

EXPOSURE-DRAFT

Notes for Reader:

1. This exposure draft of the National Law Bill has not been cleared by Australian Transport Ministers;

2. As a general rule in Commonwealth legislation, 1 Penalty Unit = \$110 for an individual and \$550 for a body corporate.

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2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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Marine Safety (Domestic Commercial Vessel) National Law Bill 2012

No. , 2012

(Infrastructure and Transport)

**A Bill for an Act to provide for a national law about
marine safety for certain commercial vessels, and
for related purposes**

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1 **A Bill for an Act to provide for a national law about**
2 **marine safety for certain commercial vessels, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Marine Safety (Domestic Commercial*
7 *Vessel) National Law Act 2012*.

8 **2 Commencement**

9 This Act commences on 1 January 2013.

- 1 (3) Terms used in the local application provisions of this Act and also
2 in the Marine Safety (Domestic Commercial Vessel) National Law
3 set out in Schedule 1 to this Act have the same meanings in those
4 provisions as they have in that Law.

5 **4 Adoption of Marine Safety (Domestic Commercial Vessel)** 6 **National Law**

7 The Marine Safety (Domestic Commercial Vessel) National Law
8 set out in Schedule 1 to this Act, and regulations and other
9 legislative instruments made under that Law:

- 10 (a) apply as a law of this jurisdiction; and
11 (b) as so applying may be referred to as the Marine Safety
12 (Domestic Commercial Vessel) National Law of the
13 Commonwealth.

14 **5 Constitutional reach of Act**

- 15 (1) This Act applies to activities of, or matters that relate to, the
16 following:
- 17 (a) a vessel engaged in trade and commerce:
 - 18 (i) among the States; or
 - 19 (ii) between a State and a Territory; or
 - 20 (iii) between 2 Territories;
 - 21 (b) a vessel that is external to Australia;
 - 22 (c) a vessel of which the owner, or any of the owners, is a
23 constitutional corporation;
 - 24 (d) a vessel, so far as the application of this Act to activities of,
25 or in relation to, the vessel is reasonably appropriate and
26 adapted to giving effect to Australia's obligations under an
27 international agreement;
 - 28 (e) a vessel of which the owner, or any of the owners, is the
29 Commonwealth or a Commonwealth authority;
 - 30 (f) a vessel that is within a participating Territory;
 - 31 (g) navigation or shipping, to the extent that the navigation or
32 shipping relates to trade and commerce:
 - 33 (i) among the States; or

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Section 6

- 1 (ii) between a State and a Territory; or
2 (iii) between 2 Territories;
3 (h) any matter that may be made the subject of the jurisdiction of
4 the High Court under paragraph 76(iii) of the Constitution;
5 (i) things that are incidental to activities or matters referred to in
6 any of the above paragraphs.
- 7 (2) For the purposes of subsection (1), an activity of, or a matter in
8 relation to, a vessel includes, but is not limited to, an activity done
9 by a person, or in relation to a person, in the capacity of owner,
10 master or crew of the vessel.
- 11 (3) For the purposes of subsection (1), *external to Australia* means:
12 (a) beyond the baseline from which the breadth of the territorial
13 sea is measured under section 7 of the *Seas and Submerged*
14 *Lands Act 1973*; or
15 (b) any waters on the landward side of the territorial sea that are
16 not within the limits of a State or internal Territory.
- 17 Note 1: For the *baseline* see *Australia's territorial sea baseline* (AGPS) 1988:
18 generally the baseline is the lowest astronomical tide along the coast
19 but it also includes lines enclosing bays and indentations that are not
20 bays and straight baselines that depart from the coast.
- 21 Note 2: A reference to *Australia* in any other provision of this Act includes a
22 reference to the coastal sea of Australia: see section 15B of the *Acts*
23 *Interpretation Act 1901*.

6 Exclusion of State and Territory laws

- 24
25 (1) This Act is intended to apply to the exclusion of a law of a State or
26 Territory, or a part of such a law, that relates to marine safety so far
27 as it would otherwise apply in relation to domestic commercial
28 vessels.
- 29 (2) However, subsection (1) does not apply to a law of a State or
30 Territory so far as:
31 (a) the law is prescribed by the regulations as a law to which that
32 subsection does not apply; or
33 (b) the law deals with any of the following matters:
34 (i) management of ports, harbours and moorings;

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- 1 (ii) environmental management, including pollution, impact
- 2 assessments and sanctuaries;
- 3 (iii) pilotage;
- 4 (iv) management of dangerous goods;
- 5 (v) designation of sheltered waters;
- 6 (vi) harbour masters;
- 7 (vii) speed limits, navigation aids, traffic management plans,
- 8 rules for prevention of collisions, no wash zones, the
- 9 management of events on waterways, wrecks, salvage,
- 10 passing dredges, towing objects, bar crossings and local
- 11 knowledge requirements;
- 12 (viii) removing obstructions (including abandoned, sinking
- 13 and derelict vessels) from navigable waters;
- 14 (ix) the actions of persons under the influence of alcohol or
- 15 other drugs;
- 16 (x) false distress signals and calls;
- 17 (xi) management of passengers;
- 18 (xii) repairs, cutting or welding occurring on board vessels;
- 19 (xiii) requirements for vessels conducting particular
- 20 dangerous operations or operations that may cause
- 21 offence, including hauling garbage;
- 22 (xiv) prices charged for the provision of commercial services;
- 23 (xv) fisheries management;
- 24 (xvi) storage, preparation, service and disposal of food and
- 25 beverages on vessels;
- 26 (xvii) marine radio;
- 27 (xviii) monitoring of marine communication services;
- 28 (xix) gas and electrical safety;
- 29 (xx) workplace health and safety;
- 30 (xxi) emergency management and response;
- 31 (xxii) any other matters prescribed by the regulations.

- 32 (3) To avoid doubt, this Act is not intended to apply to the exclusion of
- 33 a law of a State or Territory, or a part of such a law, that relates to
- 34 activities or matters to which this Act does not apply under
- 35 subsection 5(1).

- 1 (4) The Consolidated Revenue Fund is appropriated for the purposes
2 of subsections (1) and (2).

3 **10 Commonwealth consent to conferral of functions etc. on the**
4 **National Regulator etc. by corresponding State-Territory**
5 **laws**

- 6 (1) A corresponding State-Territory law may confer functions or
7 powers, or impose duties, on the National Regulator or other
8 officer or authority of the Commonwealth.
- 9 (2) Subsection (1) does not authorise the conferral of a function or
10 power, or the imposition of a duty, by a corresponding
11 State-Territory law to the extent to which:
12 (a) the conferral or imposition, or the authorisation, would
13 contravene any constitutional doctrines restricting the duties
14 that may be imposed on the National Regulator or other
15 officer or authority; or
16 (b) the authorisation would otherwise exceed the legislative
17 power of the Commonwealth.
- 18 (3) Subsection (1) does not extend to a function, power or duty of a
19 kind specified in regulations made for the purposes of this
20 subsection.
- 21 (4) This Act is not intended to exclude or limit the operation of a
22 corresponding State-Territory law that confers any functions or
23 powers, or imposes any duties, on the National Regulator or other
24 officer or authority to the extent to which that law:
25 (a) is consistent with subsections (1) to (3); and
26 (b) is capable of operating concurrently with this Act.

27 **11 Meaning of *corresponding State-Territory law***

- 28 (1) For the purposes of this Act, *corresponding State-Territory law*
29 means a law of a State or the Northern Territory that is declared by
30 the Commonwealth Minister, in writing, to correspond to this Act,
31 including such a law as amended from time to time.

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Section 12

- 1 (2) The Commonwealth Minister may revoke a declaration under
2 subsection (1) in relation to a law of a State or the Northern
3 Territory only if:
- 4 (a) the Minister is requested by the State or Territory concerned
5 to revoke the declaration; or
- 6 (b) the State or Territory law has been amended otherwise than
7 as unanimously agreed by the members of the COAG
8 Council under the Intergovernmental Agreement for
9 Commercial Vessel Safety Reform; or
- 10 (c) amendments of the State or Territory law have been as
11 unanimously agreed by the members of the COAG Council
12 under the Intergovernmental Agreement for Commercial
13 Vessel Safety Reform, and the State or Territory law has not
14 been amended in accordance with that agreement within a
15 reasonable period after the agreement.

16 **12 Meaning of *imposes a duty***

17 For the purposes of this Act, a corresponding State-Territory law
18 ***imposes a duty*** on the National Regulator or other officer or
19 authority if:

- 20 (a) the corresponding State-Territory law confers a function or
21 power on the National Regulator or other officer or authority;
22 and
- 23 (b) the circumstances in which the function or power is conferred
24 give rise to an obligation on the National Regulator or other
25 officer or authority to perform the function or to exercise the
26 power.

27 **13 When duty imposed**

28 *Application*

- 29 (1) This section applies if a corresponding State-Territory law purports
30 to impose a duty on the National Regulator or other officer or
31 authority of the Commonwealth.

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State or Territory legislative power sufficient to support duty

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
 - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 10 to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by force of the law of a State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth.
- (6) To avoid doubt, neither this Act (nor any other law of the Commonwealth) imposes a duty on the National Regulator or other officer or authority of the Commonwealth to the extent to which imposing such a duty would:

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Section 14

- 1 (a) contravene any constitutional doctrine restricting the duties
2 that may be imposed on the National Regulator or other
3 officer or authority of the Commonwealth; or
4 (b) otherwise exceed the legislative power of the
5 Commonwealth.
- 6 (7) This section does not limit section 10.

14 Imposing duty under State or Territory law

- 8 (1) This section:
9 (a) applies only for the purposes of the application of the
10 provisions of this Act or another law of the Commonwealth
11 (with or without modification) as a law of a State or the
12 Northern Territory by a provision of a corresponding
13 State-Territory law; and
14 (b) does not apply for those purposes if the corresponding
15 State-Territory law otherwise provides.
- 16 (2) If the corresponding State-Territory law purports to impose a duty
17 on the National Regulator or other officer or authority of the
18 Commonwealth to do a particular thing, the duty is taken to be
19 imposed by the corresponding State-Territory law to the extent to
20 which imposing the duty:
21 (a) is within the legislative powers of the State or Territory
22 concerned; and
23 (b) is consistent with the constitutional doctrines restricting the
24 duties that may be imposed on the National Regulator.
- 25 (3) To avoid doubt, the corresponding State-Territory law does not
26 impose the duty on the National Regulator or other officer or
27 authority of the Commonwealth to the extent to which imposing
28 the duty would:
29 (a) contravene any constitutional doctrine restricting the duties
30 that may be imposed on the National Regulator or other
31 officer or authority of the Commonwealth; or
32 (b) otherwise exceed the legislative powers of the State or
33 Territory concerned.

- 1 (4) If imposing on the National Regulator or other officer or authority
2 of the Commonwealth the duty to do that thing would:
3 (a) contravene any constitutional doctrine restricting the duties
4 that may be imposed on the National Regulator or other
5 officer or authority of the Commonwealth; or
6 (b) otherwise exceed the legislative powers of both the State or
7 Territory and the Commonwealth;
8 the corresponding State-Territory law is taken instead to confer on
9 the National Regulator or other officer or authority of the
10 Commonwealth a power to do that thing at the discretion of the
11 National Regulator or other officer or authority of the
12 Commonwealth.

13 **15 Review of decisions under corresponding State-Territory laws**

- 14 (1) Application may be made to the Administrative Appeals Tribunal
15 for review of a reviewable State-Territory decision.
- 16 (2) A decision made by the National Regulator in the performance of a
17 function or the exercise of a power conferred by a corresponding
18 State-Territory law is a *reviewable State-Territory decision* for the
19 purposes of this section if:
20 (a) the law under which the decision was made provides for
21 review by the Administrative Appeals Tribunal; and
22 (b) the decision is declared by the regulations to be a reviewable
23 State-Territory decision for the purposes of this section.
- 24 (3) For the purposes of this section, the *Administrative Appeals*
25 *Tribunal Act 1975* has effect as if a corresponding State-Territory
26 law were an enactment.

27 **16 References in instruments to the National Law**

- 28 (1) A reference in any instrument to the Marine Safety (Domestic
29 Commercial Vessel) National Law is a reference to:
30 (a) the Marine Safety (Domestic Commercial Vessel) National
31 Law as applied under section 4; and
32 (b) the Marine Safety (Domestic Commercial Vessel) National
33 Law as applied by a State or the Northern Territory.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Preliminary **Part 1**

Section 1

1 **Schedule 1—Marine Safety (Domestic**
2 **Commercial Vessel) National Law**

3 Note: See section 4.

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Law may be cited as the Marine Safety (Domestic
8 Commercial Vessel) National Law.

9 **2 Commencement**

10 This Law commences as a law of this jurisdiction as provided by
11 the Act of this jurisdiction that applies this Law as a law of this
12 jurisdiction.

13 **3 Objects of Law**

14 The objects of this Law are as follows:

- 15 (a) to form a part of a cooperative scheme between the
16 Commonwealth, the States and the Northern Territory that
17 provides a single national framework for ensuring the safe
18 operation, design and construction of domestic commercial
19 vessels;
- 20 (b) to implement Australia's international obligations in relation
21 to the safety of domestic commercial vessels;
- 22 (c) to facilitate the development of a safety culture that will
23 prevent, or mitigate the effects of, marine incidents;
- 24 (d) to provide a framework for the development and application
25 of consistent national standards relating to the operation,
26 design and construction of domestic commercial vessels;
- 27 (e) to enhance the efficient and orderly operation of domestic
28 commercial vessels;
- 29 (f) to provide an effective enforcement framework.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 1 Preliminary

Section 4

1 **4 Law binds the Crown**

- 2 (1) This Law binds the Crown in each of its capacities.
- 3 (2) This Law does not make the Crown liable to be prosecuted for an
- 4 offence.

5 **5 Extended geographical jurisdiction—category A**

6 Section 15.1 of the *Criminal Code* (extended geographical

7 jurisdiction—category A) applies to an offence against this Law.

8 **6 Definitions**

9 (1) In this Law:

10 **accredited person** means a person who is accredited in accordance

11 with regulations made under section 136.

12 **acquisition of property** has the same meaning as in paragraph

13 51(xxxi) of the Constitution of the Commonwealth.

14 **agency**:

15 (a) in relation to the Commonwealth, includes the following:

16 (i) an Agency within the meaning of the *Financial*

17 *Management and Accountability Act 1997* of the

18 Commonwealth;

19 (ii) a body corporate established for a public purpose under

20 a law of the Commonwealth; and

21 (b) in relation to a State or a Territory, includes the following:

22 (i) a Department of State (however described) of the State

23 or Territory;

24 (ii) a body corporate established for a public purpose under

25 a law of the State or Territory.

26 **certificate** means the following:

27 (a) a certificate of operation;

28 (b) a certificate of survey;

29 (c) a seafarer certificate.

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1 ***certificate of operation*** means a certificate issued under section 36.

2 ***certificate of survey*** means a certificate issued under section 27.

3 ***close quarters situation*** means a situation in which vessels pass
4 each other, or a vessel passes another vessel, a person or an object,
5 in such proximity that a reasonable person would conclude that in
6 all the circumstances there was a risk of a collision.

7 ***Commonwealth Minister*** means the Minister of State of the
8 Commonwealth administering this Law.

9 ***company*** has the same meaning as in the *Income Tax Assessment*
10 *Act 1997* of the Commonwealth.

11 Note: Under the *Income Tax Assessment Act 1997* of the Commonwealth,
12 ***company*** includes an unincorporated association or body of persons.

13 ***crew*** of a vessel means a person employed or engaged in any
14 capacity on board the vessel on the business of the vessel, other
15 than the master of the vessel or a pilot.

16 ***Criminal Code*** means the *Criminal Code* of the Commonwealth.

17 ***defence vessel*** means a warship or other vessel that:

- 18 (a) is operated for naval or military purposes by Australia or a
19 foreign country; and
20 (b) is under the command of an officer commissioned by the
21 government of Australia or the foreign country; and
22 (c) bears external marks of nationality; and
23 (d) is manned by seafarers under armed forces discipline
24 (however described).

25 ***domestic commercial vessel***: see section 7.

26 ***enforcement powers*** has the meaning given by section 82.

27 ***enforcement warrant*** means:

- 28 (a) a warrant issued under section 111; or
29 (b) a warrant signed by a magistrate under section 112.

30 ***engage in conduct*** means:

- 31 (a) do an act; or
-

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 1 Preliminary

Section 6

1 (b) omit to perform an act.

2 **entity** means any of the following:

3 (a) an individual;

4 (b) a company;

5 (c) a trust;

6 (d) a partnership;

7 (e) a corporation sole;

8 (f) a body politic.

9 **evidential material** means:

10 (a) a thing with respect to which an offence against this Law has
11 been committed or is suspected, on reasonable grounds, of
12 having been committed; or

13 (b) a thing that there are reasonable grounds for suspecting will
14 afford evidence as to the commission of an offence against
15 this Law; or

16 (c) a thing that there are reasonable grounds for suspecting is
17 intended to be used for the purpose of committing an offence
18 against this Law.

19 **foreign vessel** has the same meaning as in the *Navigation Act 2012*
20 of the Commonwealth.

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

25 **improvement notice** means an improvement notice issued under
26 section 88.

27 **just terms** has the same meaning as in paragraph 51(xxxi) of the
28 Constitution of the Commonwealth.

29 **marine incident** means any of the following:

30 (a) a death of, or injury to, a person caused by the operation or
31 navigation of a domestic commercial vessel;

32 (b) the loss or presumed loss of a domestic commercial vessel;

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Section 6

- 1 (c) a collision of a domestic commercial vessel with another
2 vessel;
3 (d) a collision by a domestic commercial vessel with an object;
4 (e) the grounding, sinking, flooding or capsizing of a domestic
5 commercial vessel;
6 (f) a fire on board a domestic commercial vessel;
7 (g) a loss of stability of a domestic commercial vessel that
8 affects the safety of the vessel;
9 (h) the structural failure of a domestic commercial vessel;
10 (i) a close quarters situation;
11 (j) an event that results in:
12 (i) the death of, or injury to, a person on board a domestic
13 commercial vessel; or
14 (ii) the loss of a person from a domestic commercial vessel;
15 or
16 (iii) a domestic commercial vessel becoming disabled and
17 requiring assistance;
18 (k) the fouling or damaging by a domestic commercial vessel of:
19 (i) any pipeline or submarine cable; or
20 (ii) any aid to navigation within the meaning of the
21 *Navigation Act 2012* of the Commonwealth;
22 (l) a prescribed incident involving a domestic commercial
23 vessel;
24 (m) a danger of the occurrence of an event or incident referred to
25 in any of the preceding paragraphs.

26 ***marine safety equipment*** means equipment designed or used to
27 prevent a marine incident, or mitigate the consequences of a
28 marine incident, and includes the following things carried or
29 installed on a domestic commercial vessel:

- 30 (a) personal flotation devices;
31 (b) telecommunications systems;
32 (c) flares and other devices that can be used to attract attention to
33 the vessel or indicate the vessel's position;
34 (d) position identification systems;
35 (e) anchors and other devices that may be used to maintain the
36 vessel's position or stability;
-

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 1 Preliminary

Section 6

- 1 (f) oars and other alternative means of propulsion;
2 (g) fire extinguishers;
3 (h) lights;
4 (i) thermal protective aids;
5 (j) such other equipment as is prescribed by the regulations.

6 **marine safety inspector** means:

- 7 (a) a person appointed as an inspector under section 73; or
8 (b) a member of the Australian Federal Police; or
9 (c) a member of the police force (however described) of a State
10 or a Territory.

11 **master** of a vessel means the person who has command or charge
12 of the vessel, but does not include a pilot.

13 **monitoring powers**: see section 81.

14 **monitoring purposes** means one or more of the following:

- 15 (a) finding out whether this Law is being, or has been, complied
16 with;
17 (b) assessing the correctness of information provided under this
18 Law;
19 (c) investigating a marine incident.

20 **monitoring warrant** means a warrant issued under section 110.

21 **National Marine Safety Regulator**: see section 9.

22 **National Regulator**: see section 9.

23 **National Standard for Commercial Vessels** means the National
24 Standard for Commercial Vessels adopted by:

- 25 (a) the COAG Council; or
26 (b) if no such entity exists—the entity prescribed by the
27 regulations for the purposes of this paragraph.

28 **occupier**, in relation to premises, includes a person who apparently
29 represents the occupier of the premises.

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Section 6

1 ***offence against this Law*** includes an offence against the *Crimes*
2 *Act 1914* of the Commonwealth or the *Criminal Code* that relates
3 to this Law.

4 ***operate*** a vessel means to determine or exercise control over the
5 course or direction of the vessel or over the means of propulsion of
6 the vessel (whether or not the vessel is underway).

7 ***owner*** of a vessel includes:

- 8 (a) a person who has a legal or beneficial interest in the vessel,
9 other than as a mortgagor; and
10 (b) a person with overall general control and management of the
11 vessel.

12 For this purpose, a person is not taken to have overall general
13 control and management of a vessel merely because he or she is the
14 master or pilot of the vessel.

15 ***partnership*** has the same meaning as in the *Income Tax*
16 *Assessment Act 1997* of the Commonwealth.

17 ***person assisting*** a marine safety inspector has the meaning given
18 by section 83.

19 ***pilot*** means a person who does not belong to, but has the conduct
20 of, a vessel.

21 ***premises*** includes the following:

- 22 (a) a structure, building, vehicle, vessel or aircraft;
23 (b) a place (whether or not enclosed or built on);
24 (c) a part of a thing referred to in paragraph (a) or (b).

25 ***prohibition notice*** means a prohibition notice issued under
26 section 89.

27 ***regulated Australian vessel*** has the same meaning as in the
28 *Navigation Act 2012* of the Commonwealth.

29 ***reviewable decision***: see section 120.

30 ***seafarer certificate*** means a certificate issued under section 46.

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- 1 (3) Despite subsection (1), a vessel is not a *domestic commercial*
2 *vessel* if the vessel:
3 (a) is a regulated Australian vessel; or
4 (b) is a foreign vessel; or
5 (c) is a defence vessel; or
6 (d) is not motorised and belongs to:
7 (i) a primary or secondary school; or
8 (ii) a community group of a kind prescribed by the
9 regulations.
- 10 (4) Despite subsections (1) to (3), the regulations may provide as
11 follows:
12 (a) that a specified thing, or a thing included in a specified class,
13 is a domestic commercial vessel;
14 (b) that a specified thing, or a thing included in a specified class,
15 is not a domestic commercial vessel.
- 16 (5) A vessel in the course of construction is a *domestic commercial*
17 *vessel* if the vessel is, after completion, for use as a domestic
18 commercial vessel.
- 19 (6) For the purposes of subsection (5), a vessel that has been launched,
20 but has not been completed and delivered under the relevant
21 building contract, is taken to be a vessel in the course of
22 construction.

8 Definition of *vessel*

- 23 (1) In this Law:
24
25 *vessel* means a craft for use, or that is capable of being used, in
26 navigation by water, however propelled or moved, and includes an
27 air-cushion vehicle, a barge, a lighter, a submersible, a ferry in
28 chains and a wing-in-ground effect craft.
- 29 (2) Despite subsection (1), none of the following is a *vessel*:
30 (a) an aircraft;

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 1 Preliminary

Section 8

- 1 (b) a thing that is a facility for the purposes of Schedule 3 to the
2 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*
3 of the Commonwealth.
- 4 (3) Despite subsections (1) and (2), the regulations may provide as
5 follows:
- 6 (a) that a specified thing, or a thing included in a specified class,
7 is a vessel;
- 8 (b) that a specified thing, or a thing included in a specified class,
9 is not a vessel.
10

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1

2 **Part 2—The National Marine Safety Regulator**

3

4 **9 The National Marine Safety Regulator**

5 The Australian Maritime Safety Authority is the *National Marine*
6 *Safety Regulator* (referred to in this Act as the *National*
7 *Regulator*).

8 Note: The Australian Maritime Safety Authority is established by the
9 *Australian Maritime Safety Authority Act 1990* of the Commonwealth.
10 Section 10 of that Act sets out the general powers of the Authority.

11 **10 Functions of the National Regulator**

12 The National Regulator has the following functions:

- 13 (a) to make and maintain Marine Orders made under
14 section 138;
- 15 (b) to develop and maintain national standards, guidelines and
16 codes of practice relating to marine safety;
- 17 (c) to issue unique identifiers and certificates for the purposes of
18 this Law and perform other functions in relation to such
19 identifiers and certificates;
- 20 (d) to accredit persons for the purposes of this Law;
- 21 (e) to undertake investigation, monitoring and enforcement
22 activities under or for the purposes of this Law;
- 23 (f) to consult appropriate authorities of the States and
24 Territories, and other persons, associations and organisations,
25 on matters related to the activities of the National Regulator;
- 26 (g) to collect and distribute information, and provide advice, to:
27 (i) the Commonwealth Minister; and
28 (ii) the States and Territories; and
29 (iii) the public;
- 30 on matters related to the activities of the National Regulator
31 and the operation of this Law;
- 32 (h) to develop or commission education programs relating to
33 marine safety;

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 2 The National Marine Safety Regulator

Section 11

- 1 (i) to collect, analyse and disseminate data relating to marine
2 safety;
- 3 (j) such other functions as are conferred on the National
4 Regulator by this Law or any other law (including a law of
5 the Commonwealth, a State or the Northern Territory);
- 6 (k) to perform functions incidental to any of the previously
7 described functions.

8 **11 Delegation**

- 9 (1) The National Regulator may, by writing, delegate one or more of
10 the National Regulator's powers or functions under this Law to one
11 or more of the following:
- 12 (a) an officer or employee of an agency of the Commonwealth;
- 13 (b) an officer or employee of an agency of a State or the
14 Northern Territory.
- 15 (2) A delegate of the National Regulator is subject to the National
16 Regulator's directions in the exercise of delegated powers and the
17 performance of delegated functions.
- 18 (3) A person (the *delegate*) to whom a power or function is delegated
19 under subsection (1) may, by writing, sub-delegate that power or
20 function to another officer or employee (the *sub-delegate*) of the
21 agency of which the delegate is an officer or employee.
- 22 (4) A sub-delegate is subject to the directions of the delegate in the
23 exercise of delegated powers and the performance of delegated
24 functions.
- 25 (5) If the delegate is subject to a direction in relation to the
26 performance of the function or the exercise of the power
27 sub-delegated under subsection (4), the delegate must give a
28 corresponding direction to the sub-delegate.
- 29 (6) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*
30 of the Commonwealth apply to a sub-delegation in the same way
31 as they apply to a delegation.
- 32 (7) The National Regulator must not delegate a power or function
33 under subsection (1) to an officer or employee of an agency of a

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
The National Marine Safety Regulator **Part 2**

Section 11

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State or the Northern Territory without the agreement of the State
or the Northern Territory, as the case requires.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 1 Owners of domestic commercial vessels

Section 12

1

2 **Part 3—General safety duties**

3 **Division 1—Owners of domestic commercial vessels**

4 **12 Duty of owners of domestic commercial vessels to ensure safety of** 5 **vessels, marine safety equipment and operations**

- 6 (1) An owner of a domestic commercial vessel must, so far as
7 reasonably practicable, ensure the safety of:
8 (a) the vessel; and
9 (b) marine safety equipment that relates to the vessel; and
10 (c) the operation of the vessel.
- 11 (2) Without limiting subsection (1), an owner of a domestic
12 commercial vessel contravenes that subsection if:
13 (a) the owner does not provide or maintain the vessel so that the
14 vessel is, so far as reasonably practicable, safe; or
15 (b) the owner does not implement and maintain a safety
16 management system that ensures that the vessel and the
17 operations of the vessel are, so far as reasonably practicable,
18 safe; or
19 (c) the owner does not provide, so far as reasonably practicable,
20 such information, instruction, training or supervision to
21 people on board the vessel as is necessary to ensure their
22 safety.
- 23 (3) Without limiting subsection (1), an owner of a domestic
24 commercial vessel contravenes that subsection if:
25 (a) the owner operates the vessel, or causes or allows the vessel
26 to be operated; and
27 (b) the vessel is an unsafe vessel.
- 28 (4) Without limiting subsection (1), an owner of a domestic
29 commercial vessel contravenes that subsection if the owner
30 prevents or restricts the master of the vessel from making or

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General safety duties **Part 3**

Owners of domestic commercial vessels **Division 1**

Section 12

- 1 implementing a decision that, in the professional opinion of the
2 master, is necessary for the safety of a person or the vessel.
- 3 (5) An owner of a domestic commercial vessel commits an offence if
4 the owner:
- 5 (a) intentionally engages in conduct that contravenes
6 subsection (1); and
- 7 (b) is reckless as to whether the conduct is a risk to the safety of
8 a person or the domestic commercial vessel.
- 9 Penalty: 1,800 penalty units.
10

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 2 Designers, builders, suppliers etc. of domestic commercial vessels

Section 13

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Division 2—Designers, builders, suppliers etc. of domestic commercial vessels

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13 Duty relating to design, manufacture etc. of domestic commercial vessels

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(1) A person who designs, commissions, constructs, manufactures, supplies, maintains, repairs or modifies a domestic commercial vessel, or marine safety equipment that relates to such a vessel, must:

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(a) ensure, so far as reasonably practicable, that the vessel or equipment is safe if used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified, as the case may be; and

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(b) either:

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(i) carry out, or arrange the carrying out of, such testing and examination as may be necessary for compliance with paragraph (a); or

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(ii) ensure that such testing and examination has been carried out; and

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(c) take such action as is necessary to ensure that there will be available, in connection with the use of the vessel or equipment, adequate information about:

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(i) the use for which the vessel or equipment was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified, as the case may be; and

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

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

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
General safety duties **Part 3**
Designers, builders, suppliers etc. of domestic commercial vessels **Division 2**

Section 13

- 1 (2) A person commits an offence if the person:
2 (a) intentionally engages in conduct that contravenes
3 subsection (1); and
4 (b) is reckless as to whether the conduct is a risk to the safety of
5 a person or the domestic commercial vessel concerned.
6 Penalty: 1,800 penalty units.
7

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 3 Masters of domestic commercial vessels

Section 14

1

2 **Division 3—Masters of domestic commercial vessels**

3 **14 Duty of masters of domestic commercial vessels to ensure safety**
4 **of vessels, marine safety equipment and operations**

5 (1) The master of a domestic commercial vessel, other than a hire and
6 drive vessel used wholly for recreational purposes, must, so far as
7 reasonably practicable, ensure the safety of:

- 8 (a) the vessel; and
9 (b) marine safety equipment that relates to the vessel; and
10 (c) the operation of the vessel.

11 (2) Without limiting subsection (1), the master of a domestic
12 commercial vessel contravenes that subsection if the master does
13 not, so far as reasonably practicable, implement and comply with
14 the safety management system applicable to the vessel and the
15 operations of the vessel.

16 (3) Without limiting subsection (1), the master of a domestic
17 commercial vessel contravenes that subsection if:
18 (a) the master operates the vessel, or causes or allows the vessel
19 to be operated; and
20 (b) the vessel is an unsafe vessel.

21 (4) Without limiting subsection (1), the master of a domestic
22 commercial vessel contravenes that subsection if, when carrying
23 out duties as master or doing anything in relation to the vessel, the
24 master interferes with or misuses anything provided to him or her
25 in the interests of the safety of the vessel.

26 (5) A person commits an offence if the person:
27 (a) intentionally engages in conduct that contravenes
28 subsection (1); and
29 (b) is reckless as to whether the conduct is a risk to the safety of
30 a person or the domestic commercial vessel concerned.

31 Penalty: 1,800 penalty units.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General safety duties **Part 3**

Masters of domestic commercial vessels **Division 3**

Section 15

1 **15 Duty of masters of domestic commercial vessels to take**
2 **reasonable care for safety of persons**

3 (1) The master of a domestic commercial vessel, other than a hire and
4 drive vessel used wholly for recreational purposes, must, when
5 carrying out duties as master of the vessel:

6 (a) take reasonable care for his or her own safety; and

7 (b) take reasonable care for the safety of persons who may be
8 affected by his or her acts or omissions.

9 (2) The master of a domestic commercial vessel must not
10 unreasonably place the safety of another person at risk when
11 carrying out duties as master of the vessel.

12 (3) A person commits an offence if the person:

13 (a) intentionally engages in conduct that contravenes
14 subsection (1) or (2); and

15 (b) is reckless as to whether the conduct is a risk to the safety of
16 a person or the domestic commercial vessel concerned.

17 Penalty: 1,800 penalty units.
18

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 4 Crew of domestic commercial vessels

Section 16

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Division 4—Crew of domestic commercial vessels

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16 Duty of crew of domestic commercial vessels to take reasonable care for safety of persons, etc.

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(1) A member of the crew of a domestic commercial vessel, when carrying out duties as a member of the crew, must:

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(a) take reasonable care for his or her own safety; and

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(b) take reasonable care for the safety of persons who may be affected by his or her acts or omissions; and

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(c) comply with any reasonable and lawful directions of the master of the vessel or a supervisor.

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(2) A member of the crew of a domestic commercial vessel must not interfere with or misuse anything provided to him or her in the interests of the safety of the vessel.

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(3) A member of the crew of a domestic commercial vessel must not unreasonably place the safety of another person at risk when carrying out duties as a member of the crew.

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(4) Without limiting subsection (1), a member of the crew of a domestic commercial vessel contravenes that subsection if the member of the crew prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of a person or the vessel.

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(5) A person commits an offence if the person:

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(a) intentionally engages in conduct that contravenes subsection (1), (2) or (3); and

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(b) is reckless as to whether the conduct is a risk to the safety of a person or the domestic commercial vessel concerned.

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Penalty: 1,800 penalty units.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General safety duties **Part 3**

Passengers on domestic commercial vessels **Division 5**

Section 17

1

2 **Division 5—Passengers on domestic commercial vessels**

3 **17 Duty of passengers on domestic commercial vessels to take**
4 **reasonable care for safety of persons, etc.**

5 (1) A passenger on board a domestic commercial vessel must:

6 (a) take reasonable care for his or her own safety; and

7 (b) comply with any reasonable and lawful directions of the
8 master or a member of the crew of the vessel, if the passenger
9 has been advised that non-compliance may constitute an
10 offence.

11 (2) A passenger on board a domestic commercial vessel must not
12 interfere with or misuse anything provided to him or her in the
13 interests of the safety of the vessel.

14 (3) A passenger on board a domestic commercial vessel must not
15 unreasonably place at risk the safety of another person.

16 (4) Without limiting subsection (1), a passenger on board a domestic
17 commercial vessel contravenes that subsection if the passenger
18 prevents or restricts the master of the vessel from making or
19 implementing a decision that, in the professional opinion of the
20 master, is necessary for the safety of a person or the vessel.

21 (5) A person commits an offence if the person:

22 (a) engages in conduct that contravenes subsection (1), (2) or
23 (3); and

24 (b) is reckless as to whether the conduct is a risk to the safety of
25 a person or the domestic commercial vessel concerned.

26 Penalty: 60 penalty units.
27

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 6 Duties of other persons

Section 18

1

2 **Division 6—Duties of other persons**

3 **18 Duty of persons in relation to safety of persons on domestic**
4 **commercial vessels, etc.**

5 (1) A person must not unreasonably place at risk the safety of a person
6 on board or in the immediate vicinity of a domestic commercial
7 vessel.

8 (2) A person must take such actions as are reasonably necessary to
9 ensure the safety of a person on board a domestic commercial
10 vessel who is in immediate danger.

11 (3) Without limiting subsection (1), a person contravenes that
12 subsection if the person prevents or restricts the master of the
13 vessel from making or implementing a decision that, in the
14 professional opinion of the master, is necessary for the safety of a
15 person or the vessel.

16 (4) A person commits an offence if the person:
17 (a) engages in conduct that contravenes subsection (1) or (2);
18 and
19 (b) is reckless as to whether the conduct is a risk to, or will not
20 ensure, the safety of a person.

21 Penalty: 60 penalty units.

22 **19 Duty of persons in relation to domestic commercial vessels and**
23 **cargo, etc.**

24 (1) A person must not unreasonably cause, or engage in conduct that
25 may cause, the loss or destruction of, or serious damage to, a
26 domestic commercial vessel or the cargo of a domestic commercial
27 vessel.

28 (2) A person must take such actions as are reasonably practicable to
29 prevent the loss or destruction of, or serious damage to, a domestic
30 commercial vessel or the cargo of a domestic commercial vessel.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
General safety duties **Part 3**
Duties of other persons **Division 6**

Section 19

- 1 (3) Without limiting subsection (1), a person contravenes that
2 subsection if the person prevents or restricts the master of the
3 vessel from making or implementing a decision that, in the
4 professional opinion of the master, is necessary for the safety of a
5 person or the vessel.
- 6 (4) A person commits an offence if the person:
7 (a) engages in conduct that contravenes subsection (1) or (2);
8 and
9 (b) is reckless as to whether the conduct will cause the loss or
10 destruction of, or serious damage to, the domestic
11 commercial vessel concerned or the cargo concerned.
- 12 Penalty: 60 penalty units.
13

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 3 General safety duties

Division 7 Matters relevant to determining what is reasonably practicable to ensure safety

Section 20

1

2 **Division 7—Matters relevant to determining what is** 3 **reasonably practicable to ensure safety**

4 **20 Determining what is reasonably practicable to ensure safety**

- 5 (1) A duty imposed upon a person to ensure safety so far as reasonably
6 practicable, or to not unreasonably place at risk safety, requires the
7 person to:
- 8 (a) eliminate risks to safety so far as reasonably practicable; or
 - 9 (b) if it is not reasonably practicable to eliminate risks to safety,
10 reduce those risks so far as reasonably practicable.
- 11 (2) In determining what is reasonably practicable, regard must be had
12 to the following:
- 13 (a) the likelihood of a particular hazard or risk eventuating;
 - 14 (b) the degree of harm that would result from a particular hazard
15 or risk eventuating;
 - 16 (c) what the person concerned knows, or ought reasonably to
17 know, about the particular hazard or risk and ways of
18 reducing or eliminating the hazard or risk;
 - 19 (d) the availability and suitability, and the cost, of ways of
20 reducing or eliminating the hazard or risk.

21 **21 Determining what is reasonable care for safety**

- 22 In determining whether a person has taken reasonable care for his
23 or her own safety or the safety of another person, regard must be
24 had to the following:
- 25 (a) the steps taken by the person in relation to his or her safety or
26 the safety of the other person;
 - 27 (b) what the person concerned knows, or ought reasonably to
28 know, about particular risks to safety;
 - 29 (c) the availability and suitability of ways of reducing or
30 eliminating risks to safety;
 - 31 (d) the probability that harm could occur to the person or to
32 another person as a result of particular risks to safety;

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General safety duties **Part 3**

Matters relevant to determining what is reasonably practicable to ensure safety

Division 7

Section 21

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- (e) the likely seriousness of that harm;
- (f) any special knowledge or skill that the person concerned had which was relevant to particular risks to safety.

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 1 Vessel identification

Section 22

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Part 4—Vessel identifiers and certificates for vessels and seafarers

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Division 1—Vessel identification

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22 Person may apply for unique identifier

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(1) A person may apply to the National Regulator for a unique identifier for a domestic commercial vessel.

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(2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

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23 Issue of unique identifier

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(1) The National Regulator must, by written instrument, issue a unique identifier for a domestic commercial vessel if:

(a) an application for the unique identifier has been made under section 22; and

(b) the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the unique identifier.

19

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(2) Without limiting the criteria that may be prescribed, the regulations are to include criteria relating to the identification of the vessel.

21

22

23

(3) A unique identifier comes into force on the day specified in the written instrument or, if no day is so specified, on the day on which it is issued.

24

24 Offence—operating etc. a vessel without a unique identifier (owner)

25

26

27

28

(1) The owner of a domestic commercial vessel commits an offence if:

(a) the owner operates the vessel, or causes or permits the vessel to be operated; and

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
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Vessel identification **Division 1**

Section 25

- 1 (b) a unique identifier is not in force for the vessel; and
2 (c) the vessel is not exempt from the requirement to have a
3 unique identifier (see section 124).

4 Penalty: 60 penalty units.

- 5 (2) An offence against subsection (1) is an offence of strict liability.

6 Note: For strict liability, see section 6.1 of the *Criminal Code*.

7 **25 Offence—operating etc. a vessel without a unique identifier** 8 **(master)**

- 9 (1) The master of a domestic commercial vessel commits an offence if:

- 10 (a) the master operates the vessel, or causes or permits the vessel
11 to be operated; and
12 (b) a unique identifier is not in force for the vessel; and
13 (c) the vessel is not exempt from the requirement to have a
14 unique identifier (see section 124).

15 Penalty: 60 penalty units.

- 16 (2) An offence against subsection (1) is an offence of strict liability.

17 Note: For strict liability, see section 6.1 of the *Criminal Code*.

18

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 2 Certificates of survey

Section 26

1

2 **Division 2—Certificates of survey**

3 **26 Person may apply for a certificate of survey**

- 4 (1) A person may apply to the National Regulator for a certificate of
5 survey for a domestic commercial vessel.
- 6 (2) The application must be in accordance with the regulations and
7 must be accompanied by the fee prescribed by the regulations (if
8 any).

9 **27 Issue of certificate of survey**

- 10 (1) The National Regulator must issue a certificate of survey for a
11 domestic commercial vessel if:
- 12 (a) an application for the certificate has been made under
13 section 26; and
- 14 (b) the National Regulator is satisfied that the vessel has been
15 surveyed by an accredited surveyor; and
- 16 (c) the National Regulator is satisfied that the criteria prescribed
17 by the regulations are met in relation to the issue of the
18 certificate.
- 19 (2) Without limiting the criteria that may be prescribed, the regulations
20 are to include criteria relating to:
- 21 (a) the technical specifications that the vessel must satisfy; and
22 (b) the standards prescribed as mentioned in section 135 that the
23 vessel must satisfy.
- 24 (3) A certificate of survey is subject to:
- 25 (a) the conditions (if any) prescribed by the regulations; and
26 (b) the conditions (if any) imposed by the National Regulator.
- 27 (4) Conditions prescribed by the regulations or imposed by the
28 National Regulator may include, but are not limited to, conditions
29 relating to:

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Vessel identifiers and certificates for vessels and seafarers **Part 4**
Certificates of survey **Division 2**

Section 28

- 1 (a) the frequency with which a vessel must be surveyed by an
2 accredited surveyor; and
3 (b) compliance with standards prescribed as mentioned in
4 section 135.
- 5 (5) A certificate of survey:
6 (a) comes into force on the day specified in the certificate, or, if
7 no day is so specified, on the day on which it is issued; and
8 (b) remains in force until the day specified in the certificate,
9 unless it is revoked earlier.

28 Person may apply for variation or revocation of a certificate of survey

- 10 (1) A person may apply to the National Regulator for a variation or
11 revocation of a certificate of survey for a domestic commercial
12 vessel.
13
14 (2) The application must be in accordance with the regulations and
15 must be accompanied by the fee prescribed by the regulations (if
16 any).
17

29 Variation of certificate of survey

- 18 (1) The National Regulator must vary a certificate of survey if:
19 (a) an application for variation of the certificate has been made
20 under section 28; and
21 (b) the National Regulator is satisfied that the criteria prescribed
22 by the regulations in relation to the variation are met.
23
- 24 (2) The National Regulator must vary a certificate of survey on the
25 National Regulator's initiative if the National Regulator is satisfied
26 that the criteria prescribed by the regulations in relation to variation
27 on the initiative of the National Regulator are met.
- 28 (3) Without limiting subsections (1) and (2), the National Regulator
29 may vary a certificate of survey to impose a condition on the
30 certificate or to vary or revoke such a condition.

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Certificates of survey **Division 2**

Section 33

1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 **33 Offence—breach of a condition of a certificate of survey (owner)**

- 3 (1) The owner of a domestic commercial vessel commits an offence if:
4 (a) the owner operates the vessel, or causes or permits the vessel
5 to be operated; and
6 (b) the operation of the vessel is in breach of a condition of the
7 certificate of survey of the vessel.

8 Penalty: 60 penalty units.

- 9 (2) An offence against subsection (1) is an offence of strict liability.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

11 **34 Offence—breach of a condition of a certificate of survey (master)**

- 12 (1) The master of a domestic commercial vessel commits an offence if:
13 (a) the master operates the vessel, or causes or permits the vessel
14 to be operated; and
15 (b) the operation of the vessel is in breach of a condition of the
16 certificate of survey of the vessel.

17 Penalty: 60 penalty units.

- 18 (2) An offence against subsection (1) is an offence of strict liability.

19 Note: For strict liability, see section 6.1 of the *Criminal Code*.

20

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 3 Certificates of operation

Section 35

1

2 **Division 3—Certificates of operation**

3 **35 Person may apply for a certificate of operation**

- 4 (1) A person may apply to the National Regulator for a certificate of
5 operation for:
- 6 (a) a domestic commercial vessel; or
7 (b) the operation of domestic commercial vessels by the person
8 or by another person.
- 9 (2) The application must be in accordance with the regulations and
10 must be accompanied by the fee prescribed by the regulations (if
11 any).

12 **36 Issue of certificate of operation**

- 13 (1) The National Regulator must issue a certificate of operation for a
14 domestic commercial vessel, or a person, if:
- 15 (a) an application for the certificate has been made under
16 section 35; and
17 (b) if the application relates to a person—the National Regulator
18 is satisfied that the person is a fit and proper person to hold
19 the certificate; and
20 (c) the National Regulator is satisfied that the criteria prescribed
21 by the regulations are met in relation to the issue of the
22 certificate.
- 23 (2) Without limiting the criteria that may be prescribed, the regulations
24 are to include criteria relating to the safe operation of vessels.
- 25 (3) A certificate of operation is subject to:
- 26 (a) the conditions (if any) prescribed by the regulations; and
27 (b) the conditions (if any) imposed by the National Regulator.
- 28 (4) Conditions prescribed by the regulations or imposed by the
29 National Regulator on a certificate of operation may include, but
30 are not limited to, conditions relating to the following for the vessel

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- 1 to which the certificate relates, or for vessels operated by the
2 person to whom the certificate relates or by other persons:
- 3 (a) the number and qualifications of crew required to be on
4 board while the relevant vessel or vessels are being operated;
5 (b) certification of the master and crew;
6 (c) the number of people that may be on board;
7 (d) the condition of specified physical parts of the relevant vessel
8 or vessels;
9 (e) safety management systems;
10 (f) limitations on use by reference to geographical and
11 meteorological factors and time of day;
12 (g) operating hours;
13 (h) compliance with standards prescribed as mentioned in
14 section 135.
- 15 (5) A certificate of operation:
- 16 (a) comes into force on the day specified in the certificate, or, if
17 no day is so specified, on the day on which it is issued; and
18 (b) remains in force until the day specified in the certificate,
19 unless it is revoked earlier.

20 **37 Person may apply for variation or revocation of a certificate of** 21 **operation**

- 22 (1) A person may apply to the National Regulator for a variation or
23 revocation of a certificate of operation for a domestic commercial
24 vessel.
- 25 (2) The application must be in accordance with the regulations and
26 must be accompanied by the fee prescribed by the regulations (if
27 any).

28 **38 Variation of certificate of operation**

- 29 (1) The National Regulator must vary a certificate of operation for a
30 domestic commercial vessel if:
- 31 (a) an application for variation of the certificate has been made
32 under section 37; and

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Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 3 Certificates of operation

Section 39

- 1 (b) the National Regulator is satisfied that the criteria prescribed
2 by the regulations in relation to the variation are met.
- 3 (2) The National Regulator must vary a certificate of operation on the
4 National Regulator's initiative if the National Regulator is satisfied
5 that the criteria prescribed by the regulations in relation to variation
6 on the initiative of the National Regulator are met.
- 7 (3) Without limiting subsections (1) and (2), the National Regulator
8 may vary a certificate of operation to impose a condition on the
9 certificate or to vary or revoke such a condition.

10 **39 Revocation of certificate of operation**

- 11 (1) The National Regulator must revoke a certificate of operation for a
12 domestic commercial vessel if:
- 13 (a) an application for revocation of the certificate has been made
14 under section 37; and
- 15 (b) the National Regulator is satisfied that the criteria prescribed
16 by the regulations in relation to revocation on application are
17 met.
- 18 (2) The National Regulator must revoke a certificate of operation on
19 the National Regulator's initiative if the National Regulator is
20 satisfied that the criteria prescribed by the regulations in relation to
21 revocation on the initiative of the National Regulator are met.

22 **40 Offence—operating etc. a vessel without a certificate of operation** 23 **(owner)**

- 24 (1) The owner of a domestic commercial vessel commits an offence if:
- 25 (a) the owner operates the vessel, or causes or permits the vessel
26 to be operated by another person; and
- 27 (b) a certificate of operation is not in force for either:
- 28 (i) the vessel; or
- 29 (ii) the operation of domestic commercial vessels of that
30 kind by the person who operates the vessel; and
- 31 (c) neither of the following applies:

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Certificates of operation **Division 3**

Section 41

- 1 (i) the vessel is exempt from the requirement to have a
2 certificate of operation (see section 124);
3 (ii) the person who operates the vessel is exempt from the
4 requirement to have a certificate of operation for vessels
5 of that kind (see section 124).

6 Penalty: 60 penalty units.

- 7 (2) An offence against subsection (1) is an offence of strict liability.

8 Note: For strict liability, see section 6.1 of the *Criminal Code*.

9 **41 Offence—operating etc. a vessel without a certificate of operation** 10 **(master)**

- 11 (1) The master of a domestic commercial vessel commits an offence if:
12 (a) the master operates the vessel, or causes or permits the vessel
13 to be operated by another person; and
14 (b) a certificate of operation is not in force for either:
15 (i) the vessel; or
16 (ii) the operation of domestic commercial vessels of that
17 kind by the master or, if the vessel is operated by
18 another person, that person; and
19 (c) neither of the following applies:
20 (i) the vessel is exempt from the requirement to have a
21 certificate of operation (see section 124);
22 (ii) the person who operates the vessel is exempt from the
23 requirement to have a certificate of operation in respect
24 of vessels of that kind (see section 124).

25 Penalty: 60 penalty units.

- 26 (2) An offence against subsection (1) is an offence of strict liability.

27 Note: For strict liability, see section 6.1 of the *Criminal Code*.

28 **42 Offence—breach of a condition of a certificate of operation** 29 **(owner)**

- 30 (1) The owner of a domestic commercial vessel commits an offence if:
-

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Division 3 Certificates of operation

Section 43

- 1 (a) the owner operates the vessel, or causes or permits the vessel
2 to be operated; and
3 (b) the operation of the vessel is in breach of a condition of
4 either of the following:
5 (i) the certificate of operation of the vessel;
6 (ii) a certificate of operation of domestic commercial
7 vessels held by the person who operates the vessel.

8 Penalty: 60 penalty units.

- 9 (2) An offence against subsection (1) is an offence of strict liability.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

11 **43 Offence—breach of a condition of a certificate of operation** 12 **(master)**

- 13 (1) The master of a domestic commercial vessel commits an offence if:
14 (a) the master operates the vessel, or causes or permits the vessel
15 to be operated; and
16 (b) the operation of the vessel is in breach of a condition of
17 either of the following:
18 (i) the certificate of operation of the vessel;
19 (ii) a certificate of operation of domestic commercial
20 vessels held by the master.

21 Penalty: 60 penalty units.

- 22 (2) An offence against subsection (1) is an offence of strict liability.

23 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 24 (3) It is a defence to a prosecution for an offence against subsection (1)
25 if the master was acting under the instruction of the owner of the
26 vessel.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Vessel identifiers and certificates for vessels and seafarers **Part 4**
Seafarer certificates **Division 4**

Section 44

1

2 **Division 4—Seafarer certificates**

3 **44 Regulations may provide for seafarer certificate**

- 4 (1) The regulations may make provision in relation to seafarer
5 certificates.
- 6 (2) The regulations may require that an individual hold a seafarer
7 certificate of a particular kind in order to undertake particular
8 duties, or perform particular functions, in the person's capacity as
9 the master or a member of the crew of a domestic commercial
10 vessel.
- 11 (3) The regulations may provide for different classes of seafarer
12 certificates.

13 **45 Individual may apply for a seafarer certificate**

- 14 (1) An individual may apply to the National Regulator for a seafarer
15 certificate.
- 16 (2) The application must be in accordance with the regulations and
17 must be accompanied by the fee prescribed by the regulations (if
18 any).

19 **46 Issue of seafarer certificate**

- 20 (1) The National Regulator must issue a seafarer certificate to a person
21 if:
- 22 (a) the person has made an application for the certificate under
23 section 45; and
- 24 (b) the National Regulator is satisfied that the person is a fit and
25 proper person to hold the certificate; and
- 26 (c) the National Regulator is satisfied that the criteria prescribed
27 by the regulations are met in relation to the issue of the
28 certificate.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 4 Seafarer certificates

Section 47

- 1 (2) Without limiting the criteria that may be prescribed, the regulations
2 are to include criteria relating to the proficiencies required for a
3 particular seafarer certificate to be issued to a person.
- 4 (3) A seafarer certificate is subject to:
5 (a) the conditions (if any) prescribed by the regulations; and
6 (b) the conditions (if any) imposed by the National Regulator.
- 7 (4) Conditions prescribed by the regulations or imposed by the
8 National Regulator may include, but are not limited to, conditions
9 relating to the tests, including medical tests, assessments of
10 experience and examinations, that the holder of the certificate must
11 take in order to retain the certificate.
- 12 (5) A seafarer certificate:
13 (a) comes into force on the day specified in the certificate or, if
14 no day is specified, the day on which it is issued; and
15 (b) remains in force until the day specified in the certificate,
16 unless it is revoked earlier .

47 Person may apply for variation or revocation of a seafarer certificate

- 17
18
- 19 (1) A person may apply to the National Regulator for a variation or
20 revocation of a seafarer certificate held by the person.
- 21 (2) The application must be in accordance with the regulations and
22 must be accompanied by the fee prescribed by the regulations (if
23 any).

48 Variation of seafarer certificate

- 24
- 25 (1) The National Regulator must vary a seafarer certificate if:
26 (a) an application for variation of the certificate has been made
27 under section 47; and
28 (b) the National Regulator is satisfied that the criteria prescribed
29 by the regulations in relation to the variation are met.
- 30 (2) The National Regulator must vary a seafarer certificate on the
31 National Regulator's initiative if the National Regulator is satisfied

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Vessel identifiers and certificates for vessels and seafarers **Part 4**
Seafarer certificates **Division 4**

Section 49

1 that the criteria prescribed by the regulations in relation to variation
2 on the initiative of the National Regulator are met.

3 (3) Without limiting subsections (1) and (2), the National Regulator
4 may vary a seafarer certificate to impose a condition on the
5 certificate or to vary or revoke such a condition.

6 **49 Revocation of seafarer certificate**

7 (1) The National Regulator must revoke a seafarer certificate if:
8 (a) an application for revocation of the certificate has been made
9 under section 47; and
10 (b) the National Regulator is satisfied that the criteria prescribed
11 by the regulations in relation to revocation on application are
12 met.

13 (2) The National Regulator must revoke a seafarer certificate on the
14 National Regulator's initiative if the National Regulator is satisfied
15 that the criteria prescribed by the regulations in relation to
16 revocation on the initiative of the National Regulator are met.

17 **50 Offence—owner causing etc. performance of duties or functions** 18 **without a seafarer certificate**

19 (1) The owner of a domestic commercial vessel commits an offence if:
20 (a) the owner causes or permits another person to perform duties
21 or functions in relation to the vessel; and
22 (b) the regulations require the other person to hold a seafarer
23 certificate of a particular kind in order to perform those
24 duties or functions; and
25 (c) the other person does not hold a seafarer certificate of that
26 kind; and
27 (d) the person is not exempt from the requirement to hold a
28 seafarer certificate of that kind (see section 124).

29 Penalty: 60 penalty units.

30 (2) An offence against subsection (1) is an offence of strict liability.

31 Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 4 Seafarer certificates

Section 51

51 Offence—person performing duties or functions without a seafarer certificate

- (1) A person commits an offence if:
- (a) the person performs duties or functions in relation to a domestic commercial vessel; and
 - (b) the regulations require the person to hold a seafarer certificate of a particular kind in order to perform those duties or functions; and
 - (c) the person does not hold a seafarer certificate of that kind; and
 - (d) the person is not exempt from the requirement to hold a seafarer certificate of that kind (see section 124).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

52 Offence—master causing etc. performance of duties or functions without a seafarer certificate

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the master causes or permits another person to perform duties or functions in relation to the vessel; and
 - (b) the regulations require the other person to hold a seafarer certificate of a particular kind in order to perform those duties or functions; and
 - (c) the other person does not hold a seafarer certificate of that kind; and
 - (d) the other person is not exempt from the requirement to hold a seafarer certificate of that kind (see section 124).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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1 **53 Offence—owner causing etc. breach of a condition of a seafarer**
2 **certificate**

- 3 (1) The owner of a domestic commercial vessel commits an offence if:
4 (a) the owner causes or permits another person to perform duties
5 or functions in relation to the vessel; and
6 (b) the performance of the duties or functions is in breach of a
7 condition of a seafarer certificate held by the other person.

8 Penalty: 60 penalty units.

- 9 (2) An offence against subsection (1) is an offence of strict liability.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

11 **54 Offence—breach of a condition of a seafarer certificate by any**
12 **person**

- 13 (1) A person commits an offence if:
14 (a) the person performs duties or functions in relation to a
15 domestic commercial vessel; and
16 (b) the performance of the duties or functions is in breach of a
17 condition of a seafarer certificate held by the person.

18 Penalty: 60 penalty units.

- 19 (2) An offence against subsection (1) is an offence of strict liability.

20 Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 **55 Offence—master causing etc. breach of a condition of a seafarer**
22 **certificate**

- 23 (1) The master of a domestic commercial vessel commits an offence if:
24 (a) the master causes or permits another person to perform duties
25 or functions in relation to the vessel; and
26 (b) the performance of the duties or functions is in breach of a
27 condition of a seafarer certificate held by the other person.

28 Penalty: 60 penalty units.

- 29 (2) An offence against subsection (1) is an offence of strict liability.
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Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 4 Seafarer certificates

Section 55

1
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Note: For strict liability, see section 6.1 of the *Criminal Code*.

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General matters relating to certificates **Division 5**

Section 56

1

2 **Division 5—General matters relating to certificates**

3 **56 National Regulator may require information**

- 4 (1) The National Regulator may require a person to give further
5 information in relation to an application by the person for a
6 certificate.
- 7 (2) The National Regulator may require information to be given under
8 this section at any time before the National Regulator decides the
9 application, whether before or after the National Regulator has
10 begun to consider the application.
- 11 (3) If the National Regulator requires information to be given under
12 this section in relation to an application, the National Regulator
13 may decline to consider or further consider the application until the
14 information is provided.

15 **57 National Regulator must give a show cause notice before varying 16 or revoking a certificate**

- 17 (1) The National Regulator must, before varying or revoking a
18 certificate:
- 19 (a) give the holder of the certificate notice in writing inviting the
20 holder to show cause, within a reasonable period specified in
21 the notice, why the variation should not be made or the
22 certificate should not be revoked; and
- 23 (b) consider any representations the holder makes to the National
24 Regulator within that period.
- 25 (2) The National Regulator is not required to give a notice under
26 subsection (1) before varying or revoking a certificate on
27 application made by the holder of the certificate.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 5 General matters relating to certificates

Section 58

58 Suspension of certificates

(1) The National Regulator may, by written notice given to the holder of a certificate, suspend the certificate if the National Regulator considers that the suspension is necessary for the purpose of:

- (a) saving human life; or
- (b) securing the safe navigation of vessels; or
- (c) dealing with an emergency involving a serious threat to the environment.

(2) A suspension:

- (a) comes into force on the day specified in the notice or, if no day is so specified, on the day on which the notice is issued; and
- (b) remains in force until the end of the period specified in the notice, which must not exceed the prescribed period, unless it is revoked earlier.

59 National Regulator may recognise certificates

(1) The National Regulator may, by written instrument, recognise a certificate, or a class of certificates, issued for a vessel under a law of a State or Territory or a law of a foreign country if the National Regulator is satisfied:

- (a) that the certificate is the equivalent of, or that it is otherwise appropriate to recognise the certificate as the equivalent of, a prescribed certificate; or
- (b) that the class of certificates is the equivalent of, or that it is otherwise appropriate to recognise the class of certificates as the equivalent of, a class of prescribed certificates.

(2) At a time when a certificate in force for a vessel is recognised under this section, the prescribed certificate is taken to be in force for the vessel.

(3) The National Regulator may specify conditions to which the recognition of the certificate is subject.

(4) A certificate ceases to have effect if a condition to which it is subject is contravened.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Vessel identifiers and certificates for vessels and seafarers **Part 4**
General matters relating to certificates **Division 5**

Section 60

- 1 (5) An instrument made under subsection (1) is not a legislative
2 instrument.

3 **60 Fit and proper person**

- 4 (1) Without limiting the matters which the National Regulator may
5 take into account in determining whether a person is a fit and
6 proper person for the purposes of this Part, the National Regulator
7 may have regard to the following:
8 (a) in the case of a seafarer certificate or a certificate of
9 operation:
10 (i) any conviction of the person for an offence against this
11 Law; and
12 (ii) any conviction of the person for an offence against a
13 law of a State or Territory that relates to marine safety;
14 (b) in the case of a certificate of operation—any conviction of
15 the person for an offence against a law of the
16 Commonwealth, a State or a Territory that is punishable by
17 imprisonment for a period of 1 year or longer.
- 18 (2) This section does not affect the operation of Part VIIC of the
19 *Crimes Act 1914* of the Commonwealth (which includes provisions
20 that, in certain circumstances, relieve persons of the requirement to
21 disclose spent convictions and require persons aware of such
22 convictions to disregard them).

23 **61 Regulations may provide for matters relating to certificates**

24 The regulations may provide for matters in relation to certificates.

25 **62 Regulations may provide for matters relating to applications for 26 certificates**

- 27 (1) Without limiting section 61, the regulations may prescribe the
28 following matters in relation to applications for certificates:
29 (a) the persons who may make applications;
30 (b) approval of forms for the making of applications;
31 (c) the manner of making applications;
32 (d) information required to be included in applications;
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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 4 Vessel identifiers and certificates for vessels and seafarers

Division 5 General matters relating to certificates

Section 63

- 1 (e) documents that must accompany applications;
2 (f) fees for applications;
3 (g) withdrawal of applications.
4 (2) The regulations may require information included in applications
5 to be verified by statutory declaration.

63 Regulations may make provision in relation to the issue, variation and revocation of certificates

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8 (1) Without limiting section 61, the regulations may prescribe the
9 following:
10 (a) criteria that must be satisfied in order for the National
11 Regulator to issue, vary or revoke certificates;
12 (b) the time limits within which applications for certificates are
13 to be determined;
14 (c) the information to be included in certificates;
15 (d) the person in whose name certificates are to be issued;
16 (e) conditions to which certificates are subject;
17 (f) conditions that the National Regulator may impose upon
18 certificates;
19 (g) the time at which certificates, variations of certificates and
20 revocations of certificates come into force;
21 (h) the time at which certificates cease to be in force;
22 (i) the methods of replacing certificates;
23 (j) registers of certificates;
24 (k) the criteria to be met for variation of certificates:
25 (i) on application; or
26 (ii) on the initiative of the National Regulator;
27 (l) procedures relating to notification of proposed decisions by
28 the National Regulator.
29 (2) The criteria that may be prescribed for the purposes of
30 subsection (1)(a) include, but are not limited to, criteria relating to
31 compliance with standards prescribed as mentioned in section 135.
32 (3) The conditions that may be prescribed for the purposes of
33 subsections (1)(e) and (f) include, but are not limited to, conditions

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Vessel identifiers and certificates for vessels and seafarers **Part 4**
General matters relating to certificates **Division 5**

Section 64

1 relating to compliance with standards prescribed as mentioned in
2 section 135.

3 **64 Regulations may make provision in relation to renewal and**
4 **transfer of certificates**

5 Without limiting section 61, the regulations may make provision
6 for and in relation to the following:

- 7 (a) the renewal of certificates;
8 (b) the transfer of certificates.

9 **65 Regulations may require display of certificates**

10 The regulations may require that a person display a certificate in
11 the prescribed manner.

12 **66 Defeasibility**

13 A certificate under this Law is issued on the basis that:

- 14 (a) the certificate may be revoked or varied under this Law; and
15 (b) the certificate may be revoked or varied (however described)
16 by or under later legislation; and
17 (c) no compensation is payable if the certificate is revoked or
18 varied as mentioned in either of the above paragraphs.
19

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 5 Assistance and reporting requirements

Section 67

1

2 **Part 5—Assistance and reporting requirements**

3

4 **67 Obligation to render assistance**

- 5 (1) The master of a domestic commercial vessel commits an offence if:
- 6 (a) the vessel is in any waters; and
- 7 (b) the master has reason to believe that one or more persons are
- 8 in distress on a vessel or in any waters; and
- 9 (c) the master does not both:
- 10 (i) cause his or her vessel to proceed as fast as practicable
- 11 to the assistance of the person or persons; and
- 12 (ii) inform the person or persons that the master is doing so.

13 Penalty: Imprisonment for 4 years.

- 14 (2) Subsection (1) does not apply if:
- 15 (a) the master of the domestic commercial vessel is unable to
- 16 comply with subsection (1)(c); or
- 17 (b) in the special circumstances of the case, it is unreasonable or
- 18 unnecessary for the master of the domestic commercial
- 19 vessel to do so; or
- 20 (c) the master of the domestic commercial vessel is informed by
- 21 the person or persons in distress, or by the master of another
- 22 vessel that has reached the person or persons, that assistance
- 23 is no longer necessary; or
- 24 (d) the master of the domestic commercial vessel is informed
- 25 that another vessel has been requisitioned and is complying
- 26 with the requisition.

27 Note: A defendant bears an evidential burden in relation to the matter in

28 subsection (2) (see section 13.3(3) of the *Criminal Code*).

29 **68 Obligation to render assistance if requisitioned**

- 30 (1) The master of a vessel that is in distress in any waters may, after
- 31 consulting so far as possible with the masters of vessels that
- 32 answer his or her call for assistance, requisition any domestic

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1 commercial vessel that the master considers best able to render
2 assistance.

- 3 (2) The master of a domestic commercial vessel commits an offence if:
4 (a) the vessel is requisitioned by the master of another vessel that
5 is in distress in any waters, in accordance with subsection (1);
6 and
7 (b) the master does not cause his or her vessel to proceed as fast
8 as practicable to the assistance of the other vessel.

9 Penalty: Imprisonment for 10 years.

- 10 (3) Subsection (2) does not apply if:
11 (a) the master of the domestic commercial vessel is unable to
12 comply with subsection (2)(b); or
13 (b) in the special circumstances of the case, it is unreasonable or
14 unnecessary for the master to do so; or
15 (c) the master of the domestic commercial vessel is informed by
16 the master of the vessel in distress, or by the master of
17 another vessel that has reached the vessel in distress, that
18 assistance is no longer necessary; or
19 (d) the master of the domestic commercial vessel is informed
20 that another vessel has been requisitioned and is complying
21 with the requisition.

22 Note: A defendant bears an evidential burden in relation to the matter in
23 subsection (2) (see section 13.3(3) of the *Criminal Code*).

24 **69 Obligation to record requests for assistance**

- 25 (1) The master of a domestic commercial vessel commits an offence if
26 the master:
27 (a) is required to keep an official logbook for the vessel; and
28 (b) receives information that a person or persons are in distress
29 on a vessel or in any waters, and does not proceed to the
30 assistance of the people in distress; and
31 (c) does not record in the official logbook his or her reasons for
32 not so proceeding.

33 Penalty: 50 penalty units.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 5 Assistance and reporting requirements

Section 70

1 (2) An offence against subsection (1) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

3 **70 Reporting of marine incidents to National Regulator (owner)**

4 (1) The owner of a domestic commercial vessel commits an offence if:

5 (a) the vessel is involved in a marine incident; and

6 (b) neither the owner nor the master of the vessel gives a written
7 report of the incident in the form approved by the National
8 Regulator to the National Regulator within 48 hours after the
9 owner becomes aware of the incident.

10 Penalty: 60 penalty units.

11 (2) The owner of a domestic commercial vessel commits an offence if:

12 (a) the vessel is involved in a marine incident that involves:

13 (i) the death of a person; or

14 (ii) serious injury to a person; or

15 (iii) the loss of a vessel; or

16 (iv) the loss of a person from the vessel; or

17 (v) significant damage to a vessel; and

18 (b) neither the owner nor the master of the vessel reports the
19 incident to the National Regulator as soon as reasonably
20 practicable, having regard to the circumstances, after the
21 owner becomes aware of the incident.

22 Penalty: 60 penalty units.

23 **71 Reporting of marine incidents to National Regulator (master)**

24 (1) The master of a domestic commercial vessel commits an offence if:

25 (a) the vessel is involved in a marine incident; and

26 (b) neither the master nor the owner of the vessel gives a written
27 report of the incident in the form approved by the National
28 Regulator to the National Regulator within 48 hours after the
29 master becomes aware of the incident.

30 Penalty: 60 penalty units.

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- 1 (2) The master of a domestic commercial vessel commits an offence if:
2 (a) the vessel is involved in a marine incident that involves:
3 (i) the death of a person; or
4 (ii) serious injury to a person; or
5 (iii) the loss of a vessel; or
6 (iv) the loss of a person from a vessel; or
7 (v) significant damage to a vessel; and
8 (b) neither the master nor the owner of the vessel reports the
9 incident to the National Regulator as soon as reasonably
10 practicable after the master becomes aware of the incident,
11 having regard to the circumstances.

12 Penalty: 60 penalty units.

13 **72 Evidence of marine incidents**

14 *Preservation of evidence by persons on board vessel*

- 15 (1) A person on board a domestic commercial vessel commits an
16 offence if:
17 (a) the vessel is involved in a marine incident; and
18 (b) the person does not, so far as reasonably practicable, preserve
19 any material that may be relevant to an investigation of the
20 marine incident.

21 Penalty: 60 penalty units.

- 22 (2) An offence against subsection (1) is an offence of strict liability.

23 Note: For strict liability, see section 6.1 of the *Criminal Code*.

24 *Vessel owner's duty to ensure preservation of evidence*

- 25 (3) The owner of a domestic commercial vessel commits an offence if:
26 (a) the vessel is involved in a marine incident; and
27 (b) the owner does not take all reasonable steps to ensure the
28 preservation of any material that may be relevant to an
29 investigation of the marine incident.

30 Penalty: 60 penalty units.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Appointment of marine safety inspectors etc. **Division 1**

Section 73

1

2 **Part 6—Powers of marine safety inspectors**

3 **Division 1—Appointment of marine safety inspectors etc.**

4 **73 Appointment of marine safety inspectors**

- 5 (1) The National Regulator may, in writing, appoint any of the
6 following as a marine safety inspector:
7 (a) an officer or employee of an agency of the Commonwealth;
8 (b) an officer or employee of an agency of a State or Territory;
9 (c) a person who is a member of a class of persons prescribed by
10 the regulations for the purposes of this paragraph.
- 11 (2) A marine safety inspector may exercise all of the powers of a
12 marine safety inspector under this Law, or such of those powers as
13 are specified in the inspector's instrument of appointment.
- 14 (3) The National Regulator must not appoint a person as a marine
15 safety inspector unless the National Regulator is satisfied that the
16 person has suitable qualifications or experience to properly
17 exercise the powers of an inspector.
- 18 (4) The National Regulator must not appoint an officer or employee of
19 an agency of a State or Territory as a marine safety inspector
20 without the agreement of the State or Territory.
- 21 (5) In exercising his or her powers or performing his or her functions
22 as a marine safety inspector, the inspector must comply with any
23 direction of the National Regulator.

24 **74 Identity cards**

- 25 (1) The National Regulator must issue an identity card to a marine
26 safety inspector appointed under section 73.
- 27 (2) The identity card must:
28 (a) be in the form approved by the National Regulator; and

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 1 Appointment of marine safety inspectors etc.

Section 75

- 1 (b) contain a recent photograph of the marine safety inspector;
2 and
3 (c) state the powers that the inspector may exercise.

- 4 (3) A person commits an offence if:
5 (a) the person has been issued with an identity card; and
6 (b) the person ceases to be a marine safety inspector; and
7 (c) the person does not, as soon as practicable after so ceasing,
8 return the identity card to the National Regulator.

9 Penalty: 1 penalty unit.

- 10 (4) An offence against subsection (3) is an offence of strict liability.

11 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 12 (5) Subsection (3) does not apply if the identity card was lost or
13 destroyed.

14 Note: A defendant bears an evidential burden in relation to the matter in
15 subsection (5) (see section 13.3(3) of the *Criminal Code*).

- 16 (6) A marine safety inspector appointed under section 73 must carry
17 his or her identity card at all times when exercising powers and
18 performing functions and duties as an inspector.

19 **75 False representation about being a marine safety inspector**

- 20 (1) A person must not make a representation that the person is a
21 marine safety inspector if the person is not a marine safety
22 inspector.

23 Penalty: 60 penalty units.

- 24 (2) An offence against subsection (1) is an offence of strict liability.

25 Note: For strict liability, see section 6.1 of the *Criminal Code*.

26 **76 Obstructing or hindering a marine safety inspector**

27 A person must not obstruct or hinder a marine safety inspector in
28 the exercise of his or her powers under this Law.

29 Penalty: 60 penalty units.
30

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Search and seizure powers of marine safety inspectors **Division 2**

Section 77

1

2 **Division 2—Search and seizure powers of marine safety**
3 **inspectors**

4 **77 Entering premises with consent or under warrant**

5 (1) A marine safety inspector may enter any premises for monitoring
6 purposes.

7 (2) A marine safety inspector may enter any premises if he or she has
8 reasonable grounds for suspecting that there may be evidential
9 material on the premises.

10 (3) Despite subsections (1) and (2), a marine safety inspector is not
11 authorised to enter the premises unless:

12 (a) the occupier of the premises has consented to the entry, and:

13 (i) if the inspector has been appointed under section 73—
14 the inspector has shown his or her identity card if
15 required by the occupier; or

16 (ii) if the inspector is a member of the Australian Federal
17 Police or of the police force (however described) of a
18 State or a Territory—the inspector is in uniform, or has
19 shown his or her police identification if required by the
20 occupier; or

21 (b) the entry is made under a warrant.

22 Note: If entry to the premises is with the occupier's consent, the inspector
23 must leave the premises if the consent ceases to have effect: see
24 section 92.

25 **78 Entering certain premises, without consent or warrant, for access**
26 **to domestic commercial vessel**

27 (1) A marine safety inspector may enter any premises that are a
28 structure, building or place, and are not used as a residence, to gain
29 access to a domestic commercial vessel for monitoring purposes.

30 (2) However, subsection (1) does not authorise a marine safety
31 inspector to enter premises unless:

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

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Division 2 Search and seizure powers of marine safety inspectors

Section 79

- 1 (a) if the inspector has been appointed under section 73—the
2 inspector has shown his or her identity card if required by the
3 occupier; or
4 (b) if the inspector is a member of the Australian Federal Police
5 or of the police force (however described) of a State or a
6 Territory—the inspector is in uniform, or has shown his or
7 her police identification if required by the occupier.
- 8 (3) This section has effect despite section 77.

79 Boarding a domestic commercial vessel

- 10 (1) A marine safety inspector may board a domestic commercial vessel
11 for monitoring purposes.
- 12 (2) If:
13 (a) the inspector has been appointed under section 73; and
14 (b) the master of the vessel requests the inspector to produce
15 identification;
16 the inspector must produce his or her identity card.
- 17 (3) If:
18 (a) the inspector is a member of the Australian Federal Police or
19 of the police force (however described) of a State or a
20 Territory and is not in uniform; and
21 (b) the master of the vessel requests the inspector to produce
22 identification;
23 the inspector must produce his or her police identification.
- 24 (4) If the marine safety inspector fails to produce the identity card or
25 police identification, the inspector must:
26 (a) leave the vessel; and
27 (b) not re-board the vessel without producing the identity card or
28 police identification or wearing police uniform.
- 29 (5) This section has effect despite section 77.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

Search and seizure powers of marine safety inspectors **Division 2**

Section 80

1 **80 Requirement to facilitate boarding a domestic commercial vessel**

- 2 (1) A marine safety inspector may require a person to take reasonable
3 steps to facilitate the boarding of a domestic commercial vessel
4 under section 77 or 79.
- 5 (2) A requirement under subsection (1) may be made by any
6 reasonable means.
- 7 (3) The requirement is made whether or not the person in charge of the
8 vessel understands or is aware of the requirement.

9 **81 Monitoring powers of marine safety inspectors**

- 10 (1) A marine safety inspector may exercise one or more of the powers
11 (the *monitoring powers*) mentioned in subsection (2) in relation to
12 premises (whether the inspector is on the premises or not) for
13 monitoring purposes.
- 14 (2) The monitoring powers are as follows:
- 15 (a) the power to search the premises and any thing on the
16 premises;
- 17 (b) the power to examine or observe any activity conducted on
18 the premises;
- 19 (c) the power to inspect, examine, take measurements of or
20 conduct tests on any thing on the premises;
- 21 (d) the power to make any still or moving image or any
22 recording of the premises or any thing on the premises;
- 23 (e) the power to inspect any document on the premises;
- 24 (f) the power to take extracts from, or make copies of, any such
25 document;
- 26 (g) the power to take onto the premises such equipment and
27 materials as the inspector requires for the purpose of
28 exercising powers in relation to the premises;
- 29 (h) the power to require a person on the premises to demonstrate
30 the operation of machinery or equipment on the premises;
- 31 (i) the power to require a person on the premises to give a
32 marine safety inspector one or more of the following:
- 33 (i) the person's name;

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 2 Search and seizure powers of marine safety inspectors

Section 81

- 1 (ii) the person's residential address;
- 2 (iii) the person's date of birth;
- 3 (iv) evidence of the person's identity;
- 4 (j) the powers set out in subsections (3), (4), (5) and (7).
- 5 (3) If the premises are a domestic commercial vessel, the **monitoring**
- 6 **powers** include the power to require (by any reasonable means) the
- 7 master of the vessel to do one or more of the following:
- 8 (a) stop or manoeuvre the vessel;
- 9 (b) adopt a specified course or speed;
- 10 (c) maintain a specified course or speed;
- 11 (d) take the vessel to a specified place.
- 12 (4) The **monitoring powers** include the power, when on premises, to
- 13 operate electronic equipment on the premises to see whether:
- 14 (a) the equipment; or
- 15 (b) a disk, tape or other storage device that:
- 16 (i) is on the premises; and
- 17 (ii) can be used with the equipment or is associated with it;
- 18 contains information (**data**) that is relevant for monitoring
- 19 purposes.
- 20 (5) The **monitoring powers** include the following powers exercisable
- 21 when on or leaving premises in relation to data found in the
- 22 exercise of the power under subsections (1), (2) and (4):
- 23 (a) the power to operate electronic equipment on the premises to
- 24 put the data in documentary form and remove the documents
- 25 so produced from the premises;
- 26 (b) the power to operate electronic equipment on the premises to
- 27 transfer the data to a disk, tape or other storage device that:
- 28 (i) is brought to the premises for the exercise of the power;
- 29 or
- 30 (ii) is on the premises and the use of which for that purpose
- 31 has been agreed in writing by the occupier of the
- 32 premises;
- 33 and remove the disk, tape or other storage device from the
- 34 premises.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

Search and seizure powers of marine safety inspectors **Division 2**

Section 82

- 1 (6) A marine safety inspector may operate electronic equipment as
2 mentioned in subsection (4) or (5) only if he or she believes on
3 reasonable grounds that the operation of the equipment can be
4 carried out without damage to the equipment.
- 5 (7) The *monitoring powers* include the power to secure a thing on
6 premises for a period not exceeding 24 hours if:
7 (a) the thing is found during the exercise of monitoring powers
8 on the premises; and
9 (b) a marine safety inspector believes on reasonable grounds
10 that:
11 (i) the thing affords evidence of the commission of an
12 offence against this Law; and
13 (ii) it is necessary to secure the thing in order to prevent it
14 from being concealed, lost or destroyed before a warrant
15 to seize the thing is obtained; and
16 (iii) it is necessary to secure the thing without a warrant
17 because the circumstances are serious and urgent.
- 18 (8) If a marine safety inspector believes on reasonable grounds that the
19 thing needs to be secured for more than 24 hours, he or she may
20 apply to a magistrate for an extension of that period.
- 21 (9) The marine safety inspector must give notice to the occupier of the
22 premises of his or her intention to apply for an extension. The
23 occupier is entitled to be heard in relation to that application.
- 24 (10) The provisions of this Part relating to the issue of monitoring
25 warrants apply, with such modifications as are necessary, to the
26 issue of an extension.
- 27 (11) The 24-hour period may be extended more than once.

82 Enforcement powers of marine safety inspectors

- 29 (1) If a marine safety inspector has reasonable grounds for suspecting
30 that there may be evidential material on any premises, the inspector
31 may exercise the following powers (the *enforcement powers*) in
32 relation to the premises (whether the inspector is on the premises
33 or not):

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 2 Search and seizure powers of marine safety inspectors

Section 82

- 1 (a) if entry to the premises is with the occupier's consent—the
2 power to search the premises and any thing on the premises
3 for the evidential material the inspector has reasonable
4 grounds for suspecting may be on the premises;
- 5 (b) if entry to the premises is under an enforcement warrant:
6 (i) the power to search the premises and any thing on the
7 premises for the kind of evidential material specified in
8 the warrant; and
9 (ii) the power to seize evidential material of that kind if the
10 inspector finds it on the premises;
- 11 (c) the power to inspect, examine, take measurements of,
12 conduct tests on or take samples of evidential material
13 referred to in paragraph (a) or (b);
- 14 (d) the power to make any still or moving image or any
15 recording of the premises or evidential material referred to in
16 paragraph (a) or (b);
- 17 (e) the power to take onto the premises such equipment and
18 materials as the inspector requires for the purpose of
19 exercising powers in relation to the premises;
- 20 (f) the power to require a person on the premises to demonstrate
21 the operation of machinery or equipment on the premises;
- 22 (g) the powers set out in subsections (2), (3), (4) and (7).
- 23 (2) If the premises are a domestic commercial vessel, the **enforcement**
24 **powers** include the power to require (by any reasonable means) the
25 master of the vessel to do one or more of the following:
26 (a) stop or manoeuvre the vessel;
27 (b) adopt a specified course or speed;
28 (c) maintain a specified course or speed;
29 (d) take the vessel to a specified place.
- 30 (3) The **enforcement powers** include the power to operate electronic
31 equipment on the premises to see whether:
32 (a) the equipment; or
33 (b) a disk, tape or other storage device that:
34 (i) is on the premises; and
35 (ii) can be used with the equipment or is associated with it;

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Search and seizure powers of marine safety inspectors **Division 2**

Section 82

- 1 contains evidential material referred to in subsection (1)(a) or (b).
- 2 (4) The ***enforcement powers*** include the following powers exercisable
3 when on or leaving premises in relation to evidential material
4 described in subsection (3) found in the exercise of the power
5 under that subsection:
- 6 (a) if entry to the premises is under an enforcement warrant—the
7 power to seize the equipment and the disk, tape or other
8 storage device referred to in that subsection;
- 9 (b) the power to operate electronic equipment on the premises to
10 put the evidential material in documentary form and remove
11 the documents so produced from the premises;
- 12 (c) the power to operate electronic equipment on the premises to
13 transfer the evidential material to a disk, tape or other storage
14 device that:
- 15 (i) is brought to the premises for the exercise of the power;
16 or
- 17 (ii) is on the premises and the use of which for that purpose
18 has been agreed, in writing, by the occupier of the
19 premises;
- 20 and remove the disk, tape or other storage device from the
21 premises.
- 22 (5) A marine safety inspector may operate electronic equipment as
23 mentioned in subsection (3) or (4) only if he or she believes on
24 reasonable grounds that the operation of the equipment can be
25 carried out without damage to the equipment.
- 26 (6) A marine safety inspector may seize equipment or a disk, tape or
27 other storage device as mentioned in subsection (4)(a) only if:
- 28 (a) it is not practicable to put the evidential material in
29 documentary form as mentioned in subsection (4)(b) or to
30 transfer the evidential material as mentioned in
31 subsection (4)(c); or
- 32 (b) possession of the equipment or the disk, tape or other storage
33 device by the occupier could constitute an offence against a
34 law of the Commonwealth, a State or a Territory.
- 35 (7) If:

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 2 Search and seizure powers of marine safety inspectors

Section 83

- 1 (a) entry to the premises is under an enforcement warrant; and
2 (b) the marine safety inspector, in the course of searching for the
3 kind of evidential material specified in the warrant, finds a
4 thing that the inspector believes on reasonable grounds to be
5 other evidential material; and
6 (c) the inspector believes on reasonable grounds that it is
7 necessary to seize the thing in order to prevent its
8 concealment, loss or destruction;
9 then the *enforcement powers* include seizing the thing.

83 Persons assisting marine safety inspectors

- 11 (1) A marine safety inspector may be assisted by other persons in
12 exercising powers or performing functions or duties under this
13 Part, if that assistance is necessary and reasonable. A person giving
14 such assistance is a *person assisting* the inspector.
- 15 (2) A person assisting the marine safety inspector:
16 (a) may enter the premises; and
17 (b) may exercise powers and perform functions and duties under
18 this Part; and
19 (c) must do so in accordance with a direction given by the
20 inspector to the person assisting.
- 21 (3) A power exercised by a person assisting the marine safety
22 inspector as mentioned in subsection (2) is taken for all purposes to
23 have been exercised by the inspector.
- 24 (4) A function or duty performed by a person assisting the marine
25 safety inspector as mentioned in subsection (2) is taken for all
26 purposes to have been performed by the inspector.

84 Use of force in executing a warrant

- 28 In executing a warrant:
29 (a) a marine safety inspector may use such force against persons
30 and things as is necessary and reasonable in the
31 circumstances; and

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Search and seizure powers of marine safety inspectors **Division 2**

Section 85

1 (b) a person assisting the inspector may use such force against
2 things as is necessary and reasonable in the circumstances.

3 **85 Offence—not complying with requirement made under this** 4 **Division**

- 5 (1) A person commits an offence if:
6 (a) a requirement is made of the person:
7 (i) under section 80 (to take reasonable steps to facilitate
8 boarding of a domestic commercial vessel); or
9 (ii) under section 81(2)(h) or 82(1)(f) (to demonstrate the
10 operation of machinery or equipment on premises); or
11 (iii) under section 81(2)(i) (to give a marine safety inspector
12 the person's name, the person's residential address, the
13 person's date of birth or evidence of the person's
14 identity); or
15 (iv) under section 81(3) or 82(2) (to stop or manoeuvre a
16 vessel, adopt or maintain a specified course or speed or
17 take a vessel to a specified place); and
18 (b) the person fails to comply with the requirement.

19 Penalty: 30 penalty units.

- 20 (2) Subsection (1) does not apply if the person has a reasonable
21 excuse.

22 Note: A defendant bears an evidential burden in relation to the matter in
23 subsection (1) (see section 13.3(3) of the *Criminal Code*).

- 24 (3) A person commits an offence if:
25 (a) a requirement is made of the person under section 81(2)(i) to
26 give a marine safety inspector the person's name, the
27 person's residential address, the person's date of birth or
28 evidence of the person's identity; and
29 (b) the person gives a name, address, date or evidence of the
30 person's identity; and
31 (c) the name, address, date or evidence is false or misleading in a
32 material particular.

33 Penalty: 30 penalty units.
34

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 3 Other powers of marine safety inspectors

Section 86

1

2 **Division 3—Other powers of marine safety inspectors**

3 **86 Power to require persons to answer questions and produce** 4 **documents**

5 (1) A marine safety inspector who is on or in premises that he or she
6 has entered under a warrant under this Part may require anyone on
7 or in the premises to:

- 8 (a) answer any questions put by the inspector; and
9 (b) produce any books, records or documents requested by the
10 inspector.

11 (2) A person commits an offence if:

- 12 (a) a requirement is made of the person under subsection (1); and
13 (b) the person fails to comply with the requirement.

14 Penalty: 30 penalty units.

15 (3) Subsection (2) does not apply if the person has a reasonable
16 excuse.

17 Note: A defendant bears an evidential burden in relation to the matter in
18 subsection (3) (see section 13.3(3) of the *Criminal Code*).

19 (4) It is not a reasonable excuse for a person to refuse or fail to answer
20 a question or produce a book, record or document on the ground
21 that to do so might tend to incriminate the person or expose the
22 person to a penalty.

23 (5) However, in the case of an individual, none of the following is
24 admissible in evidence against the individual in criminal
25 proceedings:

- 26 (a) the answer given, or the book, record or document produced;
27 (b) answering the question or producing the book, record or
28 document;
29 (c) any information, document or thing obtained as a direct or
30 indirect consequence of answering the question or producing
31 the book, record or document.

EXPOSURE-DRAFT

Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

Other powers of marine safety inspectors **Division 3**

Section 87

87 Marine safety inspector may give directions

- 1
- 2 (1) If a marine safety inspector believes, on reasonable grounds, that:
- 3 (a) a person is not complying with this Law in respect of a thing;
- 4 and
- 5 (b) at least one of the following applies:
- 6 (i) it is necessary to exercise powers under this section in
- 7 order to protect the health and safety of people or to
- 8 protect the environment;
- 9 (ii) it is desirable in the public interest for the inspector to
- 10 exercise powers under this section;
- 11 the inspector may give the person a direction requiring the person,
- 12 within the time specified in the direction, to take such steps in
- 13 relation to the thing as are reasonable in the circumstances for the
- 14 person to comply with this Law.
- 15 (2) The direction must be given in writing, unless the marine safety
- 16 inspector believes there is an urgent need for the person to comply
- 17 with this Law to protect the health and safety of people or to
- 18 protect the environment.
- 19 (3) A person commits an offence if he or she does not take the steps
- 20 specified in a direction under subsection (1) within the time
- 21 specified in the direction.
- 22 Penalty: 60 penalty units.
- 23 (4) If the person does not take the steps specified in the direction
- 24 within the time specified in the direction, the inspector may
- 25 arrange for those steps to be taken.
- 26 (5) If the National Regulator incurs costs because of arrangements
- 27 made by the inspector under subsection (4), the person is liable to
- 28 pay to the National Regulator an amount equal to the costs, and the
- 29 amount may be recovered by the National Regulator as a debt due
- 30 to the National Regulator in a court of competent jurisdiction.
- 31 (6) A time specified in a direction under subsection (1) must be
- 32 reasonable having regard to the circumstances.

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 3 Other powers of marine safety inspectors

Section 88

1 **88 Marine safety inspector may issue improvement notices**

- 2 (1) If a marine safety inspector believes on reasonable grounds that a
3 person:
4 (a) is contravening a provision of this Law; or
5 (b) has contravened a provision of this Law and is likely to
6 contravene that provision again;
7 the inspector may issue an improvement notice, in writing, to the
8 person.
- 9 (2) The notice must:
10 (a) specify the contravention of this Law that the marine safety
11 inspector believes is occurring or is likely to occur; and
12 (b) set out the reasons for that belief; and
13 (c) specify a period within which the person is to take the action
14 necessary to prevent any further contravention, or to prevent
15 the likely contravention, as the case may be.
- 16 (3) The period specified in the notice must be reasonable.
- 17 (4) The notice may specify action that the person is to take, or is not to
18 take, during the period specified in the notice.
- 19 (5) Before the end of the specified period, the marine safety inspector
20 may extend that period in writing.
- 21 (6) The person must ensure that the notice is complied with to the
22 extent that it relates to any matter over which the person has
23 control.
- 24 (7) A person commits an offence if:
25 (a) the person is subject to a requirement under subsection (6);
26 and
27 (b) the person engages in conduct; and
28 (c) the conduct results in a breach of the requirement.
- 29 Penalty: 60 penalty units.

EXPOSURE-DRAFT

Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

Other powers of marine safety inspectors **Division 3**

Section 89

89 Marine safety inspector may issue prohibition notices

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- (1) This section applies if a marine safety inspector reasonably believes that:
 - (a) an activity is occurring in relation to a domestic commercial vessel that involves or will involve a serious risk to the health or safety of a person; or
 - (b) an activity may occur in relation to a domestic commercial vessel that, if it occurs, will involve a serious risk to the health or safety of a person.
- (2) The marine safety inspector may issue a prohibition notice to the responsible person in relation to the domestic commercial vessel. For this purpose, the *responsible person* is:
 - (a) the master of the vessel; or
 - (b) if the inspector cannot locate the master—the person who applied for the unique identifier for the vessel; or
 - (c) if the inspector cannot locate the person referred to in paragraph (b)—the person who has immediate control over the vessel.
- (3) The notice must:
 - (a) specify the activity the marine safety inspector believes involves or will involve the risk to health or safety, and set out the reasons for that belief; and
 - (b) either:
 - (i) direct the responsible person to ensure that the activity is not engaged in; or
 - (ii) direct the responsible person to ensure that the activity is not engaged in in a specified manner.
- (4) A specified manner may relate to any one or more of the following:
 - (a) any vessel, or part of a vessel, in relation to which the activity is not to be engaged in;
 - (b) any thing that is not to be used in connection with the activity;
 - (c) any procedure that is not to be followed in connection with the activity.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 3 Other powers of marine safety inspectors

Section 90

- 1 (5) If a marine safety inspector is satisfied that action taken by the
2 responsible person to remove the threat to health or safety is not
3 adequate, the inspector must inform the person accordingly.
- 4 (6) In making a decision under subsection (5), a marine safety
5 inspector may exercise any of the monitoring powers that the
6 inspector considers necessary for the purposes of making the
7 decision.
- 8 (7) The notice ceases to have effect when a marine safety inspector
9 notifies the responsible person that the inspector is satisfied that the
10 responsible person has taken adequate action to remove the risk to
11 health or safety.
- 12 (8) The notice may specify action that may be taken to satisfy a marine
13 safety inspector that adequate action has been taken to remove the
14 risk to health or safety.
- 15 (9) A person commits an offence if:
16 (a) the person is subject to a notice under subsection (2); and
17 (b) the person engages in conduct; and
18 (c) the conduct results in a breach of the notice.
- 19 Penalty: 60 penalty units.

90 Display and distribution of copies of notices

- 21 If a person (the *recipient*) is given an improvement notice under
22 section 88(1) or a prohibition notice under section 89(2) in relation
23 to a vessel:
24 (a) the recipient must cause a copy of the notice to be displayed
25 in a prominent place on or near the vessel; and
26 (b) the marine safety inspector issuing the notice must give a
27 copy of the notice to the master of the vessel and the person
28 who applied for the unique identifier of the vessel.

91 Notices not to be tampered with or removed

- 30 (1) A person must not:
31 (a) tamper with a notice while it is displayed under section 90; or

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Other powers of marine safety inspectors **Division 3**

Section 91

1 (b) remove a notice that has been displayed before the notice has
2 ceased to have effect.

3 Penalty: 60 penalty units.

4 (2) Subsection (1) does not apply if the person has a reasonable
5 excuse.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (2) (see section 13.3(3) of the *Criminal Code*).

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 4 Obligations and incidental powers of marine safety inspectors

Section 92

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2 **Division 4—Obligations and incidental powers of marine** 3 **safety inspectors**

4 **92 Consent**

5 (1) A marine safety inspector must, before obtaining the consent of an
6 occupier of premises for the purposes of section 77(3)(a), inform
7 the occupier that the occupier may refuse consent.

8 (2) A consent has no effect unless the consent is voluntary.

9 (3) A consent may be expressed to be limited to entry during a
10 particular period. If so, the consent has effect for that period unless
11 the consent is withdrawn before the end of that period.

12 (4) A consent that is not limited as mentioned in subsection (3) has
13 effect until the consent is withdrawn.

14 (5) If a marine safety inspector entered premises because of the
15 consent of the occupier of the premises, the inspector, and any
16 person assisting the inspector, must leave the premises if the
17 consent ceases to have effect.

18 **93 Announcement before entry under warrant**

19 (1) A marine safety inspector must, before entering premises under a
20 warrant:

21 (a) announce that he or she is authorised to enter the premises;
22 and

23 (b) if the inspector was appointed under section 73—show his or
24 her identity card to the occupier of the premises if the
25 occupier is present at the premises; and

26 (c) if the inspector is a member of the Australian Federal Police
27 or of the police force (however described) of a State or a
28 Territory and is not in uniform—show his or her police
29 identification to the occupier of the premises if the occupier
30 is present at the premises; and

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Powers of marine safety inspectors **Part 6**
Obligations and incidental powers of marine safety inspectors **Division 4**

Section 94

1 (d) give any person at the premises an opportunity to allow entry
2 to the premises.

3 (2) However, a marine safety inspector is not required to comply with
4 subsection (1) if he or she believes on reasonable grounds that
5 immediate entry to the premises is required:

- 6 (a) to ensure the safety of a person; or
7 (b) to ensure that the effective execution of the warrant is not
8 frustrated.

9 (3) If:

- 10 (a) a marine safety inspector does not comply with
11 subsection (1) because of subsection (2); and
12 (b) the occupier of the premises is present at the premises;
13 the inspector must, as soon as practicable after entering the
14 premises, show his or her identity card or police identification to
15 the occupier.

16 **94 Marine safety inspector to be in possession of warrant**

17 If a warrant is being executed in relation to premises, a marine
18 safety inspector executing the warrant must be in possession of the
19 warrant or a copy of the warrant.

20 **95 Details of warrant etc. to be given to occupier**

21 If:

- 22 (a) a warrant is being executed in relation to premises; and
23 (b) the occupier of the premises is present at the premises;
24 a marine safety inspector executing the warrant must, as soon as
25 practicable:
26 (c) make a copy of the warrant available to the occupier (which
27 need not include the signature of the magistrate who issued
28 it); and
29 (d) inform the occupier of the rights and responsibilities of the
30 occupier under Division 5.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 4 Obligations and incidental powers of marine safety inspectors

Section 96

96 Completing execution of warrant after temporary cessation

- 1
- 2 (1) This section applies if a marine safety inspector, and all persons
3 assisting, who are executing a warrant in relation to premises
4 temporarily cease its execution and leave the premises.
- 5 (2) The marine safety inspector, and persons assisting, may complete
6 the execution of the warrant if:
- 7 (a) the warrant is still in force; and
8 (b) the inspector and persons assisting are absent from the
9 premises:
- 10 (i) for not more than 1 hour; or
11 (ii) if there is an emergency situation—for not more than 12
12 hours or such longer period as allowed by a magistrate
13 under subsection (5); or
14 (iii) for a longer period if the occupier of the premises
15 consents in writing.
- 16 (3) A marine safety inspector, or person assisting, may apply to a
17 magistrate for an extension of the 12-hour period mentioned in
18 subsection (2)(b)(ii) if:
- 19 (a) there is an emergency situation; and
20 (b) the inspector or person assisting believes on reasonable
21 grounds that the inspector and the persons assisting will not
22 be able to return to the premises within that period.
- 23 (4) If it is practicable to do so, before making the application, the
24 marine safety inspector or person assisting must give notice to the
25 occupier of the premises of his or her intention to apply for an
26 extension.
- 27 (5) A magistrate may extend the period during which the marine safety
28 inspector and persons assisting may be away from the premises if:
- 29 (a) an application is made under subsection (3); and
30 (b) the magistrate is satisfied, by information on oath or
31 affirmation, that there are exceptional circumstances that
32 justify the extension; and
33 (c) the extension would not result in the period ending after the
34 warrant ceases to be in force.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Obligations and incidental powers of marine safety inspectors **Division 4**

Section 97

97 Completing execution of warrant stopped by court order

A marine safety inspector, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

98 Expert assistance to operate electronic equipment

- (1) This section applies to premises to which a warrant relates.
- (2) If a marine safety inspector believes on reasonable grounds that:
 - (a) there is on the premises information (*data*) relevant to the monitoring purposes or determining whether there is evidential material on the premises; and
 - (b) the data may be accessible by operating electronic equipment on the premises; and
 - (c) expert assistance is required to operate the equipment; and
 - (d) if he or she does not take action under this subsection, the data may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment for up to 24 hours, whether by locking it up, placing a guard or other means.
- (3) The marine safety inspector must give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.
- (4) If a marine safety inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (5) The marine safety inspector must give notice to the occupier of the premises of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 4 Obligations and incidental powers of marine safety inspectors

Section 99

1 (6) The provisions of this Part relating to the issue of warrants apply,
2 with such modifications as are necessary, to the issue of an
3 extension.

4 (7) The 24-hour period may be extended more than once.

5 **99 Compensation for damage to electronic equipment**

6 (1) This section applies if:

7 (a) as a result of electronic equipment being operated as
8 mentioned in this Part:

9 (i) damage is caused to the equipment; or

10 (ii) the data recorded on the equipment is damaged; or

11 (iii) programs associated with the use of the equipment, or
12 with the use of the data, are damaged or corrupted; and

13 (b) the damage or corruption occurs because:

14 (i) insufficient care was exercised in selecting the person
15 who was to operate the equipment; or

16 (ii) insufficient care was exercised by the person operating
17 the equipment.

18 (2) The National Regulator must pay the owner of the equipment, or
19 the user of the data or programs, such reasonable compensation for
20 the damage or corruption as the National Regulator and the owner
21 or user agree on.

22 (3) However, if the owner or user and the National Regulator fail to
23 agree, the owner or user may institute proceedings in a court of
24 competent jurisdiction for such reasonable amount of
25 compensation as the court determines.

26 (4) In determining the amount of compensation payable, regard is to
27 be had to whether the occupier of the premises, or the occupier's
28 employees or agents, if they were available at the time, provided
29 any appropriate warning or guidance on the operation of the
30 equipment.

31 (5) For the purposes of subsection (1):

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Obligations and incidental powers of marine safety inspectors **Division 4**

Section 99

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damage, in relation to data, includes damage by erasure of data or addition of other data.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 5 Occupier's rights and responsibilities

Section 100

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Division 5—Occupier's rights and responsibilities

3

100 Occupier entitled to observe execution of warrant

4

(1) If:

5

(a) a warrant is being executed in relation to premises; and

6

(b) the occupier of the premises is present at the premises;

7

the occupier is entitled to observe the execution of the warrant.

8

(2) The right to observe the execution of the warrant ceases if the

9

occupier impedes that execution.

10

(3) This section does not prevent the execution of the warrant in 2 or

11

more areas of the premises at the same time.

12

101 Occupier to provide marine safety inspector with facilities and assistance

13

14

(1) The occupier of premises to which a warrant relates must provide:

15

(a) a marine safety inspector executing the warrant; and

16

(b) any person assisting the inspector;

17

with all reasonable facilities and assistance for the effective

18

exercise of their powers.

19

(2) A person commits an offence if:

20

(a) the person is subject to subsection (1); and

21

(b) the person fails to comply with that subsection.

22

Penalty: 30 penalty units.

23

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

General provisions relating to seizure and detention **Division 6**

Section 102

1

2 **Division 6—General provisions relating to seizure and** 3 **detention**

4 **102 Copies of seized things to be provided**

- 5 (1) This section applies if:
- 6 (a) an enforcement warrant is being executed in relation to
7 premises; and
- 8 (b) a marine safety inspector seizes one or more of the following
9 from the premises under this Part:
- 10 (i) a document, film, computer file or other thing that can
11 be readily copied;
- 12 (ii) a storage device, the information in which can be
13 readily copied.
- 14 (2) The occupier of the premises may request the marine safety
15 inspector to give a copy of the thing or the information to the
16 occupier.
- 17 (3) The marine safety inspector must comply with the request as soon
18 as practicable after the seizure.
- 19 (4) However, the marine safety inspector is not required to comply
20 with the request if possession of the document, film, computer file,
21 thing or information by the occupier could constitute an offence
22 against a law of the Commonwealth, a State or a Territory.

23 **103 Detention of vessels**

- 24 (1) A marine safety inspector may detain a domestic commercial
25 vessel and bring it, or cause it to be brought, to a port, or to another
26 place that he or she considers appropriate, if the inspector
27 reasonably suspects that the vessel is, will be or has been involved
28 in a contravention, either in or outside Australia, of this Law.
- 29 (2) If a marine safety inspector detains a domestic commercial vessel
30 under subsection (1), the inspector must give written notice, within
31 14 days, to:

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 6 General provisions relating to seizure and detention

Section 104

- 1 (a) the person who applied for the unique identifier for the
2 vessel; or
3 (b) the person who had possession or control of the vessel
4 immediately before it was detained.
- 5 (3) If the marine safety inspector cannot conveniently give the notice
6 in person, the inspector may give the notice by fixing the notice to
7 a prominent part of the vessel.
- 8 (4) The notice must:
9 (a) identify the vessel; and
10 (b) state that the vessel has been detained; and
11 (c) specify the reason for this; and
12 (d) specify contact details of a marine safety inspector who can
13 provide further information; and
14 (e) include information about the return of the vessel.
- 15 (5) The regulations may make provision for and in relation to the
16 return of detained vessels.
- 17 (6) A person commits an offence if:
18 (a) the person operates a vessel, or causes the operation of a
19 vessel, that has been detained under subsection (1); and
20 (b) the vessel has not been released from detention; and
21 (c) a marine safety inspector has not consented to the operation
22 of the vessel by the person.
- 23 Penalty: 60 penalty units.

104 Costs of detention

- 24 (1) The National Regulator is liable to pay to the owner of a domestic
25 commercial vessel a reasonable amount of compensation:
26 (a) for the costs of, and incidental to, the detention of the vessel;
27 and
28 (b) for any loss or damage incurred by the owner as a result of
29 the detention of the vessel;
30 if there was no reasonable or probable cause for the detention of
31 the vessel.
32

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

General provisions relating to seizure and detention **Division 6**

Section 105

- 1 (2) If:
2 (a) a domestic commercial vessel is detained under this Division;
3 and
4 (b) the National Regulator incurs costs in connection with the
5 detention of the vessel; and
6 (c) the detention was reasonable in the circumstances;
7 the owner of the vessel is liable to pay to the National Regulator
8 compensation of a reasonable amount in respect of the detention of
9 the vessel.
- 10 (3) If the National Regulator and the owner of the vessel do not agree
11 on the amount of compensation payable under subsection (1) or
12 (2), the National Regulator or the owner may institute proceedings
13 in a court of competent jurisdiction for the recovery of such
14 reasonable amount of compensation as the court determines.

105 Receipts for seized things

- 15 (1) If a thing is seized under this Part, a marine safety inspector must
16 provide a receipt for the thing.
17
- 18 (2) If 2 or more things are seized, they may be covered in the one
19 receipt.

20 106 Return of seized things

- 21 (1) The marine safety inspector must take reasonable steps to return a
22 thing seized under this Part when the earliest of the following
23 happens:
24 (a) the reason for the thing's seizure no longer exists;
25 (b) it is decided that the thing is not to be used in evidence;
26 (c) the period of 60 days after the thing's seizure ends.

27 Note: See subsections (2) and (3) for exceptions to this rule.

28 *Exceptions*

- 29 (2) Subsection (1):
30 (a) is subject to any contrary order of a court; and
31 (b) does not apply if the thing:

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 6 General provisions relating to seizure and detention

Section 107

- 1 (i) is forfeited or forfeitable to the Commonwealth; or
2 (ii) is the subject of a dispute as to ownership.
- 3 (3) The marine safety inspector is not required to take reasonable steps
4 to return a thing because of subsection (1)(c) if:
- 5 (a) proceedings in respect of which the thing may afford
6 evidence were instituted before the end of the 60 days and
7 have not been completed (including an appeal to a court in
8 relation to those proceedings); or
9 (b) the thing may continue to be retained because of an order
10 under section 107; or
11 (c) the Commonwealth, the National Regulator or a marine
12 safety inspector is otherwise authorised (by a law, or an order
13 of a court, of the Commonwealth or of a State or Territory) to
14 retain, destroy, dispose of or otherwise deal with the thing.

15 *Return of thing*

- 16 (4) A thing that is required to be returned under this section must be
17 returned to the person from whom it was seized (or to the owner if
18 that person is not entitled to possess it).

19 **107 Magistrate may permit a thing to be retained**

- 20 (1) A marine safety inspector may apply to a magistrate for an order
21 permitting the retention of the thing for a further period if:
- 22 (a) before the end of 60 days after the seizure; or
23 (b) before the end of a period previously specified in an order of
24 a magistrate under this section;
25 proceedings in respect of which the thing may afford evidence
26 have not been instituted.
- 27 (2) If the magistrate is satisfied that it is necessary for the thing to
28 continue to be retained:
- 29 (a) for the purposes of an investigation in respect of an offence
30 against this Law; or
31 (b) to enable evidence of an offence against this Law to be
32 secured for the purposes of a prosecution;

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

Powers of marine safety inspectors **Part 6**

General provisions relating to seizure and detention **Division 6**

Section 108

1 the magistrate may order that the thing may continue to be retained
2 for a period specified in the order (which must not exceed 3 years).

- 3 (3) Before making the application, the marine safety inspector must:
4 (a) take reasonable steps to discover who has an interest in the
5 retention of the thing; and
6 (b) if it is practicable to do so, notify each person whom the
7 inspector believes to have such an interest of the proposed
8 application.

9 **108 Disposal of things**

- 10 (1) The National Regulator may dispose of a thing seized under this
11 Part if:
12 (a) the National Regulator has taken reasonable steps to return
13 the thing to a person; and
14 (b) one of the following applies:
15 (i) the National Regulator has been unable to locate the
16 person, despite making reasonable efforts;
17 (ii) the person has refused to take possession of the thing;
18 (iii) the National Regulator has contacted the person about
19 the return of the thing and the person has not refused to
20 take possession of the thing, but the person has not
21 taken possession of the thing within 12 months of the
22 contact.
- 23 (2) The National Regulator may dispose of the thing in such manner as
24 the National Regulator thinks appropriate.

25 **109 Compensation for acquisition of property**

- 26 (1) If the operation of section 108 would result in an acquisition of
27 property from a person otherwise than on just terms, the National
28 Regulator is liable to pay a reasonable amount of compensation to
29 the person.
- 30 (2) If the National Regulator and the person do not agree on the
31 amount of the compensation, the person may institute proceedings
32 in a court of competent jurisdiction for the recovery from the

EXPOSURE-DRAFT

Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 6 General provisions relating to seizure and detention

Section 109

- 1 National Regulator of such reasonable amount of compensation as
2 the court determines.
- 3 (3) If an amount of compensation is payable under this section by the
4 National Regulator because of the disposal of a thing under
5 section 108 by a delegate of the National Regulator who is an
6 officer or employee of an agency of a State or the Northern
7 Territory:
- 8 (a) the agency; or
9 (b) the State or Territory, if the agency is a Department of State
10 of the State or Territory;
- 11 is liable to pay the National Regulator an amount equal to the
12 compensation.
13

EXPOSURE-DRAFT

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2 **Division 7—Warrants**

3 **110 Monitoring warrants**

- 4 (1) A marine safety inspector may apply to a magistrate for a warrant
5 under this section in relation to premises.
- 6 (2) The magistrate may issue the warrant if the magistrate is satisfied,
7 by information on oath or affirmation, that it is reasonably
8 necessary that one or more marine safety inspectors should have
9 access to the premises for monitoring purposes.
- 10 (3) However, the magistrate must not issue the warrant unless the
11 marine safety inspector or some other person has given to the
12 magistrate, either orally or by affidavit, such further information (if
13 any) as the magistrate requires concerning the grounds on which
14 the issue of the warrant is being sought.
- 15 (4) The warrant must:
- 16 (a) describe the premises to which the warrant relates; and
17 (b) state that the warrant is issued under this section; and
18 (c) state the purpose for which the warrant is issued; and
19 (d) authorise one or more marine safety inspectors (whether or
20 not named in the warrant) from time to time while the
21 warrant remains in force:
22 (i) to enter the premises; and
23 (ii) to exercise the powers set out in Divisions 2, 3 and 4 in
24 relation to the premises; and
25 (e) state whether entry is authorised to be made at any time of
26 the day or during specified hours of the day; and
27 (f) specify the day (not more than 6 months after the issue of the
28 warrant) on which the warrant ceases to be in force.

29 **111 Issue of enforcement warrants**

- 30 (1) A marine safety inspector may apply to a magistrate for a warrant
31 under this section in relation to premises.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 7 Warrants

Section 112

- 1 (2) The magistrate may issue the warrant if the magistrate is satisfied,
2 by information on oath or affirmation, that there are reasonable
3 grounds for suspecting that there is, or there may be within the next
4 72 hours, evidential material on the premises.
- 5 (3) However, the magistrate must not issue the warrant unless the
6 marine safety inspector or some other person has given to the
7 magistrate, either orally or by affidavit, such further information (if
8 any) as the magistrate requires concerning the grounds on which
9 the issue of the warrant is being sought.
- 10 (4) The warrant must:
- 11 (a) describe the premises to which the warrant relates; and
12 (b) state that the warrant is issued under this section; and
13 (c) specify the offence or offences to which the warrant relates;
14 and
15 (d) specify the kind of evidential material that is to be searched
16 for under the warrant; and
17 (e) name one or more marine safety inspectors; and
18 (f) authorise the inspector or inspectors so named:
19 (i) to enter the premises; and
20 (ii) to exercise the powers set out in Divisions 2, 3, 4 and 6
21 in relation to the premises; and
22 (g) state whether the entry is authorised to be made at any time
23 of the day or during specified hours of the day; and
24 (h) specify the day (not more than 1 week after the issue of the
25 warrant) on which the warrant ceases to be in force.

112 Enforcement warrants by telephone, fax etc.

- 26
- 27 (1) A marine safety inspector may apply to a magistrate by telephone,
28 fax or other electronic means for a warrant under section 111 in
29 relation to premises:
- 30 (a) in an urgent case; or
31 (b) if the inspector believes, on reasonable grounds, that the
32 delay that would occur if an application were made in person
33 would frustrate the effective execution of the warrant.

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- 1 (2) The magistrate may require communication by voice to the extent
2 that it is practicable in the circumstances.
- 3 (3) An application under this section must include all information (of
4 the kind mentioned in section 111(2)) in relation to the premises
5 that sets out the grounds on which the warrant is sought. If it is
6 necessary to do so, the inspector may apply for the warrant before
7 the information is sworn or affirmed.
- 8 (4) If the magistrate is satisfied:
9 (a) after considering the information; and
10 (b) after receiving such further information (if any) as the
11 magistrate requires concerning the grounds on which the
12 issue of the warrant is being sought;
13 that there are reasonable grounds for issuing the warrant, the
14 magistrate may complete and sign the same warrant that the
15 magistrate would issue under section 111 if the application had
16 been made under that section.
- 17 (5) If the magistrate completes and signs the warrant, the magistrate
18 must inform the inspector, by telephone, fax or other electronic
19 means, of:
20 (a) the terms of the warrant; and
21 (b) the day on which, and the time at which, the warrant was
22 signed.
- 23 (6) The marine safety inspector must then complete a form of warrant
24 in the same terms as the warrant completed and signed by the
25 magistrate, stating on the form:
26 (a) the name of the magistrate; and
27 (b) the day on which, and the time at which, the warrant was
28 signed.
- 29 (7) The marine safety inspector must also, not later than the day after
30 the earlier of the following days:
31 (a) the day on which the warrant ceased to be in force;
32 (b) the day of execution of the warrant;
33 send to the magistrate:
34 (c) the form of warrant completed by the inspector; and

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 6 Powers of marine safety inspectors

Division 7 Warrants

Section 113

- 1 (d) the information referred to in subsection (3), which must
2 have been duly sworn or affirmed.
- 3 (8) The magistrate must attach to the documents provided under
4 subsection (7) the warrant signed by the magistrate.
- 5 (9) A form of warrant duly completed under subsection (6) is authority
6 for the same powers as are authorised by the warrant signed by the
7 magistrate.
- 8 (10) If:
9 (a) it is material, in any proceedings, for a court to be satisfied
10 that an exercise of a power was authorised by this section;
11 and
12 (b) the warrant signed by the magistrate authorising the exercise
13 of the power is not produced in evidence;
14 the court must assume, unless the contrary is proved, that the
15 exercise of the power was not authorised by such a warrant.

16 **113 Offence relating to warrants by telephone, fax etc.**

- 17 A marine safety inspector commits an offence if:
18 (a) the inspector states in a document that purports to be a form
19 of warrant under section 112 the name of a magistrate, unless
20 that magistrate signed the warrant; or
21 (b) the inspector states on a form of warrant under that section a
22 matter that, to the inspector's knowledge, departs in a
23 material particular from the terms of the warrant signed by
24 the magistrate under that section; or
25 (c) the inspector purports to execute, or present to another
26 person, a document that purports to be a form of warrant
27 under that section that the inspector knows:
28 (i) has not been approved by a magistrate under that
29 section; or
30 (ii) departs in a material particular from the terms of a
31 warrant signed by a magistrate under that section; or
32 (d) the inspector gives to a magistrate a form of warrant under
33 that section that is not the form of warrant that the inspector
34 purported to execute.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
Powers of marine safety inspectors **Part 6**
Warrants **Division 7**

Section 113

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Penalty: Imprisonment for 2 years.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 7 Infringement notices

Section 114

1

2 **Part 7—Infringement notices**

3

4 **114 When an infringement notice may be given**

5 (1) If the National Regulator has reasonable grounds to believe that a
6 person has committed an offence of a kind prescribed by the
7 regulations, the National Regulator may give to the person an
8 infringement notice for the alleged offence.

9 (2) The infringement notice must be given within 12 months after the
10 day on which the offence is alleged to have taken place.

11 (3) A single infringement notice must relate only to a single alleged
12 offence.

13 **115 Matters to be included in an infringement notice**

- 14 (1) An infringement notice must:
- 15 (a) be identified by a unique number; and
 - 16 (b) state the day on which it is given; and
 - 17 (c) state the name of the person to whom the notice is given; and
 - 18 (d) state that it is being issued by the National Regulator; and
 - 19 (e) give brief details of the alleged offence, including:
 - 20 (i) the offence that was allegedly committed; and
 - 21 (ii) the maximum penalty that a court could impose for the
22 alleged offence; and
 - 23 (iii) the time (if known) and day of, and the place of, the
24 alleged offence; and
 - 25 (f) state the amount that is payable under the notice; and
 - 26 (g) give an explanation of how payment of the amount is to be
27 made; and
 - 28 (h) state that, if the person to whom the notice is given pays the
29 amount within 28 days after the day the notice is given, then

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Section 116

- 1 (unless the notice is withdrawn) the person will not be liable
2 to be prosecuted in a court for the alleged offence; and
3 (i) state that payment of the amount is not an admission of guilt
4 or liability; and
5 (j) state that the person may apply to the National Regulator to
6 have the period in which to pay the amount extended; and
7 (k) state that the person may choose not to pay the amount and, if
8 the person so chooses, the person may be prosecuted in a
9 court for the alleged offence; and
10 (l) set out how the notice can be withdrawn; and
11 (m) state that if the notice is withdrawn:
12 (i) any amount paid under the notice must be refunded; and
13 (ii) the person may be prosecuted in a court for the alleged
14 offence; and
15 (n) state that the person may make written representations to the
16 National Regulator seeking the withdrawal of the notice.
- 17 (2) For the purposes of subsection (1)(f), the amount to be stated in the
18 notice for the alleged offence must be equal to one-fifth of the
19 maximum penalty that a court could impose on the person for that
20 offence.

21 **116 Extension of time to pay amount**

- 22 (1) A person to whom an infringement notice has been given may
23 apply to the National Regulator for an extension of the period
24 referred to in section 115(1)(h).
- 25 (2) If the application is made before the end of that period, the
26 National Regulator may, in writing, extend that period. The
27 National Regulator may do so before or after the end of that period.
- 28 (3) If the National Regulator extends that period, a reference in this
29 Part, or in a notice or other instrument under this Part, to the period
30 referred to in section 115(1)(h) is taken to be a reference to that
31 period as so extended.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 7 Infringement notices

Section 117

- 1 (4) If the National Regulator does not extend that period, a reference in
2 this Part, or in a notice or other instrument under this Part, to the
3 period referred to in section 115(1)(h) is taken to be a reference to
4 the period that ends on the later of the following days:
5 (a) the day that is the last day of the period referred to in
6 section 115(1)(h);
7 (b) the day that is 7 days after the day the person was given
8 notice of the National Regulator's decision not to extend.
- 9 (5) The National Regulator may extend the period more than once
10 under subsection (2).

117 Withdrawal of an infringement notice

- 12 (1) A person to whom an infringement notice has been given may
13 make written representations to the National Regulator seeking the
14 withdrawal of the notice.
- 15 (2) The National Regulator may withdraw an infringement notice
16 given to a person (whether or not the person has made written
17 representations seeking the withdrawal).
- 18 (3) When deciding whether or not to withdraw an infringement notice
19 (the *relevant infringement notice*), the National Regulator:
20 (a) must take into account any written representations seeking
21 the withdrawal that were given by the person to the National
22 Regulator; and
23 (b) may take into account the following:
24 (i) whether a court has previously imposed a penalty on the
25 person for a contravention of another provision of this
26 Law;
27 (ii) the circumstances in which the offence specified in the
28 notice is alleged to have been committed;
29 (iii) whether the person has paid an amount, stated in an
30 earlier infringement notice, for a contravention of
31 another provision of this Law if the contravention is
32 constituted by conduct that is the same, or substantially

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Section 118

- 1 the same, as the conduct alleged to constitute the
2 offence in the relevant infringement notice;
3 (iv) any other matter the National Regulator considers
4 relevant.
- 5 (4) Notice of the withdrawal of the infringement notice must be given
6 to the person. The withdrawal notice must state:
7 (a) the person's name and address; and
8 (b) the day the infringement notice was given; and
9 (c) the identifying number of the infringement notice; and
10 (d) that the infringement notice is withdrawn; and
11 (e) that the person may be prosecuted in a court for the alleged
12 offence.
- 13 (5) If:
14 (a) the National Regulator withdraws the infringement notice;
15 and
16 (b) the person has already paid the amount stated in the notice;
17 the National Regulator must refund to the person an amount equal
18 to the amount paid.

118 Effect of payment of amount

- 19
- 20 (1) If the person to whom an infringement notice for an offence is
21 given pays the amount stated in the notice before the end of the
22 period referred to in section 115(1)(h):
23 (a) any liability of the person for the alleged offence is
24 discharged; and
25 (b) the person may not be prosecuted in a court for the alleged
26 offence; and
27 (c) the person is not regarded as having admitted guilt or liability
28 for the alleged offence; and
29 (d) the person is not regarded as having been convicted of the
30 alleged offence.
- 31 (2) Subsection (1) does not apply if the notice has been withdrawn.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 7 Infringement notices

Section 119

119 Effect of this Part

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This Part does not:

- (a) require an infringement notice to be given to a person for an alleged offence; or
- (b) affect the liability of a person for an alleged offence if:
 - (i) the person does not comply with an infringement notice given to the person for the alleged offence; or
 - (ii) an infringement notice is not given to the person for the alleged offence; or
 - (iii) an infringement notice is given to the person for the alleged offence and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged offence; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have committed an offence.

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General matters **Part 8**

Review of decisions **Division 1**

Section 120

1

2 **Part 8—General matters**

3 **Division 1—Review of decisions**

4 **120 Reviewable decisions**

5 The following decisions by the National Regulator are *reviewable*
6 *decisions*:

7 (a) to refuse to issue a certificate under the following:

8 (i) section 27(1);

9 (ii) section 36(1);

10 (iii) section 46(1);

11 (b) to refuse to issue a unique identifier under section 23(1);

12 (c) to impose a condition on a certificate under the following:

13 (i) section 27(3)(b);

14 (ii) section 36(3)(b);

15 (iii) section 46(3)(b);

16 (d) to refuse to vary a certificate under the following:

17 (i) section 29(1);

18 (ii) section 38(1);

19 (iii) section 48(1);

20 (e) to vary a certificate under the following:

21 (i) section 29(2);

22 (ii) section 38(2);

23 (iii) section 48(2);

24 (f) to refuse to revoke a certificate under the following:

25 (i) section 30(1);

26 (ii) section 39(1);

27 (iii) section 49(1);

28 (g) to revoke a certificate under the following:

29 (i) section 30(2);

30 (ii) section 39(2);

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 8 General matters

Division 1 Review of decisions

Section 121

- 1 (iii) section 49(2);
2 (h) to suspend a certificate under section 56(b);
3 (i) to refuse to recognise a certificate under section 59(1);
4 (j) to impose a condition under section 59(3);
5 (k) to refuse to grant an exemption under section 124(1), (2) or
6 (3), other than an exemption granted on the initiative of the
7 National Regulator;
8 (l) to impose a condition on an exemption under section 124(1),
9 (2) or (3), other than an exemption granted on the initiative of
10 the National Regulator.

11 **121 Internal review of reviewable decisions**

- 12 (1) The National Regulator must, as soon as practicable after a
13 reviewable decision is made in relation to a person, give a written
14 notice to the person containing:
15 (a) the terms of the decision; and
16 (b) the reasons for the decision; and
17 (c) a statement setting out particulars of the person's right to
18 have the decision reviewed under this section.
- 19 (2) A person to whom a reviewable decision referred to in
20 subsection (1) relates may apply to the National Regulator for
21 review of the decision.
- 22 (3) An application for review must:
23 (a) be in the form approved by the National Regulator; and
24 (b) contain the information required by the regulations; and
25 (c) be made within 30 days after the day on which the decision
26 first came to the notice of the applicant, or within such period
27 (if any) as the National Regulator, either before or after the
28 end of the 30-day period, allows.
- 29 (4) The National Regulator must, on receiving an application under
30 subsection (3) for review of a reviewable decision, cause the
31 decision to be reviewed by a person to whom the National
32 Regulator power under this section is delegated, being a person
33 who:

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Section 122

- 1 (a) was not involved in making the decision; and
2 (b) occupies a position that is senior to that occupied by any
3 person involved in making the decision.
- 4 (5) A person who reviews a reviewable decision under this section
5 may:
6 (a) make a decision affirming, varying or revoking the
7 reviewable decision; and
8 (b) if the person revokes the decision—make such other decision
9 as the person thinks appropriate.
- 10 (6) A failure to comply with the requirements of subsection (1) in
11 relation to a decision does not affect the validity of the decision.

12 **122 Applications for AAT review**

13 Applications may be made to the Administrative Appeals Tribunal
14 for review of a decision under section 121(5).

15 Note: The *Administrative Appeals Tribunal Act 1975* of the Commonwealth
16 provides for the manner of applying for review, etc.

17 **123 Review of decisions made under the regulations**

18 The regulations may provide for:

- 19 (a) internal review of decisions made under the regulations; and
20 (b) the making of applications to the Administrative Appeals
21 Tribunal for review of decisions under the regulations.
22

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 8 General matters

Division 2 Exemptions

Section 124

1

2 **Division 2—Exemptions**

3 **124 Power of exemption**

- 4 (1) The National Regulator may exempt from the application of this
5 Law, or specified provisions of this Law, other than Part 3 (general
6 safety duties):
7 (a) a specified vessel or class of vessels; or
8 (b) a specified person or class of persons.
- 9 (2) The National Regulator may exempt a specified vessel or class of
10 vessels from the following:
11 (a) the requirement to have a unique identifier;
12 (b) survey;
13 (c) the requirement to have a certificate of operation.
- 14 (3) The National Regulator may exempt a specified person or class of
15 persons from the requirement to have a certificate of operation or a
16 seafarer certificate.
- 17 (4) An exemption under subsection (1), (2) or (3) may be confined to
18 one or both of the following:
19 (a) one or more specified periods;
20 (b) one or more specified voyages or operations.
- 21 (5) An exemption under subsection (1), (2) or (3) may be granted:
22 (a) on application in accordance with the regulations by a
23 person; or
24 (b) on the initiative of the Regulator.
- 25 (6) An exemption under subsection (1), (2) or (3) is subject to such
26 conditions (if any) as are specified in the instrument of exemption.
- 27 (7) The National Regulator must not grant an exemption under
28 subsection (1), (2) or (3), or impose conditions under
29 subsection (6), unless the National Regulator is satisfied that the
30 exemption concerned, taken together with the conditions to which

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General matters **Part 8**

Exemptions **Division 2**

Section 125

1 it is subject, will not jeopardise the safety of a vessel or a person on
2 board a vessel.

3 (8) An exemption granted under subsection (1), (2) or (3) is not a
4 legislative instrument.

5 **125 Offence of breaching a condition of exemption (owner)**

6 (1) The owner of a domestic commercial vessel commits an offence if:

7 (a) an exemption under section 124 in relation to the vessel is
8 subject to a condition; and

9 (b) the owner breaches, or causes or permits another person to
10 breach, the condition.

11 Penalty: 50 penalty units.

12 (2) An offence against subsection (1) is an offence of strict liability.

13 Note: For strict liability, see section 6.1 of the *Criminal Code*.

14 **126 Offence of breaching a condition of exemption (master)**

15 (1) The master of a domestic commercial vessel commits an offence if:

16 (a) an exemption under section 124 in relation to the vessel is
17 subject to a condition; and

18 (b) the master breaches, or causes or permits another person to
19 breach, the condition.

20 Penalty: 50 penalty units.

21 (2) An offence against subsection (1) is an offence of strict liability.

22 Note: For strict liability, see section 6.1 of the *Criminal Code*.

23 **127 Offence of breaching a condition of exemption (all persons)**

24 (1) A person commits an offence if:

25 (a) an exemption under section 124 in relation to the person is
26 subject to a condition; and

27 (b) the person breaches the condition.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 8 General matters

Division 2 Exemptions

Section 127

- 1 Penalty: 50 penalty units.
- 2 (2) An offence against subsection (1) is an offence of strict liability.
- 3 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 4

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General matters **Part 8**

Application of National Law to certain bodies **Division 3**

Section 128

1

2 **Division 3—Application of National Law to certain bodies**

3 **128 Treatment of partnerships**

- 4 (1) This Law applies to a partnership as if it were a person, but with
5 the changes set out in this section.
- 6 (2) An obligation that would otherwise be imposed on the partnership
7 by this Law is imposed on each partner instead, but may be
8 discharged by any of the partners.
- 9 (3) An offence against this Law that would otherwise be committed by
10 the partnership is taken to have been committed by each partner.
- 11 (4) A partner does not commit an offence because of subsection (3) if
12 the partner:
13 (a) does not know of the circumstances that constitute the
14 contravention of the provision concerned; or
15 (b) knows of those circumstances but takes all reasonable steps
16 to correct the contravention as soon as possible after the
17 partner becomes aware of those circumstances.
- 18 Note: A defendant bears an evidential burden in relation to the matters in
19 subsection (4) (see section 13.3(3) of the *Criminal Code*).
- 20 (5) For the purposes of this Law, a change in the composition of a
21 partnership does not affect the continuity of the partnership.

22 **129 Treatment of unincorporated associations**

- 23 (1) This Law applies to an unincorporated association as if it were a
24 person, but with the changes set out in this section.
- 25 (2) An obligation that would otherwise be imposed on the association
26 by this Law is imposed on each member of the association's
27 committee of management instead, but may be discharged by any
28 of the members.

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Schedule 1 Marine Safety (Domestic Commercial Vessel) National Law

Part 8 General matters

Division 3 Application of National Law to certain bodies

Section 130

1 (3) An offence against this Law that would otherwise be committed by
2 the association is taken to have been committed by each member of
3 the association's committee of management.

4 (4) A member of the association's committee of management does not
5 commit an offence because of subsection (3) if the member:

6 (a) does not know of the circumstances that constitute the
7 contravention of the provision concerned; or

8 (b) knows of those circumstances but takes all reasonable steps
9 to correct the contravention as soon as possible after the
10 member becomes aware of those circumstances.

11 Note: A defendant bears an evidential burden in relation to the matters in
12 subsection (4) (see section 13.3(3) of the *Criminal Code*).

13 **130 Treatment of trusts with multiple trustees**

14 (1) If a trust has 2 or more trustees, this Law applies to the trust as if it
15 were a person, but with the changes set out in this section.

16 Note: A trust may be an owner of a vessel (see the definitions of *entity* and
17 *owner* in section 6).

18 (2) An obligation that would otherwise be imposed on the trust by this
19 Law is imposed on each trustee instead, but may be discharged by
20 any of the trustees.

21 (3) An offence against this Law that would otherwise be committed by
22 the trust is taken to have been committed by each trustee.

23 (4) A trustee does not commit an offence because of subsection (3) if
24 the trustee:

25 (a) does not know of the circumstances that constitute the
26 contravention of the provision concerned; or

27 (b) knows of those circumstances but takes all reasonable steps
28 to correct the contravention as soon as possible after the
29 trustee becomes aware of those circumstances.

30 Note: A defendant bears an evidential burden in relation to the matters in
31 subsection (4) (see section 13.3(3) of the *Criminal Code*).

32

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**

General matters **Part 8**

Fees and related matters **Division 4**

Section 131

1

2 **Division 4—Fees and related matters**

3 **131 Charging of fees by the National Regulator**

4 (1) The National Regulator may charge such fees as are prescribed by
5 the regulations for things done by the National Regulator under this
6 Law.

7 (2) The fee is payable to the National Regulator.

8 (3) The fee must not be such as to amount to taxation.

9 (4) If the fee is unpaid, it is a debt due to the National Regulator and is
10 recoverable in a court of competent jurisdiction.

11 **132 Charging of fees by accredited persons**

12 (1) An accredited person who is not an officer or employee of the
13 Commonwealth, a State or the Northern Territory, or of an agency
14 of the Commonwealth, a State or the Northern Territory, may
15 charge another person the fee agreed between the accredited person
16 and the other person for a thing done by the accredited person
17 under this Law.

18 (2) The fee is payable to the accredited person.

19 (3) The fee must not be such as to amount to taxation.

20 (4) If the fee is unpaid, it is a debt due to the accredited person and is
21 recoverable in a court of competent jurisdiction.

22 **133 Amounts payable under infringement notices**

23 Amounts payable under an infringement notice must be paid to the
24 Commonwealth.
25

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Part 8 General matters

Division 5 Immunity from suit

Section 134

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2 **Division 5—Immunity from suit**

3 **134 Immunity from suit**

4

Criminal or civil proceedings do not lie against:

5

(a) the National Regulator; or

6

(b) a member of the staff of the National Regulator; or

7

(c) a delegate of the National Regulator; or

8

(d) a marine safety inspector;

9

because of an act done or omitted to be done in the exercise of any

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power conferred on the National Regulator or a marine safety

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inspector by or under this Law.

12

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Marine Safety (Domestic Commercial Vessel) National Law **Schedule 1**
General matters **Part 8**
Regulations and other legislative instruments **Division 6**

Section 135

1

2 **Division 6—Regulations and other legislative instruments**

3 **135 Regulations**

- 4 (1) The Governor-General may make regulations prescribing matters:
5 (a) required or permitted by this Law to be prescribed; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Law.
- 8 (2) The regulations may prescribe standards for the purposes of this
9 Law including, but not limited to, standards in relation to the
10 following:
11 (a) the survey of domestic commercial vessels;
12 (b) the construction of domestic commercial vessels;
13 (c) machinery and equipment connected with domestic
14 commercial vessels;
15 (d) maintenance of domestic commercial vessels;
16 (e) operation of domestic commercial vessels;
17 (f) crewing of domestic commercial vessels;
18 (g) qualifications of crew of domestic commercial vessels;
19 (h) safety of domestic commercial vessels;
20 (i) communications relating to domestic commercial vessels.
- 21 (3) The regulations may prescribe requirements relating to the
22 following:
23 (a) the keeping of records relating to the operation of domestic
24 commercial vessels;
25 (b) auditing the operation of domestic commercial vessels;
26 (c) the marking of domestic commercial vessels.

27 **136 Regulations may prescribe matters relating to accreditation**

- 28 (1) The regulations may prescribe matters relating to accreditation,
29 including, but not limited to:
30 (a) the accreditation of persons as surveyors; and
-

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- 1 (b) the accreditation of training organisations; and
2 (c) the accreditation of persons to perform other roles prescribed
3 by regulations made for the purposes of this paragraph.
- 4 (2) Examples of matters that the regulations may deal with are:
- 5 (a) the standards that are to be met by persons who seek to be
6 accredited; and
7 (b) who is responsible for determining whether a person meets
8 the standards; and
9 (c) how accreditation is to be recognised (for example, by
10 establishment of a register or other method); and
11 (d) the standards and other obligations that accredited persons
12 must continue to meet to remain accredited; and
13 (e) who is responsible for monitoring compliance with ongoing
14 requirements in the regulations; and
15 (f) the consequences of accredited persons failing to comply
16 with the provisions of this Law; and
17 (g) the obligations of accredited persons in relation to the
18 monitoring of their compliance; and
19 (h) how and by whom an accredited person may have his or her
20 accreditation (or recognition of that accreditation) varied,
21 suspended or revoked; and
22 (i) review of decisions to refuse, vary, suspend or revoke
23 accreditation (or recognition of accreditation); and
24 (j) the process for handling complaints involving accredited
25 persons; and
26 (k) who may deliver recognised training to accredited persons;
27 and
28 (l) auditing accredited persons.

29 **137 Regulations may prescribe penalties**

30 The regulations may prescribe penalties not more than 50 penalty
31 units for offences against the regulations.

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Section 138

138 Legislative instruments other than regulations

- 1
- 2 (1) The National Regulator may, by legislative instrument, make a
3 Marine Order with respect to any matter for which provision must
4 or may be made by the regulations, other than regulations made for
5 the purposes of the following provisions:
6 (a) section 7(4) (definition of *domestic commercial vessel*);
7 (b) section 8(2) (definition of *vessel*);
8 (c) section 131(1) (fees).
- 9 (2) If a Marine Order is inconsistent with this Law, the Marine Order
10 is, to the extent of the inconsistency, of no effect.
- 11 (3) A reference to this Law in subsection (2) does not include a
12 reference to a Marine Order.

139 Incorporation of material, etc.

13

14 Despite section 14 of the *Legislative Instruments Act 2003* of the
15 Commonwealth, the regulations and Marine Orders may make
16 provision for or in relation to a matter by applying, adopting or
17 incorporating any matter contained in any written instrument in
18 force or existing from time to time, including but not limited to:
19 (a) the National Standard for Commercial Vessels; and
20 (b) the Uniform Shipping Laws Code.

21 140 Regulations may deal with transitional matters

- 22 (1) The regulations may prescribe matters of a transitional nature
23 (including matters of an application or saving nature):
24 (a) arising out of the enactment of this Law; or
25 (b) relating to the transition from the application of provisions of
26 laws of the States and the Territories to the application of
27 provisions of this Law.
- 28 (2) The regulations have effect despite anything else in this Law.

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- 1 (3) The regulations may provide that certain provisions of this Law are
2 taken to be modified as set out in the regulations. Those provisions
3 then have effect as if they were so modified.
- 4 (4) The regulations may provide that a specified identifier, document,
5 licence, certificate or exemption (however described) issued under
6 a law of a State or the Northern Territory is taken to be a specified
7 identifier, document, licence, certificate or exemption issued under
8 this Law, subject to such requirements and modification as are
9 prescribed.
- 10 (5) Despite section 12(2) of the *Legislative Instruments Act 2003* of
11 the Commonwealth, regulations made under this section may be
12 expressed to take effect from a date before the regulations are
13 registered under that Act.
- 14 (6) If:
- 15 (a) regulations are expressed to take effect from a date before the
16 date the regulations are registered under the *Legislative*
17 *Instruments Act 2003* of the Commonwealth; and
- 18 (b) a person engaged in conduct before the regulations are
19 registered; and
- 20 (c) apart from the retrospective effect of the regulations, the
21 conduct would not have contravened this Law;
- 22 then a court must not convict the person of an offence in relation to
23 the conduct on the grounds that it contravened this Law.