74
amended by
No. 36/2013
s. 78(v).

LICENSING OF MASTERS OF RECREATIONAL AND
REGULATED HIRE AND DRIVE VESSELS

Sch. 2
heading
preceding
item 75
amended by
No. 36/2013
s. 78(w).

75. The classes and types of recreational vessels for licensing purposes.
76. The duration a marine licence remains in effect after it has been granted.
77. The taking of photographs or making of digitised images for inclusion in marine licence documents.
78. The issue of duplicate marine licence documents.
79. The exemption of persons or classes of persons from the requirement to obtain a marine licence.
80. Tests and training of masters of recreational vessels.
81. Approving tests or courses or conducting tests or courses for the purposes of marine licences or licence endorsements on marine licences for the purposes of granting or renewing a marine licence or granting the licence endorsement.
- 81A. Requirements to be met by applicants for a marine licence or endorsement.
82. The information the Safety Director may require an applicant for a marine licence or an endorsement on a marine licence or the holder of a marine licence (including an endorsed marine licence) to give to the Safety Director.

Sch. 2
item 81A
inserted by
No. 78/2011
s. 42(8).

Sch. 2

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83. Requirements for holders of interstate or overseas licences or authorities to operate a vessel.
84. Records to be kept about holders of marine licences.

Sch. 2 heading preceding item 85 repealed by No. 36/2013 s. 78(x).

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Sch. 2 items 85–87 repealed by No. 36/2013 s. 78(y).

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IMPOUNDMENT, IMMOBILISATION AND FORFEITURE OF RECREATIONAL VESSELS

88. The manner and circumstances in which a recreational vessel may be immobilised.
89. The matters that must be included in notices issued, given or served under Part 4.2.
90. Procedures and requirements to be complied with before a recreational vessel or an item or thing left in or on a recreational vessel may be recovered.
91. The circumstances in which a recreational vessel is not eligible for an impoundment or immobilisation order or a forfeiture order under section 118 or 119.

MISCELLANEOUS

Sch. 2 item 92 amended by No. 78/2011 s. 42(9).

92. Licences, certificates, registrations, permits or authorisations granted, issued or made by the Commonwealth or other States or a Territory of the Commonwealth or a recognised Classification Society (that is a member of the International Association of Classification Societies recognised by the Australian Maritime Safety Authority) that may be recognised as being the equivalent of licences, certificates, registrations,

permits or authorisations granted, issued or made under
this Act or the regulations.

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Sch. 3
amended by
No. 29/2011
s. 3(Sch. 1
item 57.9),
repealed by
No. 65/2010
s. 421.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 12 August 2010

Legislative Council: 2 September 2010

The long title for the Bill for this Act was "A Bill for an Act to provide for safe marine operations in Victoria and to consequentially amend the **Marine Act 1988** and other Acts and for other purposes."

The **Marine Safety Act 2010** was assented to on 28 September 2010 and came into operation on 1 July 2012: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Marine Safety Act 2010** by Acts and subordinate instruments.

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

Marine Safety Act 2010, No. 65/2010

Assent Date: 28.9.10
Commencement Date: S. 421 on 1.7.13: s. 421
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 57) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

Transport Legislation Amendment (Port of Hastings Development Authority) Act 2011, No. 38/2011

Assent Date: 23.8.11
Commencement Date: Ss 39–41 on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011, No. 78/2011

Assent Date: 13.12.11
Commencement Date: Ss 3–43 on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 4
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 29) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012, No. 66/2012

Assent Date: 7.11.12
Commencement Date: Ss 26, 27 on 8.11.12; s. 25 on 1.12.12: Special Gazette (No. 373) 7.11.12 p. 1
Current State: This information relates only to the provision/s amending the **Marine Safety Act 2010**

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**Marine (Domestic Commercial Vessel National Law Application) Act 2013,
No. 36/2013**

Assent Date: 18.6.13
Commencement Date: Ss 23–79 on 1.7.13: Special Gazette (No. 226) 25.6.13
p. 1
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

**Road Legislation Amendment (Use and Disclosure of Information and Other
Matters) Act 2013, No. 55/2013**

Assent Date: 24.9.13
Commencement Date: S. 10 on 1.1.14: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 31) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

**Transport (Safety Schemes Compliance and Enforcement) Act 2014,
No. 27/2014**

Assent Date: 8.4.14
Commencement Date: S. 135 on 19.5.14: Special Gazette (No. 148) 13.5.14
pp 1, 2
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 107) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 25) on 15.10.14: Special Gazette
(No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s
amending the **Marine Safety Act 2010**

3. Explanatory Details

No entries at date of publication.