

Version No. 058
Marine Act 1988
Act No. 52/1988

Version incorporating amendments as at 1 July 2004

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Version No. 058

Marine Act 1988

Act No. 52/1988

Version incorporating amendments as at 1 July 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to re-enact with amendments the law relating to the registration of vessels and the pollution of State waters; and
- (b) to implement certain international conventions; and
- (c) to provide for the efficient and safe operation of vessels on State waters.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

"accompanying operator offence" means an offence under section 28(1) which is committed by a person who is taken to be in charge of a vessel by reason of the operation of section 27(1AAA);

S. 3(1) def. of "accompanying operator offence" inserted by No. 23/2001 s. 17.

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S. 3(1) def. of
"approved
health
professional"
inserted by
No. 14/2000
s. 27(1).

"approved health professional" means—

- (a) a registered nurse, within the meaning of the **Nurses Act 1993**, registered in division 1 of the register kept under that Act;
- (b) a person approved under subsection (4) to take a blood sample for the purposes of Part 4;

"Australian fishing vessel" means a fishing vessel that is registered in Australia, or entitled to be so registered, or in relation to which an instrument under section 4(2) of the Fisheries Act 1952 of the Commonwealth is in force;

* * * * *

S. 3(1) def. of
"Board"
repealed by
No. 77/2001
s. 3(a).

"breath analysing instrument" has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of
"breath
analysing
instrument"
inserted by
No. 17/1994
s. 15.

"certificate of competency" means a certificate issued by the Director under section 99C;

S. 3(1) def. of
"certificate of
competency"
inserted by
No. 9/2004
s. 3(1)(a).

"certificate of survey" means a certificate issued by the Director under section 99E;

S. 3(1) def. of
"certificate of
survey"
inserted by
No. 9/2004
s. 3(1)(a).

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

S. 3(1) def. of "channel operator" inserted by No. 82/1995 s. 153(1).

* * * * *

S. 3(1) def. of "coastal waters" repealed by No. 77/2001 s. 22(a).

"corresponding law" means a law that is declared under sub-section (3)(a) to be a corresponding law;

"Director" means the Director of Marine Safety referred to in section 63;

S. 3(1) def. of "Director" inserted by No. 77/2001 s. 3(b).

"Director of the Victorian Institute of Forensic Medicine" means the Director within the meaning of the **Coroners Act 1985**;

S. 3(1) def. of "Director of the Victorian Institute of Forensic Medicine" inserted by No. 14/2000 s. 27(1).

"fishing vessel" means a vessel used or intended to be used for catching fish, whales, seals or other living resources of the sea or seabed for profit or reward and includes any such vessel in the course of construction but excludes any vessel—

- (a) engaged in harvesting or transport of algae or aquatic plants; or
- (b) that is primarily a carrier or a mother vessel;

"government vessel" means a vessel—

- (a) that belongs to the Commonwealth or a State or Territory of the Commonwealth; or
- (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory of the Commonwealth; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of, the Commonwealth or a State or Territory of the Commonwealth—

but does not include a vessel belonging to the naval, military or air forces of the Commonwealth;

S. 3(1) def. of "harbour master" inserted by No. 82/1995 s. 153(1), substituted by No. 9/2004 s. 3(1)(b).

"harbour master" includes any person authorised under section 26B to exercise any of the functions of the harbour master, if the person so authorised is acting in accordance with the authorisation;

S. 3(1) def. of "harbour master licence" inserted by No. 9/2004 s. 3(1)(a).

"harbour master licence" means a licence issued by the Director under section 26HD;

"hire and drive vessel" means a vessel (other than a recreational vessel) that is or is intended to be let for hire or reward or for any other consideration, and includes a vessel that is provided at a holiday establishment or hotel for the use of tenants or guests;

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

S. 3(1) def. of "licensed harbour master" inserted by No. 82/1995 s. 153(1), amended by No. 77/2001 s. 31(1)(a), substituted by No. 9/2004 s. 3(1)(c).

"local authority" means—

S. 3(1) def. of "local authority" amended by Nos 77/2001 s. 16(1)(a)(b), 85/2003 s. 34(1)(a).

- (a) a person in whom control over the navigation of any State waters is vested by or under any Act; or
- (b) a person, or a body established or constituted by or under any Act for any public purpose, that is declared under sub-section (3)(b) to be a local authority in respect of any State waters; or
- (c) a person or body declared under section 6 of the **Port Services Act 1995** to be a port manager of a local port within the meaning of that Act;

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

S. 3(1) def. of "local port" inserted by No. 9/2004 s. 3(1)(a).

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

S. 3(1) def. of "local port manager" inserted by No. 9/2004 s. 3(1)(a).

S. 3(1) def. of "marine infringement" substituted by No. 77/2001 s. 22(b), amended by No. 9/2004 s. 3(1)(d)(i)(ii).

"marine infringement" means—

- (a) a contravention of a specific requirement in a notice published under section 15 (and which is therefore an offence under section 15(3));
- (b) any other offence against this Act or the regulations;
- (c) any offence against regulations made under the **Port Services Act 1995** in relation to local ports—

prescribed for the purposes of Part 7;

"master", in relation to a vessel, means a person (other than a person who is acting as the pilot of that vessel) having command or charge of the vessel;

"member of the police force" has the same meaning as "member of the force" has in the **Police Regulation Act 1958**;

S. 3(1) def. of "member of the police force" inserted by No. 9/2004 s. 3(1)(a).

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

S. 3(1) def. of "navigation aid" inserted by No. 82/1995 s. 153(1), substituted by No. 77/2001 s. 22(c).

"operator licence" means—

- (a) a general operator licence under section 116(1); or
- (b) a restricted operator licence under section 117(1);

S. 3(1) def. of "operator licence" inserted by No. 93/2000 s. 3(a).

"owner", in relation to a vessel, includes the charterer and any person having possession of the vessel;

"pilot" means a person who is licensed as a pilot under the regulations;

S. 3(1) def. of "pilot" amended by No. 9/2004 s. 3(1)(e).

"pilotage services" means—

S. 3(1) def. of "pilotage services" inserted by No. 28/1999 s. 4.

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

"pilotage services provider" means a person registered by the Director under Part 3B to provide pilotage services;

S. 3(1) def. of "pilotage services provider" inserted by No. 28/1999 s. 4, amended by No. 77/2001 s. 31(1)(a).

"pilot exempt master" means a master who is exempted under the regulations from the requirement to engage a pilot for any particular port;

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

S. 3(1) def. of "port" inserted by No. 82/1995 s. 153(1).

- (a) any harbour or haven, whether natural or artificial;
- (b) any estuary, channel, river, creek or roadstead;

S. 3(1) def. of "Port Authority" repealed by No. 82/1995 s. 153(2).

S. 3(1) def. of "port corporation" inserted by No. 9/2004 s. 3(1)(a).

S. 3(1) def. of "port management body" inserted by No. 9/2004 s. 3(1)(a).

- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers;

* * * * *

"port corporation" has the same meaning as in the **Port Services Act 1995**;

"port management body" means—

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

(iii) the waters declared under section 5 of the **Port Services Act 1995** to be the port of Hastings, the Victorian Regional Channels Authority, or, if there is an agreement with a channel operator in relation to those waters, that channel operator;

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

S. 3(1) def. of "port of Melbourne" inserted by No. 9/2004 s. 3(1)(a).

"Port of Melbourne Corporation" has the same meaning as in the **Port Services Act 1995**;

S. 3(1) def. of "Port of Melbourne Corporation" inserted by No. 9/2004 s. 3(1)(a).

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

S. 3(1) def. of "Port of Melbourne waters" inserted by No. 9/2004 s. 3(1)(a).

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

S. 3(1) def. of "port waters" inserted by No. 82/1995 s. 153(1).

S. 3(1) def. of "prescribed concentration of alcohol" substituted by No. 93/2000 s. 3(b) (as amended by No. 23/2001 s. 23), amended by Nos 90/2001 s. 3(1)(a), 94/2003 s. 34(1)(a)(b).

"prescribed concentration of alcohol" means—

- (a) in the case of a person who is under the age of 21 years and who is in charge of a regulated recreational vessel or regulated hire and drive vessel under way, any concentration of alcohol present in the blood or breath of that person; and
- (b) in the case of any other person—
 - (i) a concentration of alcohol present in the blood of that person of 0.05 grams per 100 millilitres of blood; or
 - (ii) a concentration of alcohol present in the breath of that person of 0.05 grams per 210 litres of exhaled air;

"recreational vessel" means—

- (a) a vessel used or intended to be used wholly for the purpose of recreation or sport and not for hire or reward; or
- (b) any other vessel that is, or is of a class that is, declared under sub-section (3)(c) to be a recreational vessel or recreational vessels;

"registered medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 3(1) def. of "registered medical practitioner" inserted by No. 23/1994 s. 118(Sch. 1 item 34.1).

"regulated hire and drive vessel" means—

- (a) a hire and drive personal watercraft, within the meaning of Part 10A; or
- (b) a specialised hire and drive vessel, within the meaning of Part 10A;

S. 3(1) def. of "regulated hire and drive vessel" inserted by No. 90/2001 s. 3(1)(b).

"regulated recreational vessel" means a vessel of either of the following classes—

- (a) a general recreational vessel, within the meaning of Part 10A;
- (b) a personal watercraft, within the meaning of Part 10A;

S. 3(1) def. of "regulated recreational vessel" inserted by No. 93/2000 s. 3(a).

* * * * *

S. 3(1) def. of "speed" repealed by No. 77/2001 s. 22(a).

"State waters" means—

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

"trading vessel" means a vessel used or intended to be used for or in connection with any business or commercial activity, and includes (but is not limited to) a vessel used or intended to be used wholly or principally for—

- (a) carrying passengers or cargo for hire or reward; or

S. 3(1) def. of
"Uniform
Shipping
Laws Code"
substituted by
No. 77/2001
s. 22(d).

S. 3(1) def. of
"vessel"
amended by
No. 9/2004
s. 3(1)(f)(i)(ii).

S. 3(1) def. of
"Victorian
Marine
Pollution
Contingency
Plan"
inserted by
No. 82/1995
s. 153(1),
amended by
No. 77/2001
s. 18(a)(b).

- (b) providing services to vessels and shipping, whether for reward or otherwise—

but does not include a government vessel or a fishing vessel;

"Uniform Shipping Laws Code" means the Uniform Shipping Laws Code adopted by the Australian Transport Council and notified in the Commonwealth of Australia Gazette;

"vessel" means any kind of vessel that is used, or capable of being used, in navigation by water, however propelled or moved, and includes¹—

- (a) a barge, lighter, floating restaurant or other floating vessel; and
(b) an air-cushion vehicle, or other similar craft, that is used in navigation by water; and
(c) any aeroplane that is designed for and capable of being waterborne, for so long as that aeroplane is waterborne;

"Victorian Marine Pollution Contingency Plan" means the plan (as in force from time to time) established under arrangements developed by Commonwealth, State and Territory Ministers in connection with the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances and in accordance with the state emergency response plan prepared under Part 3A of the **Emergency Management Act 1986**.

"Victorian Regional Channels Authority"
means the Victorian Regional Channels
Authority established by Division 2 of Part 2
of the **Port Services Act 1995**;

S. 3(1) def. of
"Victorian
Channels
Authority"
inserted by
No. 82/1995
s. 153(1),
substituted as
"Victorian
Regional
Channels
Authority" by
No. 85/2003
s. 34(2)(a).

"waterway manager" means—

S. 3(1) def. of
"waterway
manager"
inserted by
No. 9/2004
s. 3(1)(a).

- (a) a person or body that has been declared
by an Order under sub-section (3)(b) to
be a waterway manager; or
 - (b) the Director, in the case of any waters
which no other person or body has
responsibility for managing.
- (2) A reference to an engine in this Act or the
regulations does not include a reference to a sail,
paddle, oar, pedal or any other means of
propelling a vessel that relies solely on the wind
or physical human activity as a power source.
- (3) The Minister may, by Order published in the
Government Gazette—
- (a) declare a law of the Commonwealth or
another State or a Territory of the
Commonwealth which creates an offence
substantially similar to any one of the
offences created by section 28 to be a
corresponding law; or
 - (b) declare a person, or a body established or
constituted by or under any Act for any
public purpose, to be the waterway manager
of the State waters specified in the Order; or
 - (c) declare a vessel, or a class of vessel, to be a
recreational vessel or recreational vessels.

S. 3(2)
substituted by
No. 90/2001
s. 3(2).

S. 3(3)(b)
substituted by
No. 9/2004
s. 3(2).

S. 3(3A)
inserted by
No. 9/2004
s. 3(3).

S. 3(4)
inserted by
No. 14/2000
s. 27(2).

- (3A) The Minister may, by Order published in the Government Gazette, amend, vary or revoke an Order made under sub-section (3)(b).
- (4) The Director of the Victorian Institute of Forensic Medicine may, in writing, approve a person to take blood samples for the purposes of Part 4 if the Director is of the opinion that the person has the appropriate qualifications, training and experience to take such samples.

4. Act does not apply to defence force vessels

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

5. Act binds the Crown

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

6. Application to types of voyage

- (1) In this section—
- (a) **"inter-state voyage"** and **"overseas voyage"** have the same respective meanings as in the Navigation Act 1912 of the Commonwealth; and
- (b) **"intra-state voyage"** means a voyage other than an inter-state voyage or an overseas voyage.

-
- (2) For the purposes of this section, a vessel is connected with Victoria if it—
- (a) is registered or deemed to be registered under the Shipping Registration Act 1981 of the Commonwealth with a home port in Victoria; or
 - (b) is owned by a body corporate that is established under Victorian law or that has its principal office or place of business in Victoria, or is in the possession of such a body corporate by virtue of a charter; or
 - (c) is owned by any person whose chief office or place of business in respect of the management of the vessel is in Victoria, or is in the possession of such a person by virtue of a charter; or
 - (d) is registered or licensed or required to be registered or licensed under Victorian law.
- (3) Unless specifically provided otherwise by any provision of this Act, this Act applies to and in relation to—
- (a) a trading vessel proceeding on an intra-state voyage; and
 - (b) an Australian fishing vessel, a hire and drive vessel, or a recreational vessel, proceeding on—
 - (i) an intra-state voyage; or
 - (ii) that part of an inter-state voyage which began in Victoria where the vessel is not within the jurisdiction of another State or a Territory of the Commonwealth; and
-

Marine Act 1988
Act No. 52/1988
Part 1—Preliminary

s. 6

S. 6(3)(d)
amended by
No. 20/1993
s. 16.

S. 6(3)(e)
inserted by
No. 20/1993
s. 16.

- (c) a vessel connected with Victoria that is an Australian fishing vessel, a hire and drive vessel, or a recreational vessel, proceeding on an inter-state voyage which began in Victoria; and
- (d) an Australian fishing vessel proceeding on an inter-state voyage, a hire and drive vessel, or a recreational vessel, where the vessel is within State waters; and
- (e) any other vessel within State waters—

and to and in relation to the owner, master and crew of any such vessel.

- (4) Unless specifically provided otherwise by any provision of this Act, the provisions of this Act relating to the registration of vessels, the survey of vessels or the crewing requirements for vessels do not apply to or in relation to—
 - (a) a trading vessel proceeding on an overseas voyage or an inter-state voyage; or
 - (b) an Australian fishing vessel proceeding on an overseas voyage—

or to or in relation to the owner, master or crew of any such vessel.

PART 2—REGISTRATION

7. Application of Part

This Part applies only to vessels that are operated or intended for operation on State waters.

8. Offence if a vessel is not registered

(1) A person must not—

- (a) operate a vessel on State waters; or
- (b) being the owner or person in charge of a vessel, cause or allow it to be operated on State waters—

unless that vessel is registered under this Part or exempted from registration by the regulations or by a notice given by the Director under section 67.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 6 penalty units.

S. 8(1)
amended by
Nos 51/1996
s. 14(1)(a)(b),
77/2001
s. 31(1)(b).

(2) A person must not—

- (a) operate a vessel in breach of any condition of its registration; or
- (b) being the owner or person in charge of a vessel, cause or allow it to be so operated or employ or engage a person so to operate it.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 6 penalty units.

S. 8(2)
amended by
No. 51/1996
s. 14(2)(a)(b).

(3) A person may not be convicted under this section as both a person in charge and an owner in respect of the same circumstances.

9. Names in which a vessel must not be registered

- (1) A vessel must not be registered—
 - (a) in any name other than—
 - (i) the name of a natural person who is of or over the age of 12 years; or
 - (ii) the name of a corporation; or
 - (iii) the name of an incorporated association; or
 - (b) in the name of more than one person.
- (2) In sub-section (1)(b) "**person**" means—
 - (a) a natural person; or
 - (b) a corporation; or
 - (c) an incorporated association.

10. Effecting registration, renewal or transfer

- (1) Registration, renewal of registration and transfer of registration may be applied for, and granted or refused, only in accordance with the regulations.
- (2) If the Director is satisfied that a vessel in respect of which an application for registration is made meets the prescribed standards for registration, and if the applicant complies with the provisions of this Act and the regulations relating to registration, the Director must register the vessel.
- (3) Regulations made under this Act must not require the payment of any fees, rates or charges in respect of the registration of a vessel that is used or intended to be used primarily for search and rescue purposes and is owned by an organisation approved by the Director for the purposes of this sub-section.

S. 10(2)
amended by
No. 77/2001
s. 31(1)(b).

S. 10(3)
amended by
Nos 44/1989
s. 41(Sch. 2
item 26.1),
20/1993 s. 17,
77/2001
s. 31(1)(b).

10A. Register does not provide evidence of title

The register of recreational vessels maintained by the Director under this Part does not provide evidence of title to any recreational vessel.

S. 10A
inserted by
No. 9/2004
s. 5.

11. Power to cancel or suspend registration

The Director may, in accordance with the regulations, cancel or suspend the registration of a vessel.

S. 11
amended by
No. 77/2001
s. 31(1)(b).

12. Seizure of registration plates

The Director or a member of the police force may take possession of any registration plate or label which the Director or member has reasonable grounds for suspecting—

S. 12
amended by
No. 77/2001
s. 31(1)(b).

- (a) is being used other than in accordance with this Act and the regulations; or
- (b) was issued other than in accordance with this Act and the regulations—

and may retain it until the Director is satisfied that it is not being so used, or was not so issued.

13. Power to inspect vessels

- (1) Any of the following people may at any reasonable time inspect a vessel which is being operated, or which the inspecting person has reasonable grounds for suspecting will be operated, or has within the preceding 30 days been operated, on State waters, and which the inspecting person has reasonable grounds for suspecting does not comply with this Act or the regulations:

- (a) an inspector appointed under section 72 for the purposes of this section;

S. 13(1)(a)
substituted by
Nos 77/2001
s. 31(1)(c),
9/2004 s. 5(a).

Marine Act 1988
Act No. 52/1988
Part 2—Registration

s. 14

S. 13(1)(b)
repealed by
No. 82/1995
s. 154(1),
new s. 13(1)(b)
inserted by
No. 77/2001
s. 31(1)(c).

S. 13(1)(d)
substituted by
No. 9/2004
s. 5(b).

S. 14(1)
amended by
No. 77/2001
s. 31(1)(b).

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- (b) any other person who is authorised by the Director for the purposes of this section;
 - (c) A member of the police force;
 - (d) a person who is authorised in writing by a port management body, a local port manager or a waterway manager for the purposes of this section.
- (2) An inspection may include any reasonable tests that the inspecting person decides to be appropriate.
- (3) A person must not refuse or fail to allow a vessel to be inspected when required under this section.

Penalty: 5 penalty units.

14. Power to prohibit operation of particular vessel

- (1) The Director may, in accordance with the regulations, direct that a particular vessel (whether registered or not) must not be operated on State waters, or that it may only be operated on State waters on specified conditions, and a direction may be either for a specified period or indefinite.
- (2) A member of the police force may, in accordance with the regulations, direct that a particular vessel (whether registered or not) must not be operated on State waters, or that it may only be operated on State waters on specified conditions, for a specified period.

-
- (3) A person must not operate a vessel in contravention of a direction under sub-section (1) or (2).

Penalty: For a first offence, 2 penalty units.

For a subsequent offence, 3 penalty units.

Marine Act 1988
Act No. 52/1988

Part 3—Operation of Vessels

s. 15

PART 3—OPERATION OF VESSELS

15. Director may regulate or prohibit operation

- (1) The Director, on the recommendation of a port management body, local port manager or waterway manager, may from time to time by notice published in the Government Gazette—
- (a) regulate or prohibit the operation on any waters under the control of a port management body, local port manager or waterway manager, or any specified parts of those waters, of—
 - (i) any vessels; or
 - (ii) any specified classes of vessel; and
 - (b) regulate the use of those waters by bathers and others, so far as that use affects any boating activity.
- (2) The Director, on the recommendation of a member of the police force, may from time to time by notice published in the Government Gazette—
- (a) regulate or prohibit the operation on any waters of—
 - (i) any vessels; or
 - (ii) any specified classes of vessel; and

S. 15
(Heading)
inserted by
No. 77/2001
s. 31(1)(d).

S. 15(1)
amended by
Nos 82/1995
s. 154(2),
77/2001
s. 31(1)(b),
85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 1(a)).

S. 15(1)(a)
amended by
Nos 82/1995
s. 154(3),
85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 1(b)).

S. 15(2)
amended by
No. 77/2001
s. 31(1)(b).

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Part 3—Operation of Vessels

s. 16

(b) regulate the use of any waters by bathers and others, so far as that use affects any boating activity.

(3) A person must not operate a vessel or use any waters in contravention of a notice under subsection (1) or (2).

S. 15(3)
amended by
No. 51/1996
s. 14(3)(a)(b).

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

16. Boating activities

On application by any person or body of people—

S. 16
amended by
Nos 82/1995
ss 154(4), 155,
77/2001
s. 31(1)(b),
9/2004
s. 6(a)(b).

(a) the Director in respect of any State waters (including waters in respect of which the Director is not the waterway manager); or

S. 16(a)
inserted by
No. 9/2004
s. 6(a).

(b) any other waterway manager, in respect of waters under its control; or

S. 16(b)
inserted by
No. 9/2004
s. 6(a).

(c) any port management body or local port manager, in respect of waters under its control—

S. 16(c)
inserted by
No. 9/2004
s. 6(a).

may, by notice in writing to the applicant, declare that any provisions of this Act, the regulations or regulations made under the **Port Services Act 1995** that relate to local ports and that are specified in the notice do not apply, or apply with specified modifications, with respect to any boating activity that is held or to be held on specified State waters between specified hours on a specified day.

S. 17(1)
amended by
No. 51/1996
s. 14(4)(a)(b).

17. Underage operators

- (1) The owner of a vessel which has an engine that is used for propulsion must not cause or allow the vessel to be operated on State waters by a person who is less than 12 years old, and a person who is less than 12 years old must not so operate such a vessel.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

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S. 17(2)
amended by
No. 51/1996
s. 14(5)(a)(b),
repealed by
No. 93/2000
s. 4.

18. Owner must give information

- (1) In this section "**authorised officer**" means a person who is authorised by the Director, or a person who is authorised by the Minister, for the purposes of this section.

- (2) The owner of a vessel must, when required to do so by a member of the police force or an authorised officer—

- (a) give information which is within the knowledge of the owner and which may lead to the identification of any person, other than the owner, who was the person in charge of the vessel on any occasion; or
- (b) make all reasonable enquiries to obtain that information.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

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Part 3—Operation of Vessels

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19. Person in charge must stop and give name and address

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|--|--|
| <p>(1) In this section "authorised officer" means a person who is authorised by the Director, or a person who is authorised by the Minister, for the purposes of this section.</p> | <p>S. 19(1) amended by Nos 82/1995 s. 156(1), 77/2001 s. 31(1)(e).</p> |
| <p>(2) A member of the police force or an authorised officer may—</p> <p style="margin-left: 40px;">(a) by signalling or otherwise, require the person in charge of a vessel to stop the vessel; or</p> <p style="margin-left: 40px;">(b) require the person in charge of a vessel to state his or her name and address.</p> | |
| <p>(3) A person in charge of a vessel must not refuse or fail to stop the vessel when so required.</p> <p style="margin-left: 40px;">Penalty: For a first offence, 4 penalty units.</p> <p style="margin-left: 80px;">For a subsequent offence, 8 penalty units.</p> | <p>S. 19(3) amended by No. 51/1996 s. 14(7)(a)(b).</p> |
| <p>(4) A person in charge of a vessel must not—</p> <p style="margin-left: 40px;">(a) refuse or fail to state his or her name and address; or</p> <p style="margin-left: 40px;">(b) state a false name or address; or</p> | <p>S. 19(4) amended by No. 51/1996 s. 14(8)(a)(b).</p> <p>S. 19(4)(b) amended by No. 93/2000 s. 5.</p> |
| <p style="margin-left: 40px;">(c) fail to produce an operator licence, if such a licence is required to operate the vessel; or</p> | <p>S. 19(4)(c) inserted by No. 93/2000 s. 5.</p> |
| <p style="margin-left: 40px;">(d) fail to produce a certificate, licence or exemption issued under the regulations, while operating a vessel covered by that certificate, licence or exemption; or</p> | <p>S. 19(4)(d) inserted by No. 93/2000 s. 5, amended by No. 90/2001 s. 4(1)(a).</p> |

Marine Act 1988
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Part 3—Operation of Vessels

s. 20

S. 19(4)(e)
inserted by
No. 90/2001
s. 4(1)(b).

S. 19(4)(f)
inserted by
No. 90/2001
s. 4(1)(b).

S. 19(5)
inserted by
No. 90/2001
s. 4(2).

(e) fail to produce any other document that the operator of the vessel is required by this Act or the regulations to have in his or her possession while operating the vessel; or

(f) fail to allow inspection of any document that is required by the regulations to be displayed in or on the vessel—

when so required.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

(5) Sub-sections (4)(c), (4)(d), (4)(e) and (4)(f) do not apply if the licence, certificate, exemption or other document is not on the vessel at the time the request for its production is made.

20. Duty of owner or person in charge if accident occurs

(1) If as a result of an accident involving a vessel on State waters any person is injured or dies or any property is damaged or destroyed, the person in charge of the vessel must—

(a) immediately render any assistance that he or she can; and

(b) as soon as possible give his or her name and address, the name and address of the owner of the vessel and any identifying number of the vessel to—

(i) any person who has been injured, or who owns any property which has been damaged or destroyed, or to the representative of any such person or of a person who has died; and

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(ii) any member of the police force who is present; and

(c) if—

(i) any person is injured or dies; and

(ii) no member of the police force is present at the scene of the accident—

report, in person and without delay, full particulars of the accident at the police station that is most accessible to the scene of the accident if that station is open or, if it is not, at the next most accessible station that is open; and

(d) if—

(i) any property is damaged or destroyed; and

(ii) neither the owner of the property nor a representative of the owner, nor any member of the police force, is present—

report, in person and without delay, full particulars of the accident at the police station that is most accessible to the scene of the accident if that station is open or, if it is not, at the next most accessible station that is open.

(1A) If the vessel involved in the accident did not have anyone on board at the time the accident occurred, the owner, or the person in charge, of the vessel must as soon as possible after becoming aware of the accident comply with sub-section (1) as far as circumstances permit.

S. 20(1A)
inserted by
No. 77/2001
s. 23(1).

Marine Act 1988
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S. 20(3)
amended by
No. 77/2001
ss 23(2),
31(1)(b).

S. 20(4)
inserted by
No. 20/1993
s. 18,
amended by
No. 77/2001
ss 23(2),
31(1)(b).

S. 20(5)
inserted by
No. 77/2001
s. 23(3).

- (2) A person who contravenes sub-section (1) is guilty of an offence and is liable—
- (a) if as a result of the accident a person is injured or dies—
 - (i) to a penalty of not more than 3 penalty units for a first offence; and
 - (ii) to a penalty of not more than 5 penalty units for a subsequent offence; and
 - (b) if no person is injured or dies as a result of the accident—
 - (i) to a penalty of not more than 2 penalty units for a first offence; and
 - (ii) to a penalty of not more than 4 penalty units for a subsequent offence.
- (3) The owner or master of a trading vessel, fishing vessel or hire and drive vessel which is involved in an accident must report, in writing and without delay, to the Director full particulars of the accident.
- Penalty: 3 penalty units.
- (4) The owner or master of a trading vessel, fishing vessel or hire and drive vessel which is involved in an incident in which any vessel or person is placed at risk of damage or injury must report, in writing and without delay, to the Director full particulars of the incident.
- Penalty: 3 penalty units.
- (5) The Chief Commissioner of Police may disclose to the Director any information in the possession of the Chief Commissioner concerning any accident involving a vessel on State waters or any incident in which any vessel or person is placed at risk of damage or injury.

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Part 3—Operation of Vessels

s. 20A

20A. Damage etc. to be reported

The owner or master of a trading vessel or fishing vessel must report, in writing and without delay, to the Director full particulars if—

- (a) the vessel has been damaged or a defect in it or in its boilers, machinery or equipment has been discovered and the damage or defect has affected or is likely to affect—
 - (i) the seaworthiness or safety of the vessel; or
 - (ii) the efficient operation or the safety of the boilers, machinery or fixed equipment (within the meaning of section 268 of the Navigation Act 1912 of the Commonwealth) of the vessel; or
 - (iii) the efficiency or completeness of the life-saving appliances or other safety equipment (within the meaning of section 268 of the Navigation Act 1912 of the Commonwealth) of the vessel; or
- (b) the vessel has been in a position of great peril, either from the action of some other vessel or from danger of wreck or collision; or
- (c) the vessel has been stranded or wrecked; or
- (d) the vessel has fouled or done any damage to a pipeline or submarine cable or to a lighthouse, lightship, beacon, buoy or marine mark to which section 268(1)(e) of the Navigation Act 1912 of the Commonwealth applies.

Penalty: 5 penalty units.

S. 20A
 inserted by
 No. 82/1995
 s. 157,
 amended by
 No. 77/2001
 s. 31(1)(b).

S. 21(1)
amended by
Nos 82/1995
s. 156(2),
77/2001
s. 31(1)(e).

S. 21(2)
amended by
No. 51/1996
s. 14(9)(a)(b).

S. 22
substituted by
No. 93/2000
s. 6.

S. 22(3)
amended by
No. 90/2001
s. 7(1).

21. Person in charge must obey signals etc.

- (1) In this section "**authorised officer**" means a person who is authorised by the Director, or a person who is authorised by the Minister, for the purposes of this section.
- (2) The person in charge of a vessel on State waters must obey any direction that is given, by any means, by a member of the police force or an authorised officer.

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

22. Dangerous operating

- (1) A person must not operate a vessel at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case.
Penalty: 240 penalty units or imprisonment for 2 years.
- (2) Sub-section (1) does not apply to a person who is complying with section 26.
- (3) On conviction for an offence under this section involving a regulated recreational vessel or a regulated hire and drive vessel, the court must—
 - (a) in the case of an offender who holds an operator licence, cancel that licence and disqualify the offender from obtaining an operator licence for the time (not being less than 6 months) that the court thinks fit; or
 - (b) in the case of an offender who does not hold an operator licence, disqualify the offender from obtaining an operator licence for the time (not being less than 6 months) that the court thinks fit.

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Part 3—Operation of Vessels

s. 22A

- (4) If on a prosecution for an offence under this section the court is not satisfied that the defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence against section 22A, the court may convict the defendant of an offence against section 22A and punish the defendant accordingly.

22A. Careless operation

S. 22A
 inserted by
 No. 93/2000
 s. 6.

- (1) A person must not operate a vessel carelessly.

Penalty: 12 penalty units for a first offence.
 25 penalty units for a second or
 subsequent offence.

- (2) Sub-section (1) does not apply to a person who is complying with section 26.

23. Acts tending to endanger vessel or crew

S. 23
 amended by
 No. 82/1995
 s. 158(a)–(e).

Any person who, whether wilfully or negligently—

- (a) does any act tending to the immediate loss or destruction of, or serious damage to, a vessel or its cargo; or
- (b) does any act tending immediately to endanger anyone belonging to or on board a vessel; or
- (c) fails to do any act that is reasonably necessary to protect a vessel or cargo from immediate loss, destruction or serious damage; or

S. 23(a)
 amended by
 Nos 20/1993
 s. 19(a),
 82/1995
 s. 158(b)(c).

S. 23(b)
 amended by
 Nos 20/1993
 s. 19(b),
 82/1995
 s. 158(b)(d).

S. 23(c)
 amended by
 Nos 20/1993
 s. 19(c),
 82/1995
 s. 158(b)(c).

Marine Act 1988
Act No. 52/1988

Part 3—Operation of Vessels

s. 24

S. 23(d)
amended by
Nos 20/1993
s. 19(d),
82/1995
s. 158(b)(d).

- (d) fails to do any act that is reasonably necessary to protect anyone belonging to or on board a vessel from immediate danger—

is guilty of an indictable offence and liable to imprisonment for a term of not more than 2 years or a fine of not more than 240 penalty units or both.

24. Tampering with a vessel

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

Penalty: For a first offence, 4 penalty units.

For a subsequent offence, 8 penalty units.

- (2) The accused has the burden of proving just cause or excuse.

25. Distress signals

- (1) A vessel must be provided in accordance with the regulations with the means of making distress signals.

- (2) A person on board a vessel who knowingly uses or displays or knowingly causes or permits any person under his or her authority to use or display any recognised distress signal except in the case of a vessel being in distress is guilty of an indictable offence and liable to imprisonment for a term of not more than 3 months or a fine of not more than 20 penalty units or both.

- (3) For the purposes of section 86 of the **Sentencing Act 1991**, compensation for loss or destruction of, or damage to, property as a result of the offence shall include compensation for—

- (a) any work undertaken; or

S. 24(1)
amended by
No. 51/1996
s. 14(10).

S. 25(2)
substituted by
No. 20/1993
s. 20.

S. 25(3)
substituted by
No. 20/1993
s. 20.

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Part 3—Operation of Vessels

s. 26

(b) any risk incurred; or

(c) any loss sustained—

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

26. Assistance to people in distress

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

S. 26(1)
 amended by
 No. 77/2001
 s. 24(a)(b).

(2) If the person in charge of a vessel contravenes sub-section (1)—

(a) the person in charge is guilty of an indictable offence and liable to imprisonment for a term of not more than two years; and

(b) an investigation may be conducted into the conduct of the master and his or her certificate of competency may be cancelled or suspended and, for this purpose, the provisions of Division 3 of Part 8 with respect to investigations into accidents apply, with any necessary modifications, to investigations under this paragraph.

S. 26(2)(b)
 amended by
 No. 9/2004
 s. 7.

Pt 3A
(Heading and
ss 26A–26I)
inserted by
No. 82/1995
s. 159.

S. 26A
inserted by
No. 82/1995
s. 159,
amended by
Nos 51/1996
s. 18, 77/2001
s. 31(1)(b),
substituted by
No. 9/2004
s. 8.

PART 3A—HARBOUR MASTERS

26A. Requirement to engage harbour master

- (1) The Port of Melbourne Corporation must ensure that a licensed harbour master is at all times engaged for the port of Melbourne waters.
Penalty: 120 penalty units.
- (2) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for the waters declared under section 5 of the **Port Services Act 1995** to be the waters of the port of Geelong.
Penalty: 120 penalty units.
- (3) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for the waters declared under section 5 of the **Port Services Act 1995** to be the waters of the port of Portland.
Penalty: 120 penalty units.
- (4) The Victorian Regional Channels Authority must ensure that a licensed harbour master is at all times engaged for the waters declared under section 5 of the **Port Services Act 1995** to be the waters of the port of Hastings.
Penalty: 120 penalty units.

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s. 26B

- (5) A local port manager must ensure that a licensed harbour master is at all times engaged for any part of the waters under the control of that manager in respect of which the Director has determined that a licensed harbour master is required to be engaged.

Penalty: 60 penalty units.

- (6) A waterway manager must ensure that a licensed harbour master is at all times engaged for any part of the waters under the control of that manager in respect of which the Director has determined that a licensed harbour master is required to be engaged.

Penalty: 60 penalty units.

- (7) It is a defence to a charge under this section for the person charged to prove that he, she or it believed, after making reasonable enquiries, that the person engaged as the harbour master was licensed under this Act to act as the harbour master for the waters in respect of which he or she was engaged.

26B. Authorisation to act as a harbour master

- (1) The Port of Melbourne Corporation may, having first—
- (a) consulted the harbour master engaged for the port of Melbourne waters; and
 - (b) obtained the approval in writing of the Director—

authorise, in writing, a person to act as an assistant harbour master for the port of Melbourne waters.

- (2) The person or body who has engaged a harbour master for the waters that have been declared under section 5 of the **Port Services Act 1995** to be part of the—

S. 26B
 inserted by
 No. 82/1995
 s. 159,
 amended by
 No. 77/2001
 s. 31(1)(b),
 substituted by
 No. 9/2004
 s. 8.

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-
- (a) port of Geelong; or
 - (b) port of Portland; or
 - (c) port of Hastings—
 may, having first—
 - (d) consulted the harbour master engaged by that body; and
 - (e) obtained the approval in writing of the Director—
 authorise, in writing, a person to act as an assistant harbour master for the waters that have been so declared to be part of the port.
- (3) A local port manager may authorise, in writing, a person to act as an assistant harbour master for any waters under the control of the manager in respect of which the manager has engaged a harbour master, if the manager has first—
- (a) consulted the harbour master so engaged; and
 - (b) obtained the approval in writing of the Director.
- (4) A waterway manager may authorise, in writing, a person to act as an assistant harbour master for any waters under the control of the manager in respect of which the manager has engaged a harbour master, if the manager has first—
- (a) consulted the harbour master so engaged; and
 - (b) obtained the approval in writing of the Director.
- (5) An authorisation under this section may be general or may be limited to the exercise of the functions and powers that are specified in the authorisation.
-

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Part 3A—Harbour Masters

s. 26C

- (6) A person authorised to act as a harbour master under this section has all the functions and may exercise all the powers that are specified in his or her instrument of authorisation and, when carrying out any such function or exercising any such power, the person acts as the harbour master.
- (7) The authorisation of a person under this section to carry out a function or exercise a power does not prevent the harbour master from carrying out that function or exercising that power.

26C. Functions of harbour masters

- (1) The functions of a harbour master are as follows—
- (a) to control and direct vessels entering and leaving the waters for which he or she has been engaged, including the time and manner of doing so;
 - (b) to control and direct the navigation and other movement of vessels in those waters;
 - (c) to control and direct the position where and the manner in which any vessel may anchor or be secured in those waters;
 - (d) to control and direct the time and manner of the taking in or discharging from any vessel of cargo, stores, fuel, fresh water and water ballast in those waters;
 - (e) to control and direct the securing or removal of any vessel in those waters in, from or to any position the harbour master thinks fit;
 - (f) any other functions that are conferred on harbour masters by or under this or any other Act.

S. 26C
 inserted by
 No. 82/1995
 s. 159,
 substituted by
 No. 9/2004
 s. 8.

- (2) A harbour master must carry out his or her functions under sub-section (1) in a manner—
 - (a) that ensures the safety of persons and the safe operation of vessels; and
 - (b) that minimises the effect of vessel operations on the environment.
- (3) The Director may, at any time, impose a condition on the licence of a harbour master that limits or restricts a function of the harbour master.
- (4) A harbour master's licence may contain a condition that makes the exercise of his or her functions subject to a direction given from time to time to the harbour master by the Director.

S. 26D
inserted by
No. 82/1995
s. 159,
amended by
No. 77/2001
s. 31(1)(b),
substituted by
No. 9/2004
s. 8.

26D. Powers of harbour masters

A harbour master has all the powers that are necessary and convenient to enable him or her to carry out the functions given to the harbour master under this or any other Act.

S. 26E
inserted by
No. 82/1995
s. 159,
amended by
No. 77/2001
s. 31(1)(b),
substituted by
No. 9/2004
s. 8.

26E Power of harbour masters to give written and oral directions

- (1) A harbour master may from time to time give written directions for or with respect to vessels entering or within waters for which he or she has been engaged, including all or any of the following matters—
 - (a) prohibiting entry by any vessel to or requiring the removal of any vessel from the waters for which he or she has been engaged, if the harbour master has reasonable cause to believe that the vessel—
 - (i) is unseaworthy; or

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s. 26E

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- (ii) is in imminent danger of sinking and causing an obstruction to navigation in those waters; or
 - (iii) is in imminent danger of causing serious damage to the marine environment or property in those waters;
- (b) to control and direct the navigation and other movement of vessels in those waters;
 - (c) to control and direct the position where and the manner in which any vessel may anchor or be secured in those waters;
 - (d) to control and direct the time and manner of the taking in or discharging from any vessel of cargo, stores, fuel, fresh water and water ballast in those waters;
 - (e) to control and direct the securing or removal of any vessel in those waters in, from or to any position the harbour master thinks fit;
 - (f) any other thing for or with respect to the management of the operation of vessels in those waters.
- (2) Directions given under sub-section (1) must be published in a manner that makes them readily accessible to users of the port.
 - (3) A harbour master may, if it is reasonable to do so, give an oral direction about any matter on which a written direction can be given under sub-section (1) for or with respect to a vessel entering or within waters for which he or she has been engaged.
-

- (4) A harbour master who has given a direction under sub-section (3), must, as soon as possible after giving the direction, make a written copy of the direction and cause the copy to be kept at the business office of the person or body who has engaged the harbour master for a period of 6 years from the date of the direction.
- (5) A harbour master may, as a condition of allowing a vessel to be anchored or secured within any part of the waters for which he or she has been engaged, being waters in which a licensed pilot is required to be engaged, direct that a pilot remain on board the vessel while it is so anchored or secured, whether or not pilotage is compulsory under section 96.

26F. Specific provisions as to directions relating to the entry and removal of vessels

- (1) A harbour master must not give any direction prohibiting the entry of a vessel to the waters for which he or she has been engaged or requiring the removal of a vessel from those waters under section 26E if the direction would endanger the life of any person on the vessel.
- (2) A direction given by a harbour master prohibiting the entry of a vessel to the waters for which he or she has been engaged or requiring the removal of a vessel from those waters under section 26E may be revoked by order of the Director.

26G. General provisions relating to harbour master directions

- (1) A harbour master must not give any direction under section 26E that would result in a contravention of any law relating to the State waters or vessel concerned or that would impede the proper administration of the customs or quarantine services within those waters.

S. 26F
inserted by
No. 82/1995
s. 159,
substituted by
No. 9/2004
s. 8.

S. 26G
inserted by
No. 82/1995
s. 159,
substituted by
No. 9/2004
s. 8.

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- (2) If a direction given by a harbour master under section 26E is inconsistent with a direction given by the Director under paragraph 18C of Schedule 4, the direction given by the Director prevails and the harbour master's direction is, to the extent of the inconsistency, of no effect.

26H. Amendment and revocation of directions

A direction given by a harbour master under section 26E may be amended or revoked by any harbour master who has been engaged for the waters in respect of which the direction applies.

S. 26H
 inserted by
 No. 82/1995
 s. 159,
 amended by
 No. 77/2001
 s. 31(1)(b),
 substituted by
 No. 9/2004
 s. 8.

26HA. Harbour master may carry out direction

- (1) If—
- (a) there is no person on board any vessel to whom a harbour master may give a direction under this Part and there are reasonable grounds for the harbour master to act urgently without giving a direction; or
 - (b) a direction under this Part or under the regulations is not complied with—
- the harbour master may cause the vessel to be dealt with as required by the harbour master.
- (2) For that purpose, the harbour master (or a person authorised by the harbour master for the purposes of this section) may board a vessel and move, secure or otherwise operate the vessel.
- (3) The person or body which has engaged the harbour master may recover from the master or owner of a vessel referred to in sub-section (1) as a civil debt in any court of competent jurisdiction the reasonable charges and expenses incurred in the exercise of the harbour master's functions under that sub-section.

S. 26HA
 inserted by
 No. 9/2004
 s. 8.

s. 26HB

S. 26HB
inserted by
No. 9/2004
s. 8.

26HB. Offence to fail to comply with direction, or obstruct, harbour master

- (1) The master of a vessel must not, without reasonable excuse, refuse or fail to comply with—
 - (a) any direction given under this Part to the master by a harbour master; or
 - (b) any direction in the regulations.

Penalty: 120 penalty units.

- (2) A person must not, without reasonable excuse, obstruct a harbour master (or a person acting under the direction of a harbour master) exercising any function under this Part.

Penalty: 60 penalty units.

S. 26HC
inserted by
No. 9/2004
s. 8.

26HC. Identity cards

- (1) The person or body which has engaged a harbour master must give an identity card to the harbour master.
- (2) An identity card must be in a form approved by the Director and must contain—
 - (a) a photograph of the person to whom it is issued; and
 - (b) the signature of the person.
- (3) A harbour master must produce his or her identity card—
 - (a) before exercising a function under this Part, other than the giving of a direction by radio or other electronic communication device; and

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- (b) if requested to do so, in the course of exercising a function under this Part, other than the giving of a direction by radio or other electronic communication device.

Penalty: 5 penalty units.

- (4) Before a harbour master gives a direction by radio or other electronic communication device to another person, the harbour master must warn the person to whom the direction is given that failure to comply with the direction may constitute an offence under section 26HB(2).
- (5) A person who has been issued with an identity card must return it to the Director, or the person who issued it, on demand.

Penalty: 5 penalty units.

26HD. Issue of harbour master licences

The Director may issue a licence to a person that authorises that the person is a person who is capable of performing those functions of a harbour master that are specified in the licence in the State waters that are specified in the licence.

S. 26HD
 inserted by
 No. 9/2004
 s. 8.

26HE. Imposition or variation of conditions on harbour master licences

- (1) The Director may, after first consulting with the person or body who has engaged a harbour master, impose a condition on the licence of that harbour master at any time during the course of the licence.
- (2) The Director may, after first consulting with the person or body who engaged a harbour master, vary a condition on the licence of that harbour master that has been imposed under subsection (1).

S. 26HE
 inserted by
 No. 9/2004
 s. 8.

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s. 26HF

S. 26HF
inserted by
No. 9/2004
s. 8.

26HF. Requirement as to notification of licence conditions

- (1) The Director must not impose or vary a condition under section 26HE unless the Director has first given written notice to the holder of the licence that he or she intends to do so.
- (2) The Director must when issuing or renewing a licence on which a condition has been imposed under section 26HE, set out the terms of the condition on the licence.

S. 26I
inserted by
No. 82/1995
s. 159.

26I. Protection from liability

- (1) A harbour master, or any other person exercising the functions of a harbour master, is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance of a function under or in connection with this Part or a direction in the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with this Part or a direction in the regulations.
- (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a harbour master or person exercising the functions of a harbour master, attaches instead to the local port manager or waterway manager by which the harbour master or person is engaged.

S. 26I(1)(a)
substituted by
No. 9/2004
s. 9(1)(a).

S. 26I(1)(b)
substituted by
No. 9/2004
s. 9(1)(b).

S. 26I(2)
substituted by
No. 9/2004
s. 9(2).

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Part 3B—Pilotage Services

s. 26J

PART 3B—PILOTAGE SERVICES

Pt 3B
(Heading and
ss 26J–26T)
inserted by
No. 28/1999
s. 5.

Division 1—Registration of pilotage services providers

26J. Notification of pilotage services provider

S. 26J
inserted by
No. 28/1999
s. 5.

- (1) A person who proposes to provide pilotage services must, not less than 30 days before commencing to provide those services, give a notice to the Director of the intention to provide those services.
- (2) A notice under sub-section (1) must—
 - (a) be in writing; and
 - (b) be in a form approved by the Director; and
 - (c) be accompanied by a fee of 13.5 fee units.
- (3) A person lawfully providing pilotage services before the commencement of the **Marine (Amendment) Act 1999** and who intends to continue to provide those services after that commencement may give a notice in accordance with sub-section (2) to the Director not less than 30 days after that commencement.

S. 26J(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 26J(2)(b)
amended by
No. 77/2001
s. 31(1)(b).

S. 26J(2)(c)
amended by
No. 10/2004
s. 15(Sch. 1
item 18.1).

S. 26J(3)
amended by
No. 77/2001
s. 31(1)(b).

s. 26K

S. 26K
inserted by
No. 28/1999
s. 5,
amended by
No. 77/2001
s. 31(1)(b).

S. 26L
inserted by
No. 28/1999
s. 5.

S. 26M
inserted by
No. 28/1999
s. 5.

S. 26M(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 26M(2)(b)
amended by
No. 77/2001
s. 31(1)(b).

S. 26M(2)(c)
amended by
No. 10/2004
s. 15(Sch. 1
item 18.2).

S. 26M(3)
amended by
No. 77/2001
s. 31(1)(b).

26K. Registration as a pilotage service provider

The Director, on receiving a notice from a person under section 26J and the fee specified in that section, must register the person as a pilotage services provider.

26L. Duration of registration

The registration of a pilotage services provider—

- (a) takes effect at the time of issue of a certificate under section 26N; and
- (b) is valid for one year unless suspended or cancelled sooner.

26M. Application for renewal of registration

- (1) A pilotage services provider may apply to the Director for renewal of registration as a pilotage services provider before the existing registration of the provider expires.
- (2) An application for renewal of registration must—
 - (a) be in writing; and
 - (b) be in a form approved by the Director; and
 - (c) be accompanied by a fee of 9 fee units.
- (3) The Director, on receiving from a person an application under sub-section (2) and the fee specified in that sub-section, must renew the registration of the person as a pilotage services provider.

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s. 26N

26N. Certificates of registration

S. 26N
inserted by
No. 28/1999
s. 5.

- (1) The Director on—
 - (a) registering a person under this Part; or
 - (b) renewing the registration of a person under this Part—

S. 26N(1)
amended by
No. 77/2001
s. 31(1)(b).

must issue a certificate of registration to that person.

- (2) The following particulars must be included on a certificate of registration—

- (a) any alternative safety standards approved by the Director under section 26S; and
- (b) any other information determined by the Director.

S. 26N(2)(a)
amended by
No. 77/2001
s. 31(1)(b).

S. 26N(2)(b)
amended by
No. 77/2001
s. 31(1)(b).

26O. The Register

S. 26O
inserted by
No. 28/1999
s. 5.

- (1) The Director must cause to be kept a register of all pilotage services providers.
- (2) The register is to be called the Register of Pilotage Services Providers.
- (3) The register must contain the following information—
 - (a) the name and address of the pilotage services provider; and
 - (b) the name and identification number of any vessel to be used in connection with the provision of pilotage services; and

S. 26O(1)
amended by
No. 77/2001
s. 31(1)(b).

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Part 3B—Pilotage Services

s. 26P

S. 26O(3)(f)
amended by
No. 77/2001
s. 31(1)(b).

S. 26O(4)
amended by
No. 77/2001
s. 31(1)(b).

S. 26O(5)
amended by
No. 10/2004
s. 15(Sch. 1
item 18.3).

S. 26P
(Heading)
inserted by
No. 77/2001
s. 31(1)(f).

S. 26P
inserted by
No. 28/1999
s. 5,
amended by
No. 77/2001
s. 31(1)(b).

S. 26Q
inserted by
No. 28/1999
s. 5.

- (c) the date of commencement of provision of pilotage services by the provider; and
- (d) the name and licence number of each pilot employed or engaged by the provider, or if the provider holds a pilot licence, the number of that licence; and
- (e) details of arrangements by the provider to transport pilots other than by vessel; and
- (f) any other information determined by the Director to be included in the register.

- (4) The register may be inspected at the office of the Director by any person during ordinary office hours without charge.
- (5) A person may obtain a copy of, or an extract from, the register on payment of a fee of 2 fee units.

26P. Requirement to notify the Director of changes to registration information

A pilotage services provider must notify the Director within 14 days after any change to information recorded in a certificate of registration.

Penalty: 5 penalty units.

26Q. Records to be kept

A pilotage services provider must keep records containing the following information—

- (a) the name and licence number of each pilot employed or engaged by the provider, or if the provider holds a pilot licence, the number of that licence; and

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Part 3B—Pilotage Services

s. 26R

- (b) the number of hours worked by each pilot in any period of 24 hours, indicating the starting and finishing times for work and rest; and
- (c) the annual recreation leave taken by each pilot.

Penalty: 20 penalty units.

26R. Offence to provide pilotage services without registration

S. 26R
 inserted by
 No. 28/1999
 s. 5.

- (1) A person must not provide pilotage services unless that person is, or is employed or engaged by, a registered pilotage services provider under this Part.

Penalty: In the case of a natural person:
 20 penalty units.

In the case of a body corporate:
 60 penalty units.

- (2) A person referred to in section 26J(3) who—
- (a) continues to provide pilotage services in the 30 day period after the commencement of the **Marine (Amendment) Act 1999**; and
- (b) has given a notice to the Director in accordance with section 26J(2) within that period—

S. 26R(2)(b)
 amended by
 No. 77/2001
 s. 31(1)(b).

is not guilty of an offence under this section in respect of the provision of pilotage services at any time before the issue of a certificate of registration in response to that notice.

Division 2—Safety standards for provision of pilotage services

26S. Compliance with safety standards

- (1) The safety standards for pilotage services providers are set out in Schedule 6.
- (2) The Director, on the application of a person registered or seeking to be registered as a pilotage services provider, may approve appropriate alternative safety standards for the provider if the Director decides that—
 - (a) the alternative safety standards substantially comply with the corresponding standards in Schedule 6; or
 - (b) the alternative safety standards adequately achieve the purpose of the corresponding standards in Schedule 6; or
 - (c) compliance with the safety standards in Schedule 6 would, in particular circumstances, be impracticable, unnecessary or inappropriate.
- (3) Alternative safety standards may—
 - (a) modify the application to a pilotage services provider of the standards in Schedule 6; or
 - (b) exempt a provider from any one or more of the standards in Schedule 6; or
 - (c) specify a standard in substitution for a standard in Schedule 6.
- (4) If the Director approves alternative safety standards, the Director may limit the port waters within which the pilotage services provider to whom the standards apply may operate.

S. 26S
inserted by
No. 28/1999
s. 5.

S. 26S(2)
amended by
No. 77/2001
s. 31(1)(b).

S. 26S(4)
amended by
No. 77/2001
s. 31(1)(b)(g).

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Part 3B—Pilotage Services

s. 26T

(5) The following are conditions of the registration of the pilotage services provider—

(a) the standards set out in Schedule 6; and

(b) any alternative safety standards approved by the Director under this section; and

S. 26S(5)(b)
amended by
No. 77/2001
s. 31(1)(b).

(c) any limitation imposed by the Director under sub-section (4).

S. 26S(5)(c)
amended by
No. 77/2001
s. 31(1)(b).

(6) Nothing in this section derogates from any requirement imposed on a pilotage services provider to comply with any obligations or duties imposed under this Act, the regulations or any other standards in relation to vessels, equipment or any other matter.

26T. Offence to fail to comply with safety standards

S. 26T
inserted by
No. 28/1999
s. 5.

A pilotage services provider must comply with the safety standards applicable to the provider.

Penalty: 60 penalty units.

Marine Act 1988
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Part 4—Offences Involving Alcohol or Other Drugs

s. 27

**PART 4—OFFENCES INVOLVING ALCOHOL OR OTHER
DRUGS**

27. Interpretation

(1) For the purposes of this Part, if it is established that at any time within 3 hours after an alleged offence against section 28(1)(a) or (b) a certain concentration of alcohol was present in the blood or breath of the person charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the person's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed.

(1AA) For the purposes of this Part a person is not to be taken to be in charge of a vessel unless that person is attempting to start or operate the vessel or unless there are reasonable grounds for the belief that that person intends to start or operate the vessel.

(1A) For the purposes of an alleged offence against paragraph (e) or (f) of section 28(1) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the blood or breath of the person charged or found by an analyst to be present in the sample of blood taken from the person charged (as the case requires) was not due solely to the consumption of alcohol after being in charge of a vessel under way unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

S. 27(1)
amended by
No. 94/2003
s. 34(2)(a)(b).

S. 27(1AA)
inserted by
No. 93/2000
s. 7.

S. 27(1A)
inserted by
No. 20/1993
s. 4(1),
amended by
No. 94/2003
s. 34(3).

Marine Act 1988
Act No. 52/1988

Part 4—Offences Involving Alcohol or Other Drugs

s. 28

(1AAA) A person is to be taken to be in charge of a vessel under way, if that person is accompanying a person who is in charge of the vessel, for the purpose of enabling the person who is in charge of the vessel to comply with—

S. 27(1AAA)
inserted by
No. 23/2001
s. 18.

- (a) any condition of the person's licence; or
- (b) any requirement of regulations made under this Act—

that the person be accompanied by a licensed operator while in charge of the vessel.

(2) If a person who is convicted of an offence against—

S. 27(2)
substituted by
No. 20/1993
s. 4(2).

- (a) any one of the paragraphs of section 28(1);
or
- (b) section 31A(2) as in force from time to time—

has at any time been found guilty or been convicted of—

- (c) an offence against the same or any other of those paragraphs or that section; or
- (d) an offence against any previous enactment corresponding to any of those paragraphs or that section or any corresponding law—

the conviction for the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

(3) In this Part, "**vessel under way**" means a vessel that is not—

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

Marine Act 1988
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Part 4—Offences Involving Alcohol or Other Drugs

s. 28

28. Offences involving alcohol or other drugs

- (1) A person is guilty of an offence if—
- (a) the person is in charge of a vessel under way while under the influence of alcohol or any other drug to such an extent as to be incapable of having proper control of the vessel; or
 - (b) the person is in charge of a vessel under way while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; or
 - (c) the person refuses to undergo a preliminary breath test in accordance with section 29 when required under that section to do so; or
 - (d) the person refuses to comply with a requirement made under section 31(1), (2), (2A) or (9A); or
 - (e) within 3 hours after being in charge of a vessel under way, the person furnishes a sample of breath for analysis by a breath analysing instrument under section 31 and—
 - (i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in his or her blood or breath; and
 - (ii) the concentration of alcohol indicated by the analysis to be present in his or her blood or breath was not due solely to the consumption of alcohol after being in charge of the vessel under way; or

S. 28(1)(b)
amended by
Nos 23/2001
s. 19(a),
94/2003
s. 34(4).

S. 28(1)(c)
amended by
No. 17/1994
s. 16(a).

S. 28(1)(d)
substituted by
No. 17/1994
s. 16(b).

S. 28(1)(e)
substituted by
No. 20/1993
s. 5(1),
amended by
No. 46/2002
s. 15.

S. 28(1)(e)(i)
amended by
No. 94/2003
s. 34(5).

S. 28(1)(e)(ii)
amended by
No. 94/2003
s. 34(5).

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- (f) the person has had a sample of blood taken from him or her in accordance with section 31 or 31A within 3 hours after being in charge of a vessel under way and—
- S. 28(1)(f) substituted by No. 20/1993 s. 5(1), amended by No. 17/1994 s. 16(c).
- (i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 32 and the analyst has found that at the time of analysis the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and
- S. 28(1)(f)(i) amended by No. 23/2001 s. 19(b).
- (ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after being in charge of the vessel under way.
- (1A) A person may be convicted or found guilty of an offence under paragraph (c) or (d) of subsection (1) even if—
- S. 28(1A) inserted by No. 49/2004 s. 3.
- (a) in the case of an offence under paragraph (c), a prescribed device was not presented to the person at the time of the making of the requirement; and
- (b) in the case of an offence under paragraph (d)—
- (i) a breath analysing instrument was not available at the place where the requirement was made at the time it was made; and
- (ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made; and

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S. 28(1B)
inserted by
No. 49/2004
s. 3.

S. 28(2)
amended by
No. 23/2001
s. 20(1).

S. 28(3)
amended by
No. 23/2001
s. 20(2).

S. 28(3A)
inserted by
No. 23/2001
s. 20(3).

- (iii) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and
- (iv) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made.

- (1B) To avoid doubt, in proceedings for an offence under paragraph (d) of sub-section (1) a state of affairs or circumstance referred to in sub-section (1A)(b)(i) or (ii) is not a reason of a substantial character for a refusal for the purposes of section 31(9).
- (2) A person who is guilty of an offence under sub-section (1)(a), other than an accompanying operator offence, is liable—
 - (a) for a first offence, to a fine of not more than 25 penalty units or to imprisonment for not more than 3 months; and
 - (b) for a subsequent offence, to imprisonment for not more than 12 months.
- (3) A person who is guilty of an offence under sub-section (1)(b), (c), (d), (e) or (f), other than an accompanying operator offence, is liable—
 - (a) for a first offence, to a fine of not more than 12 penalty units; and
 - (b) for a subsequent offence, to a fine of not more than 25 penalty units or to imprisonment for not more than 3 months.
- (3A) A person who is guilty of an accompanying operator offence is liable to a fine of not more than 5 penalty units.

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- (4) It is a defence to a charge under sub-section (1)(e) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.
- (5) It is a defence to a charge under sub-section (1)(f) for the person charged to prove that the result of the analysis was not a correct result.
- (5A) In any proceedings for an offence under paragraph (e) or (f) of sub-section (1) evidence as to the effect of the consumption of alcohol on the defendant is admissible for the purpose of rebutting the presumption created by section 27(1A) but is otherwise inadmissible.
- (6) Nothing in this section applies to a master unless the master, at the time when he or she was in charge of the vessel, actually had charge of the vessel.
- (7) If a vessel is under a pilot, the pilot (and not the master) is in charge of the vessel for the purposes of this section.
- (8) On convicting a person, or finding a person guilty, of an offence under sub-section (1) the court must cause to be entered in the records of the court—
- (a) in the case of an offence under sub-section (1)(b), the level of concentration of alcohol found to be present in that person's blood or breath; and
 - (b) in the case of an offence under sub-section (1)(e), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and
 - (c) in the case of an offence under sub-section (1)(f), the level of concentration of alcohol found to be present in the sample of blood.

S. 28(5A)
inserted by
No. 20/1993
s. 5(2).

S. 28(8)
inserted by
No. 93/2000
s. 8.

S. 28(8)(a)
amended by
No. 94/2003
s. 34(6).

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28A. Provisions about cancellation and disqualification

S. 28A
inserted by
No. 93/2000
s. 9 (as
amended by
No. 23/2001
s. 24).

S. 28A(1)
amended by
No. 90/2001
s. 7(1).

- (1) On convicting a person, or finding a person guilty, of an offence under section 28(1)(b), (e) or (f) involving a regulated recreational vessel or a regulated hire and drive vessel, the court must—
 - (a) for a first offence—
 - (i) in the case of an offender who is the holder of an operator licence, suspend the licence for a period of 6 months; or
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify that person from obtaining an operator licence for a period of 6 months; or
 - (b) for a second or subsequent offence—
 - (i) in the case of an offender who is the holder of an operator licence, cancel the licence and disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months); or
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months).
- (2) On convicting a person, or finding a person guilty, of an offence under section 28(1)(a), (c), or (d) involving a regulated recreational vessel or a regulated hire and drive vessel, the court must—

S. 28A(2)
amended by
No. 90/2001
s. 7(1).

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- (a) for a first offence—
- (i) in the case of an offender who is the holder of an operator licence, cancel the licence and disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months); or
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months); or
- (b) for a second or subsequent offence—
- (i) in the case of an offender who is the holder of an operator licence, cancel the licence and disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 24 months); or
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 24 months).
- (3) Any period of suspension imposed on a person under section 28C must be deducted from the period of disqualification imposed on that person under this section.
- (4) This section does not apply to a person who is convicted or found guilty of an accompanying operator offence.
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s. 28B

S. 28B
inserted by
No. 93/2000
s. 9 (as
amended by
No. 23/2001
s. 24).

28B. Previous convictions

In determining for the purpose of section 28A(1) or (2) or section 28C whether an offence (in this section referred to as "the relevant offence") is a first offence, any other offence in respect of which a conviction was recorded or a finding of guilt was made 10 years or more before the commission of the relevant offence is to be disregarded if not to do so would make the relevant offence a subsequent offence for the purpose of that provision.

S. 28C
inserted by
No. 93/2000
s. 9 (as
amended by
No. 23/2001
s. 24).

28C. Immediate suspension of operator licence in certain circumstances

S. 28C(1)
amended by
No. 90/2001
s. 7(1).

(1) If a person is charged by a member of the police force with an offence under—

S. 28C(1)(a)
substituted by
No. 94/2003
s. 34(7).

(a) section 28(1)(b), (e) or (f) where it is alleged that the concentration of alcohol—

(i) in the blood of that person was 0.15 grams or more per 100 millilitres of blood; or

(ii) in the breath of that person was 0.15 grams or more per 210 litres of exhaled air; or

(b) section 28(1)(c), or (d)—

where the person was in charge of a regulated recreational vessel or a regulated hire and drive vessel, any member of the police force may, at any time after the making of the charge until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her operator

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licence is immediately suspended until the charge has been determined and requiring the accused to surrender the licence document immediately to the person who gave the notice.

- (2) For the purposes of this section a person is charged with an offence when a copy of the information that is signed by the member of the police force is given to the person.
- (3) Immediately on the giving of a notice under sub-section (1), the operator licence of the accused is suspended until the charge has been determined by a court.
- (4) A person who gives a notice under sub-section (1) must cause a copy of that notice to be sent immediately to the Director.
- (5) A person who, without just cause or excuse, refuses or fails to surrender a document as required by a notice under sub-section (1) is guilty of an offence and liable to a penalty of not more than 5 penalty units.
- (6) The accused has the burden of proving just cause or excuse.

S. 28C(4)
amended by
No. 77/2001
s. 31(1)(b).

28D. Appeal to court against suspension of operator licence

- (1) A person to whom a notice is given under section 28C(1) may appeal against that notice to the Magistrates' Court.
- (2) A person who appeals under sub-section (1) must give 14 days' written notice of the appeal (including particulars of any alleged exceptional circumstances) to the Chief Commissioner of Police and a registrar of the Magistrates' Court.

S. 28D
inserted by
No. 93/2000
s. 9 (as
amended by
No. 23/2001
s. 24).

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- (3) In determining the appeal the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court.
- (4) On an appeal under sub-section (1) the court may make an order—
 - (a) confirming the notice; or
 - (b) cancelling the notice.
- (5) The Magistrates' Court must not make an order under sub-section (4) cancelling a notice unless it is satisfied that exceptional circumstances exist which justify the making of such an order.
- (6) If on the subsequent hearing of the charge the accused's operator licence is cancelled and the accused is disqualified from obtaining an operator licence for a specified time, the court must take into account, in fixing the period of disqualification, the period of suspension under section 28C.

29. Preliminary breath tests

- (1) A member of the police force may at any time require—
 - (a) any person he or she finds in charge of a vessel under way; or
 - (ab) any person he or she finds in a vessel under way where the person whom the member of the police force finds in charge of the vessel—
 - (i) holds an operator licence which is subject to a condition that that person must be accompanied by a licensed operator while in charge of the vessel; or

S. 29(1)(ab)
inserted by
No. 23/2001
s. 21.

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- (ii) is required by regulations under this Act to be accompanied by a licensed operator while in charge of the vessel; or
- (b) any person in charge of a vessel under way who has been required to go to a preliminary breath testing station under section 30(3); or
- (c) any person who he or she believes on reasonable grounds has, within the last 3 preceding hours, been in charge of a vessel under way when it was involved in an accident; or
- (d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a vessel under way when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was in charge of the vessel when it was involved in the accident—
- to undergo a preliminary breath test by a prescribed device.
- (2) A person required to undergo a preliminary breath test must do so by exhaling continuously into the device to the satisfaction of the member of the police force.
- (3) A person is not obliged to undergo a preliminary breath test if more than 3 hours have passed since the person last was in charge of or was an occupant of a vessel under way.
- S. 29(1)(c) amended by No. 20/1993 s. 6(1).
- S. 29(1)(d) inserted by No. 20/1993 s. 6(1).
- S. 29(3) amended by No. 20/1993 s. 6(2).

30. Preliminary breath testing stations

- (1) A member of the police force may set up a preliminary breath testing station on or in the vicinity of any State waters.
- (2) A preliminary breath testing station—
 - (a) consists of any facilities that are necessary to enable the making of preliminary breath tests in quick succession; and
 - (b) must be identified by suitable signs, lights or other devices.
- (3) A member of the police force who is on duty and wearing uniform may request or signal any person in charge of a vessel under way to go to a preliminary breath testing station.
- (4) Members of the police force who are on duty at a preliminary breath testing station must make sure that no person is detained there any longer than is necessary.

31. Breath analysis

- (1) If a person undergoes a preliminary breath test when required to do so by a member of the police force under section 29 and—
 - (a) the test in the opinion of the member in whose presence it is made indicates that the person's blood or breath contains alcohol; or
 - (b) the person, in the opinion of the member, refuses or fails to carry out the test in the manner specified in section 29(2)—

any member of the police force may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that

S. 31(1)
amended by
Nos 20/1993
s. 7(1)(b)(c),
17/1994
s. 17(1)(2).

S. 31(1)(a)
amended by
Nos 20/1993
s. 7(1)(a),
94/2003
s. 34(8).

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purpose may also require the person to accompany a member of the police force to a police station or other place where the sample of breath is to be furnished and to remain there until the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) or until 3 hours after the person was in charge of or was an occupant of a vessel under way, whichever is sooner.

- (2) A member of the police force may require any person whom that member reasonably believes to have offended against section 28(1)(a) or (b) to furnish a sample of breath for analysis by a breath analysing instrument (instead of undergoing a preliminary breath test in accordance with section 29) and for that purpose may also require the person to accompany a member of the police force to a police station or other place where the sample of breath is to be furnished and to remain there until the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) or until 3 hours after the person was in charge of or was an occupant of a vessel under way, whichever is sooner.

S. 31(2)
 amended by
 Nos 20/1993
 s. 7(2)(a)–(c),
 17/1994
 s. 17(2).

- (2A) The person who required a sample of breath under sub-section (1) or (2) may require the person who furnished it to furnish one or more further samples if it appears to him or her that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 100 millilitres of blood or 210 litres of exhaled air because the amount of sample furnished was insufficient or because of a power failure or malfunctioning of the instrument or for any other reason whatsoever.

S. 31(2A)
 inserted by
 No. 17/1994
 s. 17(3),
 amended by
 Nos 58/1995
 s. 28(a)(b),
 94/2003
 s. 34(9).

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S. 31(4)
substituted by
No. 17/1994
s. 17(4),
amended by
Nos 100/1995
s. 33(1),
94/2003
s. 34(10).

S. 31(4A)
inserted by
No. 20/1993
s. 7(3),
repealed by
No. 17/1994
s. 17(5).

S. 31(6)
amended by
No. 20/1993
s. 7(4).

S. 31(7)
amended by
No. 23/1994
s. 118(Sch. 1
item
34.2(a)(b)),
repealed by
No. 17/1994
s. 17(5).

S. 31(8)
amended by
No. 23/1994
s. 118(Sch. 1
item 34.3),
repealed by
No. 17/1994
s. 17(5).

- (3) A breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Police.
- (4) As soon as practicable after a sample of a person's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the person whose breath has been analysed a certificate in the prescribed form produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her blood or breath.
- * * * * *
- (5) A person who furnishes a sample of breath under this section must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.
- (6) A person is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the person last was in charge of or was an occupant of a vessel under way.

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(9) A person must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.

S. 31(9)
 amended by
 No. 17/1994
 s. 17(6).

(9A) The person who required a sample of breath under sub-section (1), (2) or (2A) from a person may require that person to allow a registered medical practitioner or an approved health professional nominated by the person requiring the sample to take from him or her a sample of that person's blood for analysis if it appears to him or her that—

S. 31(9A)
 inserted by
 No. 17/1994
 s. 17(7),
 amended by
 Nos 100/1995
 s. 33(2),
 14/2000
 ss 27(3), 28,
 94/2003 s. 36.

(a) that person is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or

(b) the breath analysing instrument is incapable of measuring in grams per 100 millilitres of blood or 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by that person for any reason whatsoever—

S. 31(9A)(b)
 amended by
 No. 94/2003
 s. 34(11).

and for that purpose may further require that person to accompany a member of the police force to a place where the sample is to be taken and to remain there until the sample has been taken or until 3 hours after being in charge of or being an occupant of a vessel under way, whichever is sooner.

(9B) The registered medical practitioner or approved health professional who takes a sample of blood under sub-section (9A) must deliver a part of the sample to the person who required it to be taken and another part to the person from whom it was taken.

S. 31(9B)
 inserted by
 No. 17/1994
 s. 17(7),
 amended by
 Nos 100/1995
 s. 33(2),
 14/2000
 s. 27(4).

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S. 31(9C)
inserted by
No. 17/1994
s. 17(7).

S. 31(9D)
inserted by
No. 17/1994
s. 17(7),
amended by
Nos 100/1995
s. 33(2),
14/2000
s. 27(3).

S. 31(9E)
inserted by
No. 17/1994
s. 17(7),
amended by
Nos 100/1995
s. 33(2),
14/2000
s. 27(5)(a)(b).

S. 31(10)
amended by
Nos 17/1994
s. 17(8)(a)(b),
100/1995
s. 33(2),
14/2000
s. 27(3).

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- (9C) A person who allows the taking of a sample of his or her blood in accordance with sub-section (9A) must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis.
- (9D) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with sub-section (9A).
- Penalty applying to this sub-section: 12 penalty units.
- (9E) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under sub-section (9A).
- (10) A person who is required under this section to furnish a sample of breath for analysis may, immediately after being given the certificate referred to in sub-section (4), request the person making the requirement to arrange for the taking in the presence of a member of the police force of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force.
- (11) A part of a sample of blood taken under sub-section (10) must be delivered to the person who required the sample of breath under this section.

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- (12) Nothing in sub-section (10) relieves a person from any penalty under section 28(1)(d) for refusing to furnish a sample of breath. S. 31(12) amended by No. 17/1994 s. 17(9).
- (12A) Evidence derived from a sample of breath furnished in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under sub-section (10) if reasonable efforts were made to comply with the request. S. 31(12A) inserted by No. 17/1994 s. 17(10).
- (12B) If the question whether a breath analysing instrument was incapable of measuring in grams per 100 millilitres of blood or 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a person is relevant on a hearing for an offence against section 28(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this sub-section, a document—
- (a) purporting to be a print-out produced by that instrument in respect of that sample; and
- (b) purporting to be signed by the person who operated the instrument— S. 31(12B)(b) amended by No. 100/1995 s. 33(3).
- is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (12C) A document referred to in sub-section (12B) does not cease to be admissible in evidence or, in the absence of evidence to the contrary, to be proof of the facts and matters contained in it only because of the fact that it refers to the **Road Safety Act 1986** and not to the **Marine Act 1988** and the reference to the **Road Safety Act 1986** in that document and in each other document produced by the breath analysing instrument in respect of S. 31(12C) inserted by No. 100/1995 s. 33(4).
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the sample of breath must be construed for all purposes as a reference to the **Marine Act 1988**.

- (13) An approval or authority given under or for the purposes of this section by the Chief Commissioner of Police may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.

31A. Blood samples to be taken in certain cases

- (1) In this section—

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"doctor" means a registered medical practitioner and includes a police surgeon.

- (2) If a person of or over the age of 15 years enters or is brought to a place for examination or treatment in consequence of an accident (whether within Victoria or not) involving a vessel under way, the person must allow a doctor to take from that person at that place a sample of that person's blood for analysis.

Penalty: For a first offence, 12 penalty units.

For a subsequent offence, 25 penalty units or imprisonment for 3 months.

S. 31A
inserted by
No. 20/1993
s. 8.

S. 31A(1)
def. of
"designated
place"
repealed by
No. 7/1995
s. 4(1).

S. 31A(1) def.
of "doctor"
amended by
No. 23/1994
s. 118(Sch. 1
item 34.4).

S. 31A(2)
amended by
No. 7/1995
s. 4(2).

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(2A) On convicting a person, or finding a person guilty, of an offence under sub-section (2) involving a regulated recreational vessel or a regulated hire and drive vessel the court must—

S. 31A(2A)
 inserted by
No. 93/2000
 s. 10,
 amended by
No. 90/2001
 s. 7(1).

- (a) for a first offence—
 - (i) in the case of an offender who is the holder of an operator licence, cancel the licence and disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months);
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 12 months).
- (b) for a second or subsequent offence—
 - (i) in the case of an offender who is the holder of an operator licence, cancel the licence and disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 24 months);
 - (ii) in the case of an offender who is not the holder of an operator licence, disqualify the person from obtaining an operator licence for the time that the court thinks fit (not being less than 24 months).
- (3) Sub-section (2) does not apply if—
 - (a) in the opinion of the doctor first responsible for the examination or treatment of the person the taking of a blood sample from that person would be prejudicial to his or her proper care and treatment; or

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S. 31A(3)(d)
amended by
No. 7/1995
s. 4(3).

S. 31A(4)
amended by
No. 7/1995
s. 4(4).

- (b) a member of the police force has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or
 - (c) a member of the police force or a member of an ambulance service has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person was an occupant of and was not in charge of any vessel involved in the accident; or
 - (d) a member of the police force or a doctor has notified the doctor first responsible for the examination or treatment of the person, in writing, that a sample of the person's blood was taken by a doctor before the person entered or was brought to the place for examination or treatment.
- (4) A person to whom sub-section (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by a doctor at a place which he or she enters or to which he or she is brought for examination or treatment.
 - (5) If a sample of a person's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceedings except for the purposes of section 32.
 - (6) A person must not hinder or obstruct a doctor attempting to take a sample of the blood of any other person in accordance with this section.

Penalty: 12 penalty units.

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- (7) No action lies against a doctor in respect of anything properly and necessarily done by the doctor in the course of taking any sample of blood which the doctor believes on reasonable grounds was required or allowed to be taken from any person under this section.

32. Evidentiary provisions—blood tests

- (1) In this section "**properly qualified analyst**" means—
 - (a) a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section; or
 - (b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express the opinion to which this section relates.

- (2) If the question—

S. 32(2)
amended by
No. 20/1993
s. 9(1)(c).

- (a) whether any person was or was not at any time under the influence of alcohol or any other drug; or
- (b) as to the presence of alcohol or any other drug or the concentration of alcohol in the blood of any person at any time—

S. 32(2)(a)
amended by
No. 20/1993
s. 9(1)(a).

S. 32(2)(b)
amended by
No. 20/1993
s. 9(1)(b).

or if a finding on the analysis of a blood sample is relevant on a hearing for an offence against section 28(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

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S. 32(2)(c)
amended by
Nos 23/1994
s. 118(Sch. 1
item 34.5),
14/2000
s. 27(6),
23/2001 s. 22.

S. 32(2)(e)
amended by
No. 20/1993
s. 9(1)(d).

S. 32(3)
amended by
Nos 23/1994
s. 118(Sch. 1
item 34.5),
14/2000
s. 27(6).

S. 32(5)
amended by
Nos 17/1994
s. 18(1),
94/2003
s. 37(1).

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- (c) of the taking, after that person was in charge of a vessel under way, of a sample of blood from that person by a registered medical practitioner or an approved health professional; and
- (d) of the analysis of that sample of blood by a properly qualified analyst within 12 months after it was taken; and
- (e) of the presence of alcohol or any other drug and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis.
- (3) A certificate in the prescribed form purporting to be signed by a registered medical practitioner or an approved health professional as to the taking, in accordance with sub-section (2), of a sample of blood from a person is admissible in evidence in any proceedings referred to in that sub-section and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (4) A certificate in the prescribed form purporting to be signed by a properly qualified analyst as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood analysed by the analyst is admissible in evidence in any proceedings referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (5) A certificate given under this section must not be tendered in evidence at a hearing referred to in sub-section (2) without the consent of the accused unless a copy of the certificate is proved to have

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been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

- | | |
|---|---|
| <p>(5A) A copy of a certificate given under this section may be served on the accused by—</p> <p style="margin-left: 2em;">(a) delivering it to the accused personally; or</p> <p style="margin-left: 2em;">(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.</p> | <p>S. 32(5A)
inserted by
No. 94/2003
s. 37(2).</p> |
| <p>(6) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in sub-section (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.</p> | <p>S. 32(6)
amended by
Nos 17/1994
s. 18(1),
100/1995
s. 33(5)(a)(b),
94/2003
s. 37(3).</p> |
| <p>(7) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.</p> | <p>S. 32(7)
substituted by
No. 20/1993
s. 9(2),
amended by
No. 17/1994
s. 18(2).</p> |
| <p>(8) The court must not grant leave under sub-section (7) unless it is satisfied—</p> <p style="margin-left: 2em;">(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and</p> | <p>S. 32(8)
substituted by
No. 20/1993
s. 9(2).</p> |

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S. 32(8)(b)(ii)
amended by
Nos 23/1994
s. 118(Sch. 1
item 34.5),
14/2000
s. 27(6).

S. 32(8)(b)(iii)
substituted by
No. 7/1995
s. 4(5).

S. 32(8A)
inserted by
No. 17/1994
s. 18(3).

S. 32(9)
amended by
Nos 23/1994
s. 118(Sch. 1
item 34.5),
14/2000
s. 27(7)(a)(b).

(b) that—

- (i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under sub-section (4) was not that of the accused; or
 - (ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or
 - (iii) there is a reasonable possibility that the sample was not taken in accordance with the Code of Practice for Taking Blood Samples from Road Accident Victims; or
 - (iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.
- (8A) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under sub-section (7).
- (9) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the person to be examined or from whom a sample of blood is to be collected has expressed consent to that

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examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the person was in fact incapable by reason of his or her mental condition from effectively giving consent to the examination or collection.

- (10) Except as provided in sections 31(9A) and 31A, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the person from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.
- (11) The mere failure or refusal of a person to express consent must not be used in evidence against that person or referred to in any way against that person's interests in any proceedings.

S. 32(10)
 amended by
 Nos 17/1994
 s. 18(4),
 93/2000 s. 11.

33. Evidentiary provisions—breath tests

- (1) If the question—
- (a) whether any person was or was not at any time under the influence of alcohol; or
- (b) as to the presence or the concentration of alcohol in the blood or breath of any person at any time—

S. 33(1)
 amended by
 No. 20/1993
 s. 10(1).

S. 33(1)(b)
 amended by
 No. 94/2003
 s. 34(12).

or if a result of a breath analysis is relevant on a hearing for an offence against section 28(1), then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section—

- (c) evidence may be given of the concentration of alcohol indicated to be present in the blood or breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief

S. 33(1)(c)
 amended by
 No. 94/2003
 s. 34(12).

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S. 33(1)(d)
amended by
No. 94/2003
s. 34(12).

S. 33(2)
amended by
Nos 20/1993
s. 10(2)(a)–(c),
17/1994
s. 19(1)(a)–(d),
100/1995
s. 33(6),
94/2003
s. 34(12).

S. 33(2)(a)
inserted by
No. 17/1994
s. 19(1)(b).

S. 33(2)(b)
inserted by
No. 17/1994
s. 19(1)(b).

S. 33(2)(c)
inserted by
No. 17/1994
s. 19(1)(b).

S. 33(2)(d)
inserted by
No. 17/1994
s. 19(1)(b).

S. 33(2)(e)
inserted by
No. 17/1994
s. 19(1)(b).

Commissioner of Police under section 31;
and

- (d) the concentration of alcohol so indicated is, subject to compliance with section 31(4), evidence of the concentration of alcohol present in the blood or breath of that person at the time his or her breath is analysed by the instrument.
- (2) A document purporting to be a certificate in the prescribed form produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the blood or breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in any proceedings referred to in sub-section (1), subject to sub-section (2E), is conclusive proof of—
- (a) the facts and matters contained in it; and
- (b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and
- (c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 31; and
- (d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and
- (e) the fact that the instrument was in proper working order and properly operated; and

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(f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed—

S. 33(2)(f)
inserted by
No. 17/1994
s. 19(1)(b),
substituted by
No. 100/1995
s. 33(7).

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter².

(2AA) A certificate referred to in sub-section (2) does not cease to be admissible in evidence or to be conclusive proof of the facts and matters referred to in that sub-section only because of the fact that it refers to the **Road Safety Act 1986** and not to the **Marine Act 1988** and the reference to the **Road Safety Act 1986** in that certificate and in each other certificate produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the **Marine Act 1988**.

S. 33(2AA)
inserted by
No. 100/1995
s. 33(8).

(2A) A notice under sub-section (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.

S. 33(2A)
inserted by
No. 17/1994
s. 19(2).

(2B) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under sub-section (2).

S. 33(2B)
inserted by
No. 17/1994
s. 19(2).

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S. 33(2C)
inserted by
No. 17/1994
s. 19(2).

(2C) If an accused person gives notice to the informant in accordance with sub-section (2) that he or she requires the person giving a certificate to be called as a witness and the court is satisfied that that person—

- (a) is dead; or
- (b) is unfit by reason of his or her bodily or mental condition to testify as a witness; or
- (c) has ceased to be a member of the police force or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or

(d) cannot with reasonable diligence be found—

the court must order that sub-section (2) has effect as if the notice had not been given.

S. 33(2D)
inserted by
No. 17/1994
s. 19(2).

(2D) A certificate referred to in sub-section (2) remains admissible in evidence even if the accused person gives a notice under that sub-section but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that sub-section.

S. 33(2E)
inserted by
No. 17/1994
s. 19(2),
amended by
No. 100/1995
s. 33(9).

(2E) Nothing in sub-section (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in sub-section (2) and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.

S. 33(3)
substituted by
No. 94/2003
s. 38.

(3) In any proceeding under this Act—

- (a) the statement of any person that on a particular date he or she was authorised by the Chief Commissioner of Police under section 31 to operate breath analysing instruments; or

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- (b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner under section 31 to operate breath analysing instruments—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that person.

- (4) Evidence by a person authorised to operate a breath analysing instrument under section 31—
- (a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument within the meaning of this Act; and
- (b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her; and
- (c) that, in relation to the breath analysing instrument, all regulations made under this Act with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

- (5) The statement on oath of a person authorised to operate a breath analysing instrument under section 31 when called as a witness that any apparatus used by him or her on any occasion under section 31 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions "Drager Alcotest 7110" and "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus

S. 33(5)
 substituted by
 No. 17/1994
 s. 19(3).

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is a breath analysing instrument within the meaning of this Act.

33A. Avoidance of certain provisions in contracts of insurance

- (1) Any covenant, term, condition, or other provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of an insurer under a contract of insurance in the event of the person in charge of a vessel having a concentration of alcohol present in his or her breath or blood as indicated by an analysis of his or her breath or blood of not more than .05 grams per 210 litres of exhaled air or 100 millilitres of blood (as the case requires).
- (2) Sub-section (1) applies to a contract of insurance whether entered into before or after the commencement of section 11 of the **Marine (Amendment) Act 1993**.

PART 5—POLLUTION

34. Definitions etc.

(1) In this Part—

"agent", in relation to a vessel, means any person who performs for or on behalf of the owner of the vessel any function or duty under or for the purposes of this Act and includes any person who, within the State, on behalf of the owner of the vessel, undertakes or performs the functions of ships' husbandry or makes any arrangements for or in connection with the repair or berthing of the vessel or the carriage, loading or unloading of cargo, stores or bunkers on the vessel or from the vessel;

S. 34(1) def. of "agent" amended by No. 82/1995 s. 154(8)(a).

"appropriate authority" means the Director;

S. 34(1) def. of "appropriate authority" amended by Nos 82/1995 s. 154(8)(b), 77/2001 s. 31(1)(h).

"discharge" means any discharge or escape, howsoever caused;

"occupier"—

- (a) in relation to a place on land, means the person exercising personally or through servants or agents, any right of occupation of the land or, if there is no such person, the owner of the land; and
- (b) in relation to a vehicle, includes the person in charge of the vehicle and the owner of the vehicle but does not include the occupier of the land on or over which the vehicle stands or moves; and

- (c) in relation to a pipeline, means the person who undertakes the carriage of oil or an oily mixture by means of the pipeline;

"oil" and **"oily mixture"** have the same meanings as in Division 1 of Part 2 of the **Pollution of Waters by Oil and Noxious Substances Act 1986**;

"oil residues" means those parts of an oily mixture that remain after undergoing a separation process;

"place on land" includes—

- (a) any structure or apparatus on land; and
- (b) anything or vehicle resting on or moving over land; and
- (c) anything resting on or lying under the bed, shore or bank of any navigable waters; and
- (d) anything afloat (other than a vessel) if it is anchored or attached to the bed, shore or bank of any navigable waters or is used in any operation for the exploration of the sea-bed and sub-soil or the exploitation of the natural resources of the sea-bed and sub-soil;

"prohibited discharge" means a discharge into State waters of—

- (a) oil; or
- (b) an oily mixture; or
- (c) an undesirable substance;

"public statutory body" includes any Minister of the Crown and any municipality;

"tanker" means a vessel constructed or adapted for carrying a cargo of oil in bulk;

"transfer operation" means any operation involved in the preparation for, or the commencement, carrying on or termination of, the transfer of oil or an oily mixture or a liquid substance or a mixture containing a liquid substance from or to any vessel, whether to or from a place on land or to or from another vessel;

"undesirable substance" means—

- (a) any solid ballast, rubbish, gravel, earth, stone or wreck; or
- (b) any dangerous, flammable, corrosive or offensive substance, whether solid, liquid or gaseous; or
- (c) any article or thing or any substance (whether solid, liquid or gaseous) which is capable of constituting a hazard to navigation or of preventing or hindering the proper use of State waters—

but does not include oil or an oily mixture.

- (2) A discharge of oil or an oily mixture onto or into any land, water, structure or thing is, if the whole or any part of the oil or oily mixture eventually enters State waters, to be taken for all purposes under this Part to be a discharge into State waters of the oil or oily mixture or of so much of it as enters State waters.

35. Saving of other laws

No. 6705 s. 5.

- (1) This Part must be construed as being in addition to and not in derogation of any other law of the State.

No. 6705 s. 29.

- (2) To the extent that this Part is inconsistent with any of the provisions of the **Environment Protection Act 1970**, the provisions of the **Environment Protection Act 1970** prevail.

S. 36
amended by
No. 46/1991
s. 38(1)(2),
repealed by
No. 82/1995
s. 160.

* * * * *

S. 37
amended by
No. 46/1991
s. 39(1)(2),
repealed by
No. 82/1995
s. 160.

* * * * *

No. 6705 s. 8.

38. Removal of pollution

S. 38(1)
substituted by
No. 77/2001
s. 19.

- (1) If a prohibited discharge occurs, or is likely to occur, the appropriate authority or any public statutory body may—
 - (a) do anything necessary to prevent the discharge from occurring;
 - (b) do anything necessary to mitigate the effect the discharge has, or will have, on the marine environment, any marine habitat (including any habitat used for aquaculture) or any marine or other wildlife;
 - (c) remove, disperse, destroy or mitigate the discharge or any thing polluted by the discharge;

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- (d) reinstate or restore any land, building, structure or vessel that has been damaged by the discharge.
- (2) The powers conferred by sub-section (1) on a public statutory body that is a municipality are limited to the area within the boundaries of the municipal district of the municipality and the area immediately adjacent to that area but any other public statutory body and any appropriate authority may exercise those powers either within or outside the land or waters under its control.
- (3) Any appropriate authority or public statutory body may recover all costs and expenses incurred by it in or in connection with any exercise of the powers conferred by sub-section (1)—
- (a) if the discharge occurs from any place on land, from the occupier of that place; or
 - (b) if the discharge occurs from any vessel, from the owner of that vessel; or
 - (c) if the discharge occurs from any apparatus used in a transfer operation, from the person in charge of the apparatus.
- (4) The Minister may reimburse a public statutory body for the costs and expenses incurred by it in or in connection with any exercise of the powers conferred by sub-section (1) if the Minister is satisfied that the action taken by the public statutory body was reasonable or if the action was taken with the approval of, or at the request of, the Director or the Minister.
- (5) If the Minister reimburses a public statutory body under sub-section (4), the Minister may recover the costs and expenses in accordance with sub-section (3) as if those costs and expenses had been incurred by the Minister in or in connection with

S. 38(4)
amended by
No. 77/2001
s. 31(1)(b).

an exercise of the powers conferred by subsection (1).

- (6) Costs and expenses recoverable under this section may be recovered in the course of criminal proceedings in respect of the discharge or may be recovered in any court of competent jurisdiction as a debt due to the authority or body even if no proceedings have been taken in respect of the discharge.
- (7) Despite anything to the contrary in this section, if a person is convicted of an offence under section 36(3), the appropriate authority or public statutory body or the Minister (as the case requires) may, if it, he or she thinks fit, recover the costs and expenses as provided in this section from the person so convicted instead of from the person from whom they might otherwise have been recoverable under this section.
- (8) Proceedings under this section are in addition to and not in derogation of any proceedings which may be taken apart from this section.
- (9) In this section "**prohibited discharge**" means prohibited discharge within the meaning of section 34 and includes—
 - (a) a discharge of a liquid substance or any mixture containing a liquid substance within the meaning of section 14 of the **Pollution of Waters by Oil and Noxious Substances Act 1986**; and
 - (b) a discharge or disposal of any other substance, the discharge or disposal of which is prohibited by that Act.

S. 38(9)
inserted by
No. 46/1991
s. 40.

38A. Recovery of costs of analysis

S. 38A
inserted by
No. 46/1991
s. 41.

- (1) In this section, "**work conducted**" in relation to an appropriate authority or public statutory body, means any analysis, measurement, recording, evaluation, testing or inspection conducted by the authority or body through any of its officers, employees or agents.
- (2) In any proceedings under this Act in which legal costs are awarded to an appropriate authority or public statutory body or a person appointed by the authority or body to take proceedings, the court may include in those costs the reasonable market cost of any work conducted by the authority or body.
- (3) A document which—
 - (a) sets out charges for work similar to any work conducted by an appropriate authority or public statutory body; or
 - (b) purports to estimate the reasonable market cost of any work conducted by such an authority or body—

and which is signed by, or on behalf of, a person who purports to be a person who charges for doing any work similar to that conducted by the authority or body is evidence of the reasonable market cost of work conducted by the authority or body.

39. Appropriate authority may issue written notice

No. 6705
s. 8A.

- (1) Without limiting or derogating from the provisions of section 38, if a prohibited discharge occurs or the appropriate authority is satisfied that a prohibited discharge is likely to occur from any place on land or from any apparatus used in a transfer operation, the appropriate authority may by notice in writing addressed to and served on the occupier of the place on land or the person in

charge of the apparatus or the occupier or person in charge of any place on land used for, or apparatus used in, a transfer operation require—

- (a) that any operation or activity in, on, or involving the use of the place on land or apparatus concerned be terminated; or
- (b) that all or a specified part of the oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance contained in the place on land or apparatus concerned or any part of that place or apparatus be removed; or
- (c) that the required removal of oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance from the place on land or apparatus concerned be carried out in a specified manner and to a specified place; or
- (d) that all or a specified part of the oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance in the place on land or apparatus concerned be retained there; or
- (e) that—
 - (i) no oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance; or
 - (ii) no further oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance; or

- (iii) no oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance in excess of a specified amount—
- be received into the place on land or apparatus concerned; or
- (f) that any restrictions specified in the notice be complied with in the reception, or transfer of oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance into, from or within the place on land or apparatus concerned; or
- (g) that any equipment or machinery in or used with the place on land or apparatus concerned be operated or put into operating condition; or
- (h) that specified repair or reconstruction work be carried out on the place on land or apparatus concerned or any part of that place or apparatus.
- (2) If a notice under sub-section (1) is addressed to and served on the occupier of any place on land and any requirement specified in the notice is not complied with as soon as possible or (as the case requires) within the time (if any) specified in the notice, the occupier of that place is guilty of an indictable offence and liable to a penalty of not more than 500 penalty units.
- (3) If a requirement of a notice under sub-section (1) is not complied with as soon as possible or within the time (if any) specified in the notice, the appropriate authority may cause the requirement to be complied with and for that purpose any officer of the authority or any other person authorised by the authority, acting in accordance with a warrant issued by a magistrate and using

S. 39(3)
 amended by
 No. 57/1989
 s. 3(Sch.
 item 126.1).

any force that is necessary and without doing unnecessary damage, may enter any place on land and may—

- (a) take possession to any extent that is required of any vessel, place on land or apparatus used in a transfer operation; and
 - (b) take and retain possession of any substance or thing; and
 - (c) use and operate any machinery or equipment.
- (4) The appropriate authority may recover all costs and expenses incurred by it in or in connection with any exercise of the powers conferred by sub-section (3) from the occupier of the place on land or the person in charge of the apparatus, as the case requires.
- (5) Costs and expenses recoverable under this section may be recovered in the course of proceedings for an offence under sub-section (2) or may be recovered in any court of competent jurisdiction as a debt due to the appropriate authority even if no proceedings have been taken in respect of the offence.
- (6) A notice under this section may be served on a person—
- (a) by delivering the notice to the person personally; or
 - (b) by leaving the notice at the place on land or apparatus referred to in the notice with a person who is apparently not less than 18 years of age and who apparently has at that time the control or management of the land or apparatus.

* * * * *

45. Power of Minister with respect to prohibited discharges

No. 6705
ss 22, 23.

- (1) If a prohibited discharge is occurring from a vessel, or the Minister is satisfied that a prohibited discharge is likely to occur from a vessel, the Minister may, for the purpose of preventing or reducing the extent of pollution or likely pollution of State waters, by notice in writing addressed to the owner of the vessel and served in accordance with this section do all or any of the following—
- (a) require any action to be taken in relation to the vessel or its cargo (including ballast, stores and fuel), or the vessel and its cargo, that is specified in the notice, by the time specified in the notice and such action may include—
 - (i) action to prevent a prohibited discharge occurring from the vessel; and
 - (ii) the removal of oil, an oily mixture, a liquid substance or a mixture containing a liquid substance, or an undesirable substance from the vessel, or a specified part of the vessel, in any manner that may be specified; and
 - (iii) the removal of the vessel to a specified place;
 - (b) prohibit the removal of the vessel from a place specified in the notice except with, and in accordance with, the approval of the Minister; or
 - (c) prohibit the removal from the vessel of any cargo (including ballast, stores and fuel) specified in the notice except with, and in accordance with, the approval of the Minister.

- (2) More than one notice may be served in respect of a vessel under sub-section (1) and a subsequent notice may revoke or vary an earlier notice and, if an earlier notice is varied, it has effect as varied from the time when the other notice is served.
- (3) Service of a notice under sub-section (1) in respect of a vessel must be effected—
 - (a) by serving it personally on the owner of the vessel or, if the owner is a company, on a director, secretary or other officer of the company; or
 - (b) by serving it personally on the agent of the vessel or, if the agent is a company, on a director, secretary or other officer of the company; or
 - (c) by serving it personally on the operator of the vessel or, if for any reason (including the absence of the operator from the vessel) it is not practicable to serve the notice on the operator, by handing it to any person on board the vessel who appears to be an officer of the vessel.
- (4) If service cannot be effected on any person under sub-section (3), the notice must be taken to be properly served if its contents are transmitted to the operator or person in command of the vessel by any manner in which receipt of the contents is acknowledged by any person on board the vessel to have been received and understood.
- (5) A statement in writing purporting to be made and signed by a person employed as a communications officer whose duties include the transmission of messages to vessels at sea that he or she caused the contents of a notice under sub-section (1) to be transmitted to a vessel at sea and received an acknowledgment of the message from some

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person purporting to be on board the vessel is evidence, until the contrary is proved, of service of the contents of the notice on the operator of the vessel.

- (6) In this section, "**prohibited discharge**" has the same meaning as in section 38.

S. 45(6)
 inserted by
 No. 46/1991
 s. 45.

46. Non-compliance with notice under section 45(1)

No. 6705
 ss 24–26.

- (1) If a notice under section 45(1) is served in respect of a vessel and a requirement specified in the notice is not complied with or a prohibition specified in it is contravened, the owner of the vessel is guilty of an indictable offence and liable to a penalty of not more than 500 penalty units.
- (2) It is a defence to a charge under sub-section (1) for the person charged to prove—
 - (a) that the failure to comply with the notice resulted from the need to save life at sea; or
 - (b) that compliance with the notice was not reasonably practicable in the circumstances.
- (3) If a requirement specified in a notice under section 45(1) is not complied with, the Minister may, whether or not the owner of the vessel has been convicted of an offence under sub-section (1), cause such things to be done as the Minister thinks proper for the carrying out of the action required by the notice to be carried out.
- (4) If—
 - (a) a notice under section 45(1) is served in respect of a vessel which is not a tanker; and
 - (b) a requirement specified in the notice is not complied with or a prohibition specified in it is contravened; and

(c) a prohibited discharge occurs from the vessel because the requirement was not complied with or the prohibition was contravened—

the Minister may, whether or not the owner of the vessel has been convicted of an offence under sub-section (1), cause any things to be done that the Minister thinks proper to prevent, or reduce the extent of, the pollution of State waters or any part of the Victorian coast or to remove or reduce the effects of that pollution.

(5) Subject to sub-section (6), the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under sub-section (3) or (4) in relation to a vessel—

(a) is a debt due to the Crown by, and may be recovered from, the owner of the vessel; and

(b) is a charge on the vessel—

and the vessel may be detained by a person authorised by the Minister until the amount is paid or security for its payment is provided to the satisfaction of the Minister.

(6) Sub-section (5) does not apply in relation to the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under sub-section (4) in relation to a prohibited discharge that has occurred from a vessel if—

(a) the failure of the owner of the vessel to comply with the notice under section 45(1) resulted from the need to save life at sea; or

(b) compliance with the notice was not reasonably practicable in the circumstances.

47. Prevention of pollution caused by escape of oil

No. 6705 s. 27.

(1) In this section—

"adjusted net tonnage", in relation to a tanker, means the number of tons that would be the net tonnage of the tanker if, in ascertaining that tonnage by reference to the gross tonnage of the tanker in accordance with the normal rules for measuring the tonnage of tankers, no deduction were made from the gross tonnage of the tanker in respect of engine-room space;

"incident" means an occurrence or a series of occurrences having the same origin;

"oil" includes an oily mixture, a liquid substance or a mixture containing a liquid substance;

"owner", in relation to a tanker from which oil has escaped, means the owner of the tanker at the time the incident that caused the escape occurred or, if the incident consisted of a series of occurrences having the same origin, at the time of the first of the occurrences;

"third party", in relation to a tanker, means any person other than—

- (a) the owner of the tanker; or
- (b) a servant or agent of the owner of the tanker; or
- (c) the operator, an officer or other member of the crew of the tanker or of any other tanker also owned by the owner of the tanker;

"tonnage factor", in relation to a tanker, means a number equal to the number of tons included in the adjusted net tonnage of the tanker or, if the tanker cannot be measured in

accordance with the normal rules for measuring the tonnage of tankers, a number equal to 40% of the number of tons of oil that the tanker is capable of carrying in bulk as cargo and, for the purpose of this definition, one ton of oil is to be taken to occupy 40 cubic feet of space.

- (2) If oil escapes from a tanker, the Minister may, whether or not a notice has been served in respect of the tanker under section 45(1) and whether or not any notice so served has been complied with, cause such things to be done as the Minister thinks proper to prevent, or reduce the extent of, the pollution of State waters or any part of the Victorian coast or to remove or reduce the effects of that pollution.
- (3) If oil escapes from a tanker the owner of the tanker is liable to pay—
 - (a) the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under sub-section (2) in relation to the oil; and
 - (b) the amount of any damage to the environment or a State resource caused by contamination resulting from the escape of the oil; and
 - (c) the amount of any loss or damage suffered by any person caused by contamination resulting from the escape of the oil—

but, if the oil escaped without the fault or privity of the owner, the owner is liable only to the extent that the total of those amounts does not exceed the maximum liability applicable to the tanker under sub-section (6) in relation to that incident.

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- (4) The amount of any liability under paragraph (a) or (b) of sub-section (3)—
- (a) is a debt due to the Crown by, and may be recovered from, the owner of the tanker; and
 - (b) is a charge on the tanker—
- and the tanker may be detained by a person authorised by the Minister until the amount is paid or security for its payment is provided to the satisfaction of the Minister.
- (5) Sub-section (3) does not apply in relation to a tanker or the owner of a tanker if the owner of the tanker proves that the escape of the oil—
- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or
 - (b) was wholly caused by an act or omission done by a third party with intent to cause damage; or
 - (c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.
- (6) For the purposes of sub-section (3) the maximum liability applicable to a tanker in relation to an incident that resulted in the escape of oil from a tanker without the fault or privity of the owner is—
- (a) an amount calculated by multiplying the amount of \$220 by the tonnage factor applicable to the tanker; or

S. 47(6)(a)
amended by
No. 46/1991
s. 46(a).

S. 47(6)(b)
amended by
No. 46/1991
s. 46(b).

(b) the amount of \$23 240 000—

whichever amount is the less.

- (7) If oil has escaped from two or more tankers without the actual fault or privity of each owner and it is not reasonably practicable to identify the oil that has escaped from a particular tanker, all the oil that has escaped from those tankers is, for the purposes of this section, to be taken to have escaped from each of those tankers, but the Crown is not, by virtue of this sub-section, entitled to recover from the owners of those tankers amounts that in the aggregate exceed the total amount of the expenses and liabilities incurred by the Minister in the exercise of his or her powers under sub-section (2) in relation to the oil.

No. 6705 s. 19.

48. Power to prosecute

Any officer of an appropriate authority or any other person who is authorised in writing by an appropriate authority to do so either generally or in any particular case may prosecute for an offence under this Part or the regulations made for the purposes of this Part.

No. 6705 s. 18.
S. 49
amended by
No. 82/1995
s. 161.

49. Application of penalties

Any money that is recovered by way of fine for an offence against this Part or the regulations made for the purposes of this Part must be paid into the Consolidated Fund.

50. Evidence**No. 6705 s. 17.**

- (1) In any proceedings for an offence under this Part—
 - (a) any record kept in pursuance of, or for the purposes of, this Part is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the record; and
 - (b) a copy of an entry in such a record, being a copy purporting to be certified by the person by whom the record is required to be kept as a true copy of the entry, is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the entry; and
 - (c) a document purporting to be such a record or purporting to be such a certified copy of an entry in such a record is, unless the contrary is proved, to be taken to be such a record or certified copy, as the case requires; and
 - (d) a map, plan or chart of any State waters purporting to be certified by an appropriate authority or by a person appointed by an appropriate authority for the purpose is admissible in evidence and, in the absence of evidence to the contrary, is proof of any matter that is apparent from, or can be calculated from, the map, plan or chart.
- (2) A statement in writing purporting to be signed by an officer of an appropriate authority or any other person authorised by an appropriate authority in that behalf—
 - (a) to the effect that any person has been generally or specially appointed by the appropriate authority—

No. 6705 s. 20.

- (i) to investigate any prohibited discharge or suspected prohibited discharge under section 41; or
 - (ii) to report to it under section 43 regarding the proper observance of, and the adequacy of, the prohibitions, restrictions and obligations imposed by or under this Part; or
 - (iii) to prosecute for an offence under this Part or the regulations made for the purposes of this Part; or
- (b) to the effect that any dispensation has been directed, any exemption has been granted or any conditions have been imposed or that any variation or revocation of any such condition, exemption or dispensation has been made under section 44—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters specified in the statement.

No. 6705
s. 17A.

51. Service

Without limiting or derogating from the provisions of section 101, a notice, summons or other document required or permitted to be served on the owner or operator of a vessel for the purposes of this Part may be served on the agent of the vessel personally or by post and, when so served, must be taken to have been served on the owner or operator.

52. Delegation

The Minister may, by instrument, delegate to any person, any of his or her powers under this Part, other than this power of delegation.

PART 6—INTERNATIONAL CONVENTIONS

Division 1—General

53. Definitions

In this Part—

"Commonwealth Navigation Act" means the Navigation Act 1912 of the Commonwealth;

"Prevention of Collisions Convention" means the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (a copy of the English text of the articles of which is set forth in Schedule 1), together with the International Regulations for Preventing Collisions at Sea, 1972, constituted by the rules, and other annexes attached to that Convention, as corrected by the Procès-Verbal of Rectification dated 1 December 1973 (a copy of the English text of which rules and other annexes, as so corrected, is also set forth in Schedule 1), as affected by any amendment, other than an amendment objected to by Australia, made under Article VI of that Convention;

"Protocol of 1978 relating to the Safety Convention" means the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of part of the annex to which, is set forth in Schedule 3), as affected by any amendment, other than an amendment objected to by Australia, made under Article VIII of the International Convention for the Safety of Life at Sea, 1974, as incorporated in that Protocol by Article II of that Protocol;

"Safety Convention" means the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of part of the annex to which, is set forth in Schedule 2), as affected by any amendment, other than an amendment objected to by Australia, made under Article VIII of that Convention and as also affected by the Protocol of 1978 relating to the Safety Convention;

"sea" includes any waters within the ebb and flow of the tide;

"vessel" means any kind of vessel used in navigation by water however propelled or moved, and includes—

- (a) a barge, lighter or other floating vessel; and
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and
- (c) an off-shore industry mobile unit within the meaning of section 8 of the Commonwealth Navigation Act—

but (except in section 58) does not include an off-shore industry mobile unit that is not self-propelled.

54. Certificate by Minister as to amendments of Conventions

- (1) The Minister may, by instrument in writing, certify that the amendments, other than amendments objected to by Australia, by which the Prevention of Collisions Convention was affected as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and the certificate is, for all purposes,

cf. Navigation
Act 1912
s. 258AA.

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evidence and, in the absence of evidence to the contrary, proof of the matters so certified.

- (2) The Minister may, by instrument in writing, certify that the amendments, other than amendments objected to by Australia, by which the Safety Convention, or Protocol of 1978 relating to the Safety Convention, was affected as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and the certificate is, for all purposes, evidence and, in the absence of evidence to the contrary, proof of the matters so certified.

cf. Navigation
 Act 1912
 s. 187E.

55. Regulations under this Part

cf. Navigation
 Act 1912
 s. 425(1)(h).

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part and, in particular, except as otherwise provided in this Part, for or with respect to prescribing penalties not exceeding—
- (a) if the offender is a natural person—a fine of 20 penalty units or imprisonment for a period of 12 months, or both; or
 - (b) if the offender is a body corporate—a fine of 50 penalty units—
- for a contravention of, or failure to comply with, a provision of the regulations or a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations.
- (2) Regulations made under this Part may make provision for or with respect to any matter by applying, adopting or incorporating, with or without modification—
- (a) the provisions of any Act of, or of any regulations made under an Act of, a State or the Commonwealth, as in force at a

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particular time or as in force from time to time; or

- (b) any matter contained in any other instrument or writing as in force or existing at the time when the first-mentioned regulations take effect—

but the regulations shall not, except as provided by this sub-section, make provision for or with respect to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

- (3) In paragraph (a) of sub-section (2), "**regulations**" includes orders made in pursuance of regulations made under the Commonwealth Navigation Act to which section 426 of that Act applies.

56. Direction of Governor in Council and Minister

- (1) Where, under this Part, the Governor in Council is empowered to make regulations for and in relation to giving effect to any of the provisions of the Safety Convention or the Prevention of Collisions Convention, the power is, in the case of a provision of any of those Conventions the terms of which are such as to vest in the several Governments who are parties to the Convention a discretion as to whether any, and if so what, action should be taken under the Convention, to be construed as an authority to the Governor in Council to make by regulation such provision (if any) with respect to the matter in question as the Governor in Council in the exercise of that discretion thinks proper.

cf. Navigation
 Act 1912
 s. 191A.

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Part 6—International Conventions

s. 57

- (2) Despite any regulation made under this Part for the purpose of giving effect to any provision of the Safety Convention or the Prevention of Collisions Convention which requires a particular fitting, material, appliance or apparatus, or type thereof, to be fitted or carried in a vessel, or any particular provision to be made in a vessel, the Minister may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if the Minister is satisfied that that other fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the relevant Convention.

57. Delegation

The Minister may, by instrument, delegate to any person any of his or her powers under this Part, other than this power of delegation.

Division 2—Prevention of Collisions Convention

58. Regulations giving effect to Prevention of Collisions Convention

cf. Navigation Act 1912 s. 258.

- (1) The regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention in relation to vessels, while they are in State waters.
- (2) A person must not contravene a regulation made under sub-section (1).

Penalty:

- (a) in the case of a natural person—100 penalty units or imprisonment for two years or both; or
- (b) in the case of a body corporate—200 penalty units.

Marine Act 1988
Act No. 52/1988

Part 6—International Conventions

s. 58

S. 58(5)
amended by
No. 57/1989
s. 3(Sch.
item 126.2).

S. 58(6)
amended by
Nos 57/1989
s. 3(Sch.
item 126.3),
77/2001
s. 31(1)(b).

S. 58(7)
amended by
No. 77/2001
s. 31(1)(b)(2)
(a)(i).

S. 58(8)
amended by
No. 77/2001
s. 31(2)(a)(ii)
(A)(B).

S. 58(9)(b)
amended by
No. 77/2001
s. 31(1)(b).

- (3) An offence against a regulation made under sub-section (1) must be prosecuted summarily.
- (4) Sub-sections (3) and (4) of section 6 do not apply in respect of this section.
- (5) The Magistrates' Court hearing a proceeding for an offence against a regulation made under sub-section (1) must, except as provided by sub-section (6), be assisted by two assessors who shall advise the Court but shall not adjudicate on the matter before the Court.
- (6) It is not necessary for the Magistrates' Court to be assisted by assessors if the Director, at the request of the magistrate constituting the Court, directs that the services of assessors in the particular case be dispensed with.
- (7) The Director may appoint persons who are in the opinion of the Director possessed of nautical or engineering or other special skill and experience to be assessors for the purposes of this section.
- (8) Before the hearing of a proceeding for an offence against a regulation made under sub-section (1) the Director must, unless the services of assessors in the particular case are dispensed with, by a notice signed by him or her require two of the assessors appointed by the Director (being assessors who appear to possess skill of the particular nature likely to be required in the proceeding) to attend the Court for the purpose of the proceeding.
- (9) An assessor is not required to attend the Court if—
 - (a) he or she is disqualified by reason of being interested in the matter of the proceeding; or
 - (b) he or she is on leave of absence granted by the Director.

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- (10) An assessor is, for every day or part of a day during which he or she attends the Court, entitled to be paid such fee as is prescribed.

Division 3—Safety Convention

59. Regulations giving effect to Safety Convention

cf. Navigation
 Act 1912
 s. 191.

- (1) In this section "**inter-State voyage**" and "**overseas voyage**" have the same meanings as in section 6 of the Commonwealth Navigation Act.
- (2) The regulations may make provision for or in relation to giving effect to a provision of Chapter V of the Regulations contained in the Annex to the Safety Convention (other than Regulation 13 or 15 of that Chapter of those Regulations) with respect to—
- (a) a trading ship within the meaning of section 6 of the Commonwealth Navigation Act proceeding on a voyage other than an overseas voyage or an inter-State voyage; or
 - (b) an Australian fishing vessel within the meaning of section 6 of that Act proceeding on a voyage other than an overseas voyage; or
 - (c) an inland waterways vessel within the meaning of section 6 of that Act; or
 - (d) a pleasure craft within the meaning of section 6 of that Act; or
 - (e) an off-shore industry vessel within the meaning of section 8 of that Act—
 - (i) in respect of which there is not in force a declaration under section 8A(5) of that Act; and

Marine Act 1988
Act No. 52/1988

Part 6—International Conventions

s. 59

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- (ii) that is proceeding on a voyage other than an overseas voyage or an inter-State voyage.
- (3) Where a provision of the Safety Convention applies only in relation to a particular class of vessel or in relation to vessels engaged on a particular class of voyage, any regulation under sub-section (2) that gives effect to that provision may be applied to ships, vessels or craft of any other class mentioned in that sub-section or to such ships, vessels or craft engaged in any other class of voyage other than an overseas voyage or, except in the case of an Australian fishing vessel, an inter-State voyage.
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Part 7—Marine Infringements

s. 60

PART 7—MARINE INFRINGEMENTS

60. Marine infringements

- (1) A member of the police force or a person who is authorised by the Director, or a person who is authorised by the Minister, for the purposes of this section who has reasonable cause to believe that a person has committed a marine infringement of a kind that is prescribed for the purposes of this Part may in accordance with the regulations serve on that person a marine infringement notice.
- (2) A marine infringement notice must be in the prescribed form and must contain the prescribed particulars.
- (3) A marine infringement notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days after the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which is in the prescribed form.
- (4) If the appropriate amount specified in the notice as the penalty for the infringement has been paid before the notice is withdrawn the amount so paid must be refunded on the notice of withdrawal being given.
- (5) The penalty for the purposes of this section in respect of any marine infringement is the amount prescribed in respect of that marine infringement.
- (6) A member of the police force or a person who is authorised by the Director, or a person who is authorised by the Minister, for the purposes of this section who has reason to believe that a person has committed a marine infringement may require that person to state his or her name and address.

S. 60(1)
 amended by
 Nos 82/1995
 s. 156(3),
 77/2001
 s. 31(1)(e).

S. 60(6)
 amended by
 Nos 82/1995
 s. 156(4),
 77/2001
 s. 31(1)(e).

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Part 7—Marine Infringements

s. 61

- (7) A person must not—
- (a) refuse or fail to state his or her name and address; or
 - (b) state a false name or address—
- when so required.

Penalty: For a first offence, 2 penalty units.

For a subsequent offence, 4 penalty units.

61. Payment of penalty

- (1) Subject to sub-section (4), if before the end of the period specified in the infringement notice for the payment of the penalty or, where the member of the police force or authorised officer or other person giving the notice so allows, at any time before the service of a summons in respect of the infringement, the amount of the penalty specified in the notice is paid at the place so specified—
- (a) the offender must be taken to have expiated the infringement by payment of the penalty; and
 - (b) no further proceedings may be taken in respect of the infringement; and
 - (c) a conviction for the infringement must not be regarded as having been recorded.
- (2) Subject to sub-section (2A), every penalty paid pursuant to this section must be applied in the same manner as if the offender had been convicted of the infringement in the Magistrates' Court on a charge filed by the member of the police force or authorised officer or other person who served the infringement notice or caused it to be served.

S. 61(1)
amended by
No. 51/1996
s. 15(1).

S. 61(2)
amended by
Nos 57/1989
s. 3(Sch.
item 126.4),
51/1996
s. 15(2)(a)(b).

Marine Act 1988
Act No. 52/1988

Part 7—Marine Infringements

s. 61

- (2A) If the infringement notice was served by a staff member of a Council within the meaning of the **Local Government Act 1989**, the penalty paid under this section must be paid into the municipal fund of that Council.
- (3) Payment of any penalty under this section may be effected in accordance with the regulations.
- (4) If an infringement notice has been served and the amount of the penalty is not paid before the end of the period specified in the notice as the time for payment or where the notice has been withdrawn, nothing in this section in any way prejudices the institution or prosecution of proceedings for the infringement in question (whether pursuant to Schedule 3 to the **Magistrates' Court Act 1989** or otherwise) but in any case, where the court is satisfied that an infringement notice was served in respect of the infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose (including but not limited to the purposes of any enactment imposing, authorising or requiring the imposition of any disqualification, disability or higher penalty on convicted people or people convicted on more than one occasion) except in relation to—
- (a) the making of the conviction itself; and
 - (b) any subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal or order to review.

S. 61(2A)
 inserted by
No. 51/1996
 s. 15(3).

S. 61(4)
 amended by
No. 57/1989
 s. 3(Sch.
 item 126.5).

s. 61A

S. 61A
inserted by
No. 20/1993
s. 12.

S. 61A(1)(a)
substituted by
No. 94/2003
s. 34(14).

61A. Effect of certain infringements

- (1) Section 61 does not apply to an offence under section 28(1)(b), (e) or (f) in circumstances where—
 - (a) the concentration of alcohol—
 - (i) in the blood of the person is less than 0.15 grams per 100 millilitres of blood; or
 - (ii) in the breath of the person is less than 0.15 grams per 210 litres of exhaled air—as the case requires; and
 - (b) the offence is a first offence having regard to the provisions of section 27(2).
- (2) Subject to section 61B, an infringement notice that is issued in respect of an offence referred to in sub-section (1) takes effect, 28 days after the date of the notice, as a conviction for the offence specified in the notice, unless the person to whom the notice was issued objects, within that time and in accordance with this section, to the infringement notice.
- (3) Despite sub-section (2), if an infringement notice is withdrawn under sub-section (7)(b) the person to whom the notice was issued must for all purposes be taken not to have been convicted of the offence specified in the notice.
- (4) A person may object to the infringement notice by giving notice in writing of the objection to the person specified for that purpose in the infringement notice.

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s. 61A

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- (5) A notice of objection must state—
- (a) that the person to whom the infringement notice was issued refuses to pay the penalty; and
 - (b) that the person requests that the matter be dealt with by a court; and
 - (c) that the person intends to defend any charge arising out of the facts specified in the infringement notice.
- (6) The giving of notice of objection to the infringement notice has the effect that—
- (a) the infringement notice is cancelled; and
 - (b) the person to whom the infringement notice was issued may only be proceeded against by a charge filed for the alleged offence.
- (7) If an infringement notice is issued in respect of an offence referred to in sub-section (1) and it subsequently appears that the offence in respect of which the notice was issued is not a marine infringement of a kind that is prescribed for the purposes of this Part—
- (a) the infringement notice operates as if the infringement were so prescribed; and
 - (b) any member of the police force may withdraw the infringement notice by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which is in the prescribed form; and
 - (c) the person may be proceeded against by a charge filed for the alleged offence.
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s. 61B

S. 61B
inserted by
No. 20/1993
s. 12.

61B. Extension of time to object if no actual notice

- (1) If a marine infringement notice that is issued in respect of an offence referred to in section 61A(1) is not delivered personally to the person to whom it was issued, and that person is not in fact aware, before the notice takes effect as a conviction, that it had been issued, the person may, within 7 days after becoming aware of it, apply in accordance with the regulations to the Magistrates' Court to have the time for objecting to the notice extended.
- (2) The court must not grant an extension of time unless it is satisfied that the person was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued.
- (3) If the court grants an extension of time, and if a notice of objection is given, in accordance with section 61A(4) or with any order made by the court, before the expiry of the extended time, the giving of the notice has the effect that—
 - (a) the conviction is set aside; and
 - (ab) any cancellation, disqualification or suspension that resulted from the conviction is set aside; and
 - (ac) anything done by the person before he or she became aware that the infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, that resulted from the conviction must be taken not to constitute that offence; and
 - (b) any of the procedures set out in Schedule 7 to the **Magistrates' Court Act 1989** that are being used for the enforcement of the amount specified in the infringement notice as payable in respect of the offence for which the notice was issued must be

S. 61B(3)(ab)
inserted by
No. 93/2000
s. 12(1).

S. 61B(3)(ac)
inserted by
No. 93/2000
s. 12(1).

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s. 61BA

discontinued and any warrant issued under that Schedule ceases to have effect; and

- (c) the infringement notice is cancelled; and
- (d) the person may only be proceeded against by a charge filed for the alleged offence.

(3A) In the case of any subsequent proceedings in relation to an offence in respect of which an infringement notice was issued to which sub-section (3) applies, any period of cancellation, disqualification or suspension of an operator licence that—

S. 61B(3A)
 inserted by
 No. 93/2000
 s. 12(2).

- (a) resulted from the conviction; and
- (b) occurred after the person became aware that the infringement notice had been issued—

must be taken into account by the court if the court convicts the person, or finds the person guilty, of the offence in respect of which the infringement notice was issued.

(4) Despite anything to the contrary in any other Act, a charge referred to in sub-section (3)(d) may be filed not later than 12 months after the date of the notice of objection.

61BA. Suspension of operator licence for drink-operator infringements

S. 61BA
 inserted by
 No. 93/2000
 s. 13 (as
 amended by
 No. 23/2001
 s. 25).

(1) If—

- (a) a marine infringement notice has been issued to a person in respect of an offence under section 28(1) involving a regulated recreational vessel or a regulated hire and drive vessel where the breath or blood alcohol concentration specified in the notice is the prescribed concentration of alcohol or

S. 61BA(1)(a)
 amended by
 Nos 90/2001
 s. 7(1),
 94/2003
 s. 34(15).

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Part 7—Marine Infringements

s. 61BA

more than the prescribed concentration of alcohol; and

- (b) the person to whom the infringement notice has been issued does not give a notice of objection to the infringement notice and the 28 day period has expired—

and—

- (c) if the person is the holder of an operator licence, the licence is suspended for a period of 6 months; or
- (d) if the person is not the holder of an operator licence, he or she is disqualified from obtaining such a licence for a period of 6 months.

- (2) If a person to whom a marine infringement notice has been issued in respect of an offence under section 28(1) involving a regulated recreational vessel or a regulated hire and drive vessel—

- (a) is exempted under the regulations from the requirements of section 115, 115A or 115B because he or she holds an appropriate operator licence issued in another State, Territory or country; and
- (b) does not give notice of objection to the infringement notice and the 28 day period has expired—

the person is disqualified from operating a vessel in State waters for the period for which he or she would have been suspended under this section had the person held an operator licence under this Act.

- (3) Any suspension or disqualification under subsection (1) or disqualification under subsection (2) takes effect on the expiry of the 28 day period.

S. 61BA(2)
amended by
No. 90/2001
s. 7(1).

S. 61BA(2)(a)
amended by
No. 90/2001
s. 7(2).

Marine Act 1988
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Part 7—Marine Infringements

s. 61C

- (4) When any suspension has taken effect, the Director may, by notice in writing served on the person whose operator licence is suspended, require that person to surrender any operator licence document to the Director.
- (5) A person on whom a notice is served under sub-section (4) must comply with the notice within the time specified in it.
- Penalty: 5 penalty units.
- (6) Payment of a penalty in respect of an infringement notice to which sub-section (1) applies may be made in accordance with the regulations.
- (7) A person to whom sub-section (1) applies must, on or before the expiry of the 28 day period, surrender his or her operator licence document in accordance with the regulations.

S. 61BA(4)
 amended by
 No. 77/2001
 s. 31(1)(b).

61C. Application and modification of certain provisions of the Magistrates' Court Act 1989

S. 61C
 inserted by
 No. 20/1993
 s. 12.

- (1) The following provisions of Schedule 7 to the **Magistrates' Court Act 1989** do not apply to or in relation to a marine infringement notice in respect of an offence referred to in section 61A(1)—
- (a) clause 3(6);
- (b) clause 4(2)(e) and (g);
- (c) clause 9(1)(a) and (b);
- (d) clause 10A.

S. 61C(1)(c)
 amended by
 No. 94/2003
 s. 39(a).

S. 61C(1)(d)
 inserted by
 No. 94/2003
 s. 39(b).

Marine Act 1988
Act No. 52/1988

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s. 62

S. 61C(3)
amended by
No. 74/2000
s. 3(Sch. 1
item 76).

- (2) Clause 8(3) of Schedule 7 to the **Magistrates' Court Act 1989** applies to and in relation to a marine infringement notice in respect of an offence referred to in section 61A(1) as if sub-clause (3) did not include "and with respect to applications for revocation of enforcement orders".
- (3) Clause 10 of Schedule 7 to the **Magistrates' Court Act 1989** applies to and in relation to a marine infringement notice in respect of an offence referred to in section 61A(1) as if clause 10(1) did not include "or any person against whom an enforcement order has been made".
- (4) Subject to sub-sections (1), (2) and (3), and sections 61A and 61B of this Act, the procedures set out in Schedule 7 to the **Magistrates' Court Act 1989** may be used for the enforcement of the amount specified as payable in a marine infringement notice issued in respect of an offence referred to in section 61A(1).

62. Proof of prior convictions

- (1) If a person is served with a summons for any infringement and it is alleged that he or she has been previously convicted or found guilty of any infringement or infringements there may be served with the summons a separate document in the prescribed form signed by the informant setting out particulars of the alleged prior convictions or findings of guilt.
- (2) The document setting out the alleged prior convictions or findings of guilt—
 - (a) must be endorsed with a notice in the prescribed form; and
 - (b) may be served in any manner in which the summons for the infringement may be served.

S. 62(2)
amended by
No. 20/1993
s. 13(2).

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- (3) If the court by which any person has been convicted or found guilty is satisfied that a copy of any such document was served on that person at least 14 days before the hearing of the charge the document is admissible and is evidence—
- (a) that the person was convicted or found guilty of the offences alleged in the document; and
 - (b) of the particulars relating to the convictions or findings of guilt set out in the document.
- (4) Any such document may not be tendered in evidence without the consent of the defendant if the defendant is present at the hearing of the charge.
- (5) Without limiting the generality of the provisions of Division 5 of Part 4 of the **Magistrates' Court Act 1989**, where any evidence of prior convictions or findings of guilt has been tendered pursuant to the provisions of this section, the court may set aside, on any terms as to costs or otherwise that the court decides, any conviction, finding or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted, or found guilty, of the offences as alleged in the document.

S. 62(3)
 amended by
 Nos 57/1989
 s. 3(Sch. item
 126.6),
 20/1993
 s. 13(3)(a)(b).

S. 62(4)
 amended by
 No. 57/1989
 s. 3(Sch.
 item 126.7).

S. 62(5)
 amended by
 Nos 57/1989
 s. 3(Sch.
 item 126.8),
 20/1993
 s. 13(4)(a)–(c).

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Victorian Legislation and Parliamentary Documents

Pt 8 (Heading)
amended by
No. 77/2001
s. 4(a).

PART 8—ADMINISTRATION AND ENFORCEMENT

Pt 8 Div. 1
(Heading)
amended by
No. 77/2001
s. 4(b).

Division 1—Director of Marine Safety

S. 63
amended by
No. 82/1995
s. 162(1)(2),
substituted by
No. 77/2001
s. 5.

63. Director of Marine Safety

There is to be a Director of Marine Safety employed under Part 3 of the **Public Sector Management and Employment Act 1998**.

S. 64
amended by
No. 82/1995
s. 163(a)(b),
repealed by
No. 77/2001
s. 31(2)(b).

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S. 65
(Heading)
inserted by
No. 77/2001
s. 6(1).
S. 65
amended by
No. 77/2001
s. 6(2)(a).

65. Functions of the Director

The functions of the Director are—

- (a) to develop appropriate standards for the construction, crewing, equipment and operation of vessels and to take steps to ensure that those standards are maintained; and
- (b) to issue certificates and to develop appropriate standards for the training of crews and to take steps to ensure that those standards are maintained; and
- (c) to investigate incidents adequately in order to identify deficiencies in operational procedures, vessel standards or crew training; and

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s. 65

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| (ca) to advise the Minister on the operation and administration of the Act, the regulations, marine pollution legislation and marine safety matters, and on any other matters referred for advice by the Minister; and | S. 65(ca)
inserted by
No. 77/2001
s. 6(2)(b). |
| (cb) to provide guidance and information on marine safety matters; and | S. 65(cb)
inserted by
No. 77/2001
s. 6(2)(b). |
| (cc) to commission and sponsor research into marine safety matters; and | S. 65(cc)
inserted by
No. 77/2001
s. 6(2)(b). |
| (cd) to promote education and training in marine safety; and | S. 65(cd)
inserted by
No. 77/2001
s. 6(2)(b). |
| (ce) to ensure that adequate means exist in ports to enable an effective response to marine pollution incidents within ports; and | S. 65(ce)
inserted by
No. 77/2001
s. 6(2)(b). |
| (cf) to take action to deal with marine pollution incidents occurring in State waters that are not port waters; and | S. 65(cf)
inserted by
No. 77/2001
s. 6(2)(b). |
| (d) to provide vessel survey and consultancy services; and | |
| (e) to manage resources in the most efficient manner; and | |
| (f) to determine the fitness of a person to hold a licence or a certificate of competency; and | |
| (g) to license pilots and to develop appropriate standards for the training of pilots and pilot exempt masters and to ensure that those standards are maintained; and | |
| (ga) to register pilotage services providers; and | S. 65(ga)
inserted by
No. 28/1999
s. 6. |
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S. 65(gb)
inserted by
No. 28/1999
s. 6.

S. 65(h)
substituted by
No. 82/1995
s. 164(1).

S. 65(i)
substituted by
No. 82/1995
s. 164(1).

S. 65(j)
substituted by
No. 82/1995
s. 164(1).

S. 65(ja)
inserted by
No. 82/1995
s. 164(1).

S. 65(jb)
inserted by
No. 82/1995
s. 164(1).

S. 65(jc)
inserted by
No. 82/1995
s. 164(1).

S. 65(jd)
inserted by
No. 82/1995
s. 164(1).

S. 65(je)
inserted by
No. 82/1995
s. 164(1).

S. 65(jf)
inserted by
No. 93/2000
s. 14.

- (gb) to approve appropriate alternative safety standards for the provision of pilotage services by pilotage services providers;
- (h) to determine and enforce standards and procedures for navigation and maritime safety on State waters; and
- (i) to develop appropriate standards for the provision and maintenance of navigation aids for State waters; and
- (j) to develop appropriate standards for the dredging and maintenance of channels in State waters; and
- (ja) to direct the removal of impediments or obstructions to navigation on State waters; and
- (jb) after consultation with the Environment Protection Authority, to develop, review, coordinate and administer the Victorian Marine Pollution Contingency Plan; and
- (jc) to determine the parts of State waters in which a licensed pilot is required to be engaged; and
- (jd) to determine the parts of State waters (other than port waters of the Port of Melbourne, the Port of Geelong, the Port of Portland or the Port of Hastings) with respect to which a licensed harbour master is required to be engaged; and
- (je) to licence harbour masters and determine standards for the training of harbour masters; and
- (jf) to test, approve the testing of and licence operators of regulated recreational vessels; and

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| <p>(jg) to train or approve courses or persons for the purposes of training of operators of regulated recreational vessels; and</p> | <p>S. 65(jg)
inserted by
No. 93/2000
s. 14.</p> |
| <p>(jh) to register recreational vessels; and</p> | <p>S. 65(jh)
inserted by
No. 93/2000
s. 14.</p> |
| <p>(k) to investigate alleged breaches of this Act or the regulations and to prosecute for them;
and</p> | |
| <p>(l) any other function that is conferred on the Director by or under this or any other Act.</p> | <p>S. 65(l)
amended by
No. 77/2001
s. 6(2)(a)(c).</p> |

66. Powers of the Director

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| <p>(1) The Director may do all things that are necessary or convenient to enable him or her to carry out his or her functions, including, but not limited to, the powers specified in Schedule 4.</p> <p>(2) Despite sub-section (1), the Director must not exercise any of his or her powers in a way that is inconsistent with the regulations.</p> <p>(3) Subject to the approval of the Minister, the Director may on behalf of the Crown—</p> <p style="margin-left: 20px;">(a) acquire, hold or dispose of real or personal property;</p> <p style="margin-left: 20px;">(b) participate in the formation of a corporation, trust, partnership or other body;</p> <p style="margin-left: 20px;">(c) subscribe for or otherwise acquire, and hold and dispose of, shares in or debentures or other securities of, a corporation;</p> <p style="margin-left: 20px;">(d) become a member of a company limited by guarantee;</p> | <p>S. 66
substituted by
No. 77/2001
s. 7.</p> |
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- (e) subscribe for or otherwise acquire, and hold and dispose of, units in a trust;
 - (f) acquire, and hold and dispose of, an interest in a partnership or other body;
 - (g) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or body carrying on or engaged in, or about to carry on or engage in, any business or transaction whether within or outside the State relating to, or connected with, any function of the Director;
 - (h) engage consultants, contractors or agents.
- (4) Without limiting the powers conferred by subsections (1) and (3), the Director may on behalf of the Crown enter into any agreement, lease or licence.

66A. Acquisition of land

- (1) The Minister may purchase or compulsorily acquire any land which is or may be required, whether by the Director, a port management body, a local port manager or a waterway manager, for or in connection with, or as incidental to, the provision of a navigation aid for State waters.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this section and for that purpose—
 - (a) the **Marine Act 1988** is the special Act; and
 - (b) the Minister is the Authority.

S. 66A
inserted by
No. 82/1995
s. 165.

S. 66A(1)
amended by
Nos 77/2001
s. 31(2)(c)(i)(ii),
85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 2).

S. 66A(2)(b)
amended by
No. 77/2001
s. 31(2)(d).

Marine Act 1988
Act No. 52/1988

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s. 66B

66B. Recovery of costs

S. 66B
inserted by
No. 82/1995
s. 165.

- (1) If a port management body, a local port manager or a waterway manager refuses or fails to comply with a standard developed by the Director under paragraph 18B of Schedule 4 for the provision and maintenance of navigation aids, the Director may provide or maintain (as the case requires) the navigation aid in accordance with that standard and recover the cost of doing so from the port management body, the local port manager or the waterway manager as a civil debt in any court of competent jurisdiction.

S. 66B(1)
amended by
Nos 77/2001
s. 31(1)(b)(2)
(e)(i), 85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 3(a)(b)).

- (2) If—

S. 66B(2)
amended by
No. 77/2001
s. 31(1)(b)(2)
(e)(ii).

- (a) there is no person on board any vessel to whom the Director may give a direction under paragraph 18C of Schedule 4 and there are reasonable grounds for the Director to act urgently without giving the direction; or
- (b) a direction given by the Director under paragraph 18C of Schedule 4 is not complied with—

S. 66B(2)(a)
amended by
No. 77/2001
s. 31(1)(b).

S. 66B(2)(b)
amended by
No. 77/2001
s. 31(1)(b).

the Director may cause a person authorised by the Director to board the vessel and move, secure or otherwise operate it and recover from the master or owner of the vessel as a civil debt in any court of competent jurisdiction the reasonable charges and expenses incurred under this sub-section.

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S. 66B(3)
amended by
No. 77/2001
s. 31(1)(b)(2)
(e)(ii).

S. 66C
(Heading)
inserted by
No. 77/2001
s. 31(2)(f).

S. 66C
inserted by
No. 82/1995
s. 165.

S. 66C(1)
amended by
No. 77/2001
s. 31(2)(g).

S. 66C(2)
amended by
No. 77/2001
s. 31(2)(h)(i)(ii).

- (3) The Director may recover from the person on whom a notice has been served under paragraph 18D of Schedule 4 any costs incurred by the Director under section 66C(2)(c) as a civil debt in any court of competent jurisdiction.

66C. Protection of Director from liability

- (1) The Director is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the performance of a function under or in connection with section 65(jb) or 66B(2); or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with section 65(jb) or 66B(2).
- (2) If the Director does or omits to do anything—
- (a) negligently in the exercise of a power or performance of a function under or in connection with section 65(jb) or 66B(2); or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with section 65(jb) or 66B(2)—
- any liability that would, but for sub-section (1), attach to the Director because of that act or omission attaches instead to the Crown.

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s. 66D

66D. Protection from liability (Victorian Marine Pollution Contingency Plan)

S. 66D
inserted by
No. 82/1995
s. 165.

S. 66D(1)
amended by
No. 77/2001
s. 31(1)(b).

- (1) A person required by the Director under paragraph 22 of Schedule 4 to participate in the Victorian Marine Pollution Contingency Plan is not personally liable for anything done or omitted to be done in good faith—
 - (a) in carrying out that requirement; or
 - (b) in the reasonable belief that the act or omission was carrying out that requirement.
- (2) If a person referred to in sub-section (1) does or omits to do anything—
 - (a) negligently in carrying out a requirement referred to in that sub-section; or
 - (b) in the reasonable belief that the act or omission was carrying out such a requirement—

any liability that would, but for sub-section (1), attach to the person because of that act or omission attaches instead to the Crown.

67. Exemptions

- (1) The Director may, by notice in writing to any person affected, exempt any person or vessel or any class of person or vessel from any requirement of this Act if the Director decides—
 - (a) that the requirement has been substantially complied with; or
 - (b) that the purpose of the requirement has been adequately achieved; or
 - (c) that compliance would, in the particular circumstances, be impracticable, unnecessary, or inappropriate.

S. 67(1)
amended by
No. 77/2001
s. 31(1)(b).

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S. 67(3)
amended by
No. 77/2001
s. 31(1)(b).

S. 68
amended by
No. 82/1995
s. 166,
substituted by
No. 77/2001
s. 8.

S. 69
substituted by
No. 82/1995
s. 167(1),
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 77/2001
s. 8.

S. 69(1)(b)
amended by
Nos 85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 4).

- (2) An exemption may be either indefinite or for a specified period and either absolute or on specified conditions.
- (3) The Director may at any time cancel an exemption, or alter its period or its terms and conditions, by notice in writing to any person affected.

68. Director must comply with the Minister's directions

- (1) In carrying out any function or exercising any power, the Director is subject to the general direction and control of the Minister.
- (2) The Director must comply with any specific written direction given to him or her by the Minister in relation to a matter or class of matter.

69. Delegation

- (1) The Director may delegate, in writing, any power conferred on the Director by or under this Act to—
 - (a) any employee of the Department of Infrastructure; or
 - (b) an officer or employee of a port management body, a local port manager or a waterway manager; or
 - (c) with the consent of the Minister, any other person or class of person.
- (2) Despite sub-section (1), the Director must not delegate—
 - (a) the power to enter into agreements, leases or licences on behalf of the Crown; or
 - (b) the power of delegation conferred by this section.

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- (3) A delegation under this section may be conferred on the holder of an office or position or on a named person.

70. Restriction on whom the Director may authorise to act under specific sections

S. 70 substituted by Nos 82/1995 s. 167(1), 77/2001 s. 8.

- (1) The Director may only authorise a person to act for the purposes of section 13(1), 18, 19, 21, 60(1), 60(2), 85A or 87(1) if the person is—
- (a) an employee of the Department of Infrastructure; or
 - (b) an officer or employee of the Victorian Regional Channels Authority, a port management body, a local port manager or a waterway manager; or
 - (c) an inspector appointed under section 82; or
 - (d) a person who has been, or who is a member of a class of person that has been, approved by the Minister to act as an authorised person for the purposes of that section.
- (2) The Director must make any authorisation made for the purposes of any section listed in subsection (1) in writing.

S. 70(1)(b) amended by Nos 85/2003 s. 34(2)(b), 9/2004 s. 25(Sch. item 5).

71. Advisory committees

S. 71 substituted by Nos 82/1995 s. 167(1), 77/2001 s. 8.

- (1) The Minister may establish advisory committees to advise the Minister or the Director on marine safety matters.
- (2) In establishing an advisory committee, the Minister must specify the terms of reference of the committee.

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s. 71

- (3) The Minister—
 - (a) is responsible for appointing the members of an advisory committee; and
 - (b) is to determine the terms and conditions of appointment (including the remuneration (if any) and the allowances (if any)) of each member of an advisory committee.
- (4) The Minister must publish notice of the establishment of an advisory committee, together with the terms of reference of the committee, in the Government Gazette.
- (5) The Minister may dissolve an advisory committee at any time by publishing notice of the dissolution in the Government Gazette.
- (6) The Minister may amend or replace the terms of reference of an advisory committee by publishing the amendment or replacement in the Government Gazette.
- (7) An advisory committee may regulate its own procedure.

* * * * *

Ss 72–74
substituted by
No. 82/1995
s. 167(1),
repealed by
No. 77/2001
s. 31(2)(b).

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 72

Division 2—Appointment of Inspectors

Pt 8 Div. 2
(Heading and
ss 72–75)
inserted by
No. 9/2004
s. 10.

72. Appointment of inspectors

New s. 72
inserted by
No. 9/2004
s. 10.

- (1) The Director may, if satisfied that a person has the appropriate qualifications and training, appoint—
 - (a) an employee of the Department of Infrastructure; or
 - (b) a person engaged by the Director for such a purpose—

as an inspector for the purposes of this Act.
- (2) An inspector may be appointed under sub-section (1) for the purposes of all or any provisions of this Act or the regulations.
- (3) The Director may exercise any of the powers of an inspector.

73. Inspector's identity card

New s. 73
inserted by
No. 9/2004
s. 10.

- (1) The Director must issue an identity card to each person appointed as an inspector that identifies the person by name as an inspector and that states the provisions of this Act or the regulations for which the inspector has been appointed.
- (2) The identity card must contain—
 - (a) a photograph of the person to whom it is issued; and
 - (b) the signature of the person.
- (3) If a person's authorisation as an inspector is revoked or expires, he or she must immediately return his or her identity card to the Director.

Penalty: 5 penalty units.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 74

New s. 74
inserted by
No. 9/2004
s. 10.

74. Production of identity card

- (1) An inspector must produce his or her identity card for inspection—
 - (a) before exercising a power under this Act; and
 - (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 5 penalty units.

- (2) Sub-section (1) does not apply if an inspector is exercising—
 - (a) a power by telephone, radio or other electronic communication device; or
 - (b) a power to board a vessel in circumstances in which it is not practicable to produce his or her identity card for inspection.

75. Offence to impersonate an inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

Division 2A—Compliance inspections

Pt 8 Div. 2A
(Heading and
ss 76, 77)
inserted by
No. 9/2004
s. 10.

76. Definition

In this Division, "**inspector**" means an inspector appointed under Division 2 for the purposes of this Division.

New s. 76
inserted by
No. 9/2004
s. 10.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 77

77. Powers to enter vessels without consent or warrant

New s. 77
inserted by
No. 9/2004
s. 10.

- (1) An inspector or a member of the police force, in order to determine whether or not—
 - (a) in the case of a vessel for which a certificate of survey has been issued, the certificate is being complied with; or
 - (b) in the case of a vessel for which a certificate of survey has not been issued, any provisions of this Act or the regulations as to—
 - (i) the design of the vessel; or
 - (ii) the construction of the vessel; or
 - (iii) the equipment that the vessel is required to be equipped with; or
 - (iv) the operation of the vessel—
 are being complied with—
 may, at any reasonable time, do the following—
 - (c) enter and search the vessel;
 - (d) inspect any equipment or document found on the vessel.
- (2) A person who is exercising a power under subsection (1) may do so with the assistance of another inspector or a member of the police force.

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Ss 74A–74C
inserted by
No. 82/1995
s. 167(1),
repealed by
No. 77/2001
s. 31(2)(b).

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 74D

Victorian Legislation and Parliamentary Documents

<p>S. 74D inserted by No. 82/1995 s. 167(1), amended by No. 44/2001 s. 3(Sch. item 78), repealed by No. 77/2001 s. 31(2)(b).</p>	*	*	*	*	*
<p>S. 74E inserted by No. 82/1995 s. 167(1), repealed by No. 77/2001 s. 31(2)(b).</p>	*	*	*	*	*
<p>S. 75 repealed by No. 77/2001 s. 31(2)(b).</p>	*	*	*	*	*
<p>S. 76 amended by No. 20/1993 s. 21, substituted by No. 82/1995 s. 168, amended by No. 93/2000 s. 15, repealed by No. 77/2001 s. 31(2)(b).</p>	*	*	*	*	*
<p>S. 77 amended by Nos 44/1989 s. 41(Sch. 2 item 26.2(a)(b)), 85/1992 s. 11, 82/1995 s. 154(11) (a)(b), 46/1998 s. 7(Sch. 1), repealed by No. 77/2001 s. 31(2)(b).</p>	*	*	*	*	*

Marine Act 1988
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Part 8—Administration and Enforcement

s. 82

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Pt 8 Div. 2
(Heading and
ss 78–81)
amended by
Nos 31/1994
s. 4(Sch. 2
items 50.1,
50.2), 46/1998
s. 7(Sch. 1),
11/2001
s. 3(Sch.
items 46.1,
46.2), 77/2001
s. 31(1)(b),
repealed by
No. 77/2001
s. 31(2)(b).

Division 3—Inspections and Investigations

82. Definition

In this Division, "**inspector**" means an inspector appointed under Division 2 for the purposes of this Division.

S. 82
amended by
Nos 82/1995
s. 169(1)(2),
28/1999
s. 7(1),
substituted by
Nos 77/2001
s. 10, 9/2004
s. 11.

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Ss 82A–82C
inserted by
No. 77/2001
s. 10,
repealed by
No. 9/2004
s. 11.

82D. Functions of inspectors

An inspector must investigate and report to the Director on any of the following that the Director requires—

S. 82D
inserted by
No. 77/2001
s. 10.

- (a) whether this Act and the regulations, and the conditions of any licence or certificate issued or registration granted by the Director, are being complied with;

Marine Act 1988
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Part 8—Administration and Enforcement

s. 83

- (b) any accident or incident reported to a member of the police force, or at a police station, under section 20(1);
- (c) any accident or incident reported to the Director under section 20(3) or 20(4);
- (d) the nature and causes of an alleged accident involving a vessel or of any alleged damage to a vessel;
- (e) the condition and adequacy of any vessel and its equipment;
- (f) any other matter that, in the opinion of the Director, should be investigated for the purposes of this Act.

83. Powers of inspectors

- (1) An inspector may, for the purposes of conducting an investigation under section 82D—
 - (a) without unnecessarily delaying the vessel, go on board and inspect any vessel and its equipment; and
 - (aa) if it is necessary to do so to enable the inspector to board or leave a vessel, direct the master of the vessel or the person operating the vessel—
 - (i) to stop the vessel; or
 - (ii) to manoeuvre the vessel in a specified manner or to a specified place; or
 - (iii) to secure the vessel in a specified manner; and
 - (ab) detain a vessel for so long as is necessary for the purposes of the investigation, up to a maximum period of 48 hours; and

S. 83
amended by
No. 77/2001
s. 11(1)(a)(2)
(ILAs. 39B(1)).

S. 83(1)(aa)
inserted by
No. 77/2001
s. 11(1)(b).

S. 83(1)(ab)
inserted by
No. 77/2001
s. 11(1)(b).

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Part 8—Administration and Enforcement

s. 83

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| (ac) if authorised to do so under section 83D, detain a vessel for the period authorised under that section; and | S. 83(1)(ac) inserted by No. 77/2001 s. 11(1)(b). |
| (ad) direct the master or owner of a vessel or the person operating a vessel to do anything necessary to enable the effective and safe detention of the vessel; and | S. 83(1)(ad) inserted by No. 77/2001 s. 11(1)(b). |
| (b) in accordance with a search warrant issued by a magistrate, enter and inspect any premises; and | S. 83(1)(b) amended by Nos 57/1989 s. 3(Sch. item 126.9), 28/1999 s. 7(2). |
| (c) request a person to give any information or require a person to produce any document in relation to a matter referred to in section 82(2). | S. 83(1)(c) inserted by No. 28/1999 s. 7(2). |
| (2) An inspector may enter any land for the purpose of boarding a vessel (other than land used for residential purposes). | S. 83(2) inserted by No. 77/2001 s. 11(2). |
| (3) An inspector may do all or any of the following on any vessel boarded under sub-section (1)— | S. 83(3) inserted by No. 77/2001 s. 11(2). |
| (a) search and inspect the vessel; | |
| (b) inspect any thing on the vessel; | |
| (c) make copies of, or take extracts from, any document; | |
| (d) seize any thing on the vessel if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction; | |
| (e) test any equipment or substance on the vessel; | |
| (f) take samples of any substance; | |
| (g) take measurements; | |
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Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 83A

S. 83A
inserted by
No. 28/1999
s. 8.

S. 83A(1)(a)
amended by
No. 77/2001
s. 12(a).

S. 83A(1)(b)
amended by
No. 77/2001
s. 12(b).

S. 83A(1)(c)
inserted by
No. 77/2001
s. 12(c).

S. 83A(1)(d)
inserted by
No. 77/2001
s. 12(c).

- (h) take any photographs or make any audio, visual or other recordings that he or she considers necessary;
- (i) use any assistants or equipment the inspector considers necessary to exercise the powers conferred by this section.

83A. Offence to fail to comply with request of inspector

(1) A person must not—

- (a) without reasonable excuse, refuse or fail to comply with a request or requirement made by an inspector in the course of conducting an investigation under section 82D; or
- (b) give information to an inspector under section 83 that the person knows to be false or misleading in a material particular; or

Penalty: 10 penalty units.

- (c) obstruct, hinder, impede or oppose an inspector who is exercising a power given to the inspector by or under this Act, or induce or attempt to induce any other person to do so; or
- (d) prevent, or attempt to prevent, any other person from assisting an inspector.

(2) It is a reasonable excuse for a natural person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under section 83 if the giving of the information, the production of the document or the doing of that other thing would tend to incriminate the person.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 83B

83B. Requirement to give name and address

S. 83B
inserted by
No. 77/2001
s. 13.

- (1) This section applies if an inspector believes on reasonable grounds that a person has committed an offence against this Act or the regulations.
- (2) The inspector may ask the person to state his or her name and ordinary place of residence or business.
- (3) In making the request, the inspector must inform the person of the grounds for his or her belief that the person has committed an offence.
- (4) A person who, in response to the request—
 - (a) refuses or fails to comply with the request without a reasonable excuse for not doing so; or
 - (b) states a name that is false in a material particular; or
 - (c) states an address other than the full and correct address of his or her ordinary place of residence or business—
 is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
- (5) If a person states a name and address in response to a request made under sub-section (2) and the inspector suspects on reasonable grounds that the stated name or address may be false, the inspector may request the person to produce evidence of the correctness of the name and address.
- (6) The person must comply with the request, unless he or she has a reasonable excuse for not doing so.
 Penalty: 5 penalty units.

- (7) It is not an offence for a person to fail to comply with a request made under sub-section (2) or (5) if the inspector did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request.

83C. Identity of vessel owner or master must be disclosed

- (1) This section applies if an inspector—
- (a) needs to establish the identity or location of the owner or master of a vessel for the purposes of an investigation; and
 - (b) asks a person whom the inspector believes has information concerning that identity or location to disclose that information.
- (2) The person must give the inspector all the information the person has regarding the identity and location of the owner and master of the vessel.

Penalty: 5 penalty units.

- (3) It is not an offence for a person to fail to comply with sub-section (2) if the inspector did not inform the person, at the time the request for the information was made, that it is an offence to fail to comply with the request.

83D. Extension of detention time

- (1) An inspector may apply to a magistrate for an order extending the period for which a vessel may be detained.
- (2) The magistrate may make the order if he or she is satisfied that there is reasonable cause to do so.
- (3) In making an order, the magistrate must specify the period for which the extension applies.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 84

84. Investigations

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| <p>(1) The Director may conduct an investigation if the Director has reason to believe—</p> <p style="margin-left: 20px;">(a) that a vessel has been involved in an accident; or</p> <p style="margin-left: 20px;">(ab) that a vessel has been involved in an incident tending to the loss or destruction of, or damage to, any vessel or other property or tending to endanger any person; or</p> <p style="margin-left: 20px;">(b) that any pilot, pilot exempt master, harbour master, pilotage services provider or person holding a certificate of competency or service under this Act has acted incompetently in the course of his or her duties or in breach of this Act or the regulations; or</p> <p style="margin-left: 20px;">(c) that the holder of any harbour master licence has breached the conditions of that licence; or</p> <p style="margin-left: 20px;">(d) that any pilot, pilot exempt master or pilotage service provider, who is registered under this Act to act as a pilot, pilot exempt master or pilotage service provider (as the case requires), has breached the conditions of that registration.</p> <p>(1A) The Director, for the purposes of conducting an investigation, may require—</p> <p style="margin-left: 20px;">(a) a vessel to remain in port waters for a period not exceeding 24 hours; and</p> <p style="margin-left: 20px;">(b) a person to give written or oral information to the Director; and</p> | <p>S. 84(1) amended by No. 77/2001 s. 14(1).</p> <p>S. 84(1)(ab) inserted by No. 20/1993 s. 22(1).</p> <p>S. 84(1)(b) amended by Nos 82/1995 s. 169(3), 28/1999 s. 9(1), 9/2004 s. 12(1)(a).</p> <p>S. 84(1)(c) inserted by No. 9/2004 s. 12(1)(b).</p> <p>S. 84(1)(d) inserted by No. 9/2004 s. 12(1)(b).</p> <p>S. 84(1A) inserted by No. 28/1999 s. 9(2), amended by No. 77/2001 s. 31(1)(b).</p> <p>S. 84(1A)(b) amended by No. 77/2001 s. 31(1)(b).</p> |
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Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 84A

S. 84(1A)(c)
amended by
No. 77/2001
s. 31(1)(b).

(c) a person to produce to the Director any documents relevant to the investigation.

S. 84(1B)
inserted by
No. 28/1999
s. 9(2),
amended by
No. 77/2001
s. 31(1)(b).

(1B) If the Director commences an investigation under this section, the Director—

S. 84(1B)(a)
amended by
No. 77/2001
s. 14(2).

- (a) may suspend a licence or certificate issued or registration granted under this Act for a period not exceeding 14 days; and
- (b) must notify the person holding the licence or certificate or registered under this Act that the licence, certificate or registration has been suspended for the period specified in the notice.

S. 84(2)
amended by
Nos 28/1999
s. 9(3), 9/2004
s. 12(2).

(2) An investigation must be conducted in such a manner that any person against whom an allegation of incompetence or breach of this Act or the regulations or a condition of a licence granted under this Act is made is given an opportunity of making a defence and showing why his or her certificate, licence or registration should not be cancelled or suspended.

S. 84(3)
amended by
Nos 20/1993
s. 22(2),
77/2001
s. 31(1)(b).

(3) In conducting an investigation the Director has the powers conferred by sections 14, 15, 16 and 21A of the **Evidence Act 1958** on a board appointed by the Governor in Council.

S. 84A
inserted by
No. 77/2001
s. 15.

84A. Extension of suspension pending investigation

- (1) The Victorian Civil and Administrative Tribunal may extend the period of a suspension imposed—
 - (a) by the Director under section 84(1B); or
 - (b) by the Tribunal under this section.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 84B

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- (2) The Tribunal may only extend the period of a suspension—
 - (a) on the application of the Director; and
 - (b) if it is satisfied that there is reasonable cause to do so.
 - (3) In extending a period of suspension, the Tribunal must specify the period for which the extension applies.

84B. Action by the Director following investigation

S. 84B
inserted by
No. 77/2001
s. 15.

- (1) On the completion of an investigation under section 84, the Director may, in relation to any person who was given an opportunity to make a defence under that section—
 - (a) take no action;
 - (b) reprimand the person;
 - (c) take action under section 85 to cancel or suspend any certificate, licence or registration held by the person under this Act;
 - (d) impose or vary conditions on any certificate, licence or registration held by the person under this Act;
 - (e) replace any certificate, licence or registration cancelled under section 85 with an authority of a lesser nature;
 - (f) inform any other marine safety authority that has granted a licence, certificate, registration or other authority to the person of any action taken under this section or section 85;
 - (g) recommend to the Director of Public Prosecutions or other relevant law enforcement agency that criminal or other legal proceedings be taken against the person.
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Marine Act 1988
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Part 8—Administration and Enforcement

s. 84C

- (2) Within 21 days of determining what action he or she will take in relation to an investigation, the Director must give the person—
 - (a) a copy of the final investigation report; and
 - (b) written notice of the action.
- (3) Nothing in sub-section (1) is intended to restrict the Director to doing one thing only, nor to restrict the Director from taking action in relation to only one certificate, licence, registration or other authority.

84C. Public release of report

- (1) At the completion of an investigation under section 84, the Director may make public the report of the investigation or any part of the report.
- (2) During the course of an investigation under section 84, the Director may make public any findings, interim findings or recommendations arising out of the investigation.
- (3) However, the Director may only make a report, part of a report, finding or recommendation public if—
 - (a) in the opinion of the Director, it is in the public interest to do so; and
 - (b) the making public of the report, part, finding or recommendation will not be likely to prejudice the rights of any person in any criminal proceedings that may be instituted in connection with the matter that was investigated.

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 85

85. Cancellation or suspension of certificates, licences or registrations

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| <p>(1) In this section, a reference to the cancellation or suspension of a certificate includes a reference to the withdrawal of acceptance by the Director of a certificate issued by an authority as being equivalent to a certificate issued by the Director.</p> | <p>S. 85(1)
amended by
No. 77/2001
s. 31(1)(b).</p> |
| <p>(2) The Director may, if as a result of the report of an inspector or as a result of an investigation it is satisfied that it is appropriate to do so, cancel or suspend any certificate or licence issued or registration granted under this Act.</p> | <p>S. 85(2)
amended by
Nos 28/1999
s. 10(a),
77/2001
s. 31(1)(b).</p> |
| <p>(3) Any person whose certificate, licence or registration is cancelled or suspended may apply to the Victorian Civil and Administrative Tribunal for review of the decision of the Director.</p> | <p>S. 85(3)
amended by
Nos 52/1998
s. 311(Sch. 1
item 57.1),
28/1999
s. 10(b),
77/2001
s. 31(1)(b).</p> |
| <p>(3A) An application for review of a decision to cancel or suspend the certificate, licence or registration must be made within 28 days after the later of—</p> <p style="margin-left: 20px;">(a) the day on which the decision is made;</p> <p style="margin-left: 20px;">(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.</p> | <p>S. 85(3A)
inserted by
Nos 52/1998
s. 311(Sch. 1
item 57.2),
28/1999
s. 10(b).</p> |
| <p>(3B) If the Director has imposed a condition on a harbour master licence under section 26HE(1), the holder of the licence may apply to the Victorian Civil and Administrative Tribunal for a review of the decision of the Director.</p> | <p>S. 85(3B)
inserted by
No. 9/2004
s. 13.</p> |

Marine Act 1988
Act No. 52/1988

Part 8—Administration and Enforcement

s. 85

S. 85(3C)
inserted by
No. 9/2004
s. 13.

- (3C) An application for review of a decision of the Director under sub-section (3B) must be made within 28 days of the later of—
- (a) the day on which the decision was made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 85(4)
amended by
Nos 28/1999
s. 10(c)(i)–(iii),
77/2001
s. 31(1)(b).

- (4) Any person whose certificate, licence or registration is cancelled or suspended must, if that certificate or licence was issued or registration was granted by the Director, deliver the certificate or licence or certificate of registration to the Director without delay—

S. 85(4)(a)
amended by
No. 77/2001
s. 31(1)(b).

- (a) after notification of the decision of the Director; or

S. 85(4)(b)
amended by
No. 52/1998
s. 311(Sch. 1
item
57.3(a)(b)).

- (b) after notification of the decision of the Victorian Civil and Administrative Tribunal if the person has applied for review under sub-section (3) and the Tribunal decides—

S. 85(4)(b)(i)
amended by
No. 11/2002
s. 3(Sch. 1
item 44).

- (i) to confirm the Director's decision; or

S. 85(4)(b)(ii)
amended by
No. 28/1999
s. 10(c)(iv).

- (ii) to vary it in such a way that the certificate, licence or registration is cancelled or suspended even after the variation.

Penalty: 5 penalty units.

Marine Act 1988
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Part 8—Administration and Enforcement

s. 85

(5) In this section "**licence**" does not include an operator licence.

S. 85(5)
inserted by
No. 93/2000
s. 16.

PART 9—GENERAL

85A. Powers of entry in relation to lights

- (1) If a notice served under paragraph 18D of Schedule 4 is not complied with, a person authorised by the Director for the purposes of this sub-section may do all or any of the following—
- (a) enter any premises and take possession of the light;
 - (b) order that the light be forfeited;
 - (c) do anything in relation to the light that the notice required the owner or other person to do.
- (2) A person on whom a notice under paragraph 18D of Schedule 4 is served must comply with the notice.

Penalty: 60 penalty units.

86. Arrest without warrant

- (1) A member of the police force may arrest without warrant any person who within his or her sight commits an offence against this Act or the regulations and who on being requested to give his or her name and address refuses or fails to do so or gives a name or address that the member of the police force reasonably suspects to be false.
- (2) If a person who is arrested for an offence under this Act or the regulations was in charge of a vessel, any member of the police force may take charge of the vessel and may move it to an appropriate place and keep or leave it there pending the admission of the arrested person to bail or, if that person is not the owner of the

vessel, pending a demand for the vessel by its owner.

86A. Police power to move vessel or require vessel to be moved

S. 86A
inserted by
No. 93/2000
s. 17.

If a person has, within sight of a member of the police force, committed an offence against Part 4 or Part 10A and that person is in charge of a vessel, the member of the police force may—

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

87. Power to prosecute

- (1) Proceedings for any offence against this Act, the regulations or regulations made under the **Port Services Act 1995** that relate to local ports may be brought by—

S. 87(1)
amended by
No. 9/2004
s. 14.

- (a) any member of the police force; or
- (b) any person who is authorised by the Director in writing to do so either generally or in any particular case; or
- (c) any person or body authorised in writing to do so either generally or in any particular case by a public authority or other person prescribed for the purposes of this subsection, if the offence occurs on land, waters or premises which are vested in, or under the control of, that public authority or person prescribed.

S. 87(1)(b)
amended by
Nos 82/1995
s. 154(12)
(a)(b), 77/2001
s. 31(3)(c).

S. 87(2)
amended by
Nos 82/1995
s. 154(13)
(a)(b), 77/2001
s. 31(1)(b).

- (2) If proceedings are brought by a member of the police force or an officer of the Director or by a person or body authorised by a public authority the proceedings may be conducted before the court by any other member of the police force or officer of the Director or by any other person or body authorised by the public authority.

88. Evidence of speed

If in any criminal proceedings the speed at which a vessel travelled on any occasion is relevant, evidence of the speed of the vessel as indicated or determined on that occasion by a prescribed measuring device when tested, sealed and used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the vessel on that occasion.

89. General evidentiary provisions

- (1) A certificate in the prescribed form purporting to be issued by the Director certifying as to any matter that appears in or can be calculated from the records kept by the Director or a delegate of the Director is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
- (2) Without limiting any provision of the **Evidence Act 1958**, a certificate or document that purports to be issued under any Act of the Commonwealth, or of a State or Territory of the Commonwealth, and that purports to relate in any way to—
- (a) the registration or non-registration of a vessel; or
 - (b) the person who is the owner of a vessel or in whose name a vessel is registered; or

S. 89(1)
amended by
No. 77/2001
s. 31(1)(b).

*Marine Act 1988**Act No. 52/1988*

Part 9—General

s. 89

(c) the qualifications of people crewing a vessel;
or

(d) any other matter relating to the use of
vessels—

is, for the purposes of this Act, admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (3) A certificate in the prescribed form purporting to be issued by the Director certifying that on a particular date a vessel was registered in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the owner of the vessel.
- (4) A certificate or document purporting to be issued under any Act of the Commonwealth, or of a State or Territory of the Commonwealth, that corresponds to this Act and certifying that on a particular date a vessel was registered in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the owner of the vessel.
- (5) In any proceedings for a contravention of section 8, proof that a vessel was operated on State waters without having affixed to it any identifying number, and any appropriate registration label, required by or under this Act is, in the absence of evidence to the contrary, proof that the vessel was operated in contravention of that section.
- (6) A certificate in the prescribed form to the effect that a prescribed speed measuring device has been tested or sealed in the prescribed manner, signed or purporting to be signed by a person authorised

S. 89(3)
amended by
No. 77/2001
s. 31(1)(b).

S. 89(6)
inserted by
No. 77/2001
s. 25.

to do so by the regulations is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof that the device has been so tested or sealed.

89A. Obtaining licence etc. by false statements

A person who—

- (a) by any false statement or any misrepresentation or other dishonest means obtains or attempts to obtain any notice, certificate, licence or other document, or any identifying number or general identification mark that is authorised, issued or required by or under this Act; or
- (b) without lawful authority or excuse possesses any notice, certificate, licence or other document so obtained—

is guilty of an offence and liable to a penalty of not more than 10 penalty units or imprisonment for a term of not more than 2 months and any notice, certificate, licence or other document or identifying number or general identification mark so obtained is void and of no effect.

90. Forgery etc. of documents and identification marks

(1) A person must not—

- (a) forge; or
- (b) fraudulently alter or use; or
- (c) fraudulently lend or allow to be used by another person—

any notice, certificate, licence or other document, or any identifying number or general identification mark, that is authorised, issued or required by or under this Act.

Penalty: 10 penalty units.

*Marine Act 1988**Act No. 52/1988*

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- (2) A person must not, otherwise than in accordance with this Act, make, use, knowingly have custody or possession of, sell or alter any paper or other material purporting to be a notice, certificate, licence or other document, or any identifying number or general identification mark, that is authorised, issued or required by or under this Act.

S. 90(2)
amended by
No. 20/1993
s. 23.

Penalty: 10 penalty units.

91. Offence to interfere etc. with navigation aid

S. 91
substituted by
No. 77/2001
s. 26.

- (1) A person must not, without lawful authority, wilfully or negligently interfere or tamper with, or obstruct the use or operation of, a navigation aid.
- (2) A person who contravenes sub-section (1) is guilty of an indictable offence and is liable to a penalty not exceeding imprisonment for 10 years or a fine of 1200 penalty units, or both.

91A. Accountability for damage

S. 91A
inserted by
No. 82/1995
s. 171.

- (1) The Director may recover damages in any court of competent jurisdiction from a person who removed or damaged a light house, light ship, buoy, beacon, navigation aid or other land or sea mark used for the safety or convenience of navigation.
- (2) Nothing in sub-section (1) prejudices any other rights which the Director may have or limits any liabilities to which a person may be subject in respect of any such removal or damage as is referred to in that sub-section.

S. 91A(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 91A(2)
amended by
No. 77/2001
s. 31(1)(b).

s. 92

S. 92
amended by
Nos 82/1995
s. 154(14),
28/1999
s. 11(a)(b),
substituted by
No. 77/2001
s. 27.

S. 92(1)
amended by
No. 9/2004
s. 25(Sch.
item 6).

92. Offence to obstruct authorised person

- (1) In this section "**authorised person**" means the Director, a person appointed, employed or engaged by the Director (other than an inspector) or an officer of a port management body, a local port manager or a waterway manager.
- (2) A person must not—
 - (a) obstruct, hinder, impede or oppose an authorised person who is performing a duty or function, or exercising a power, under this Act or the regulations, or induce or attempt to induce any other person to do so; or
 - (b) prevent or attempt to prevent any other person from assisting an authorised person.

Penalty: 20 penalty units.

92A. Offence to fail to comply with certain directions etc.

S. 92A
inserted by
No. 82/1995
s. 172.

S. 92A(1)
amended by
No. 77/2001
s. 31(1)(b).

- (1) A person must not, without reasonable excuse, refuse or fail to comply with any direction given to the person by the Director under paragraph 18C, 18H or 22 of Schedule 4.

Penalty: 120 penalty units.

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- (2) A port management body, a local port manager or a waterway manager must not refuse or fail to comply with a standard developed by the Director under paragraph 18B or 18G of Schedule 4.

Penalty: 120 penalty units.

S. 92A(2)
amended by
Nos 77/2001
s. 31(1)(b),
85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 7).

93. Offence to offer or accept bribes

- (1) A person who offers a bribe, pecuniary or otherwise, either directly or indirectly, to a person who is employed or engaged to provide services for the Director, a port management body, a local port manager or a waterway manager, is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or a fine of not more than 30 penalty units or both.

S. 93(1)
amended by
Nos 82/1995
s. 154(14),
77/2001
s. 31(3)(d)(i),
9/2004
s. 25(Sch.
item 8).

- (2) A person who is employed or engaged to provide services for the Director, a port management body, a local port manager or a waterway manager, who accepts a bribe, pecuniary or otherwise, either directly or indirectly is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or a fine of not more than 30 penalty units or both.

S. 93(2)
amended by
Nos 82/1995
s. 154(14),
77/2001
s. 31(3)(d)(ii),
9/2004
s. 25(Sch.
item 8).

94. Offence if people employed without appropriate certificates

- (1) A person must not act as a master or a crew member on a vessel in any capacity for which a certificate of competency is required under the regulations unless that person holds a certificate of competency that authorises that person to act in that capacity.

Penalty: 60 penalty units.

S. 94(1)
amended by
Nos 20/1993
s. 24(a),
28/1999
s. 12(a),
9/2004 s. 15.

Marine Act 1988
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S. 94(1A)
inserted by
No. 82/1995
s. 173.

S. 94(2)
amended by
Nos 20/1993
s. 24(b),
28/1999
s. 12(a).

S. 94(3)
amended by
No. 28/1999
s. 12(a).

S. 95
amended by
No. 28/1999
s. 12(b).

(1A) A person must not act as the harbour master for any port waters or other State waters with respect to which a licensed harbour master is required to be engaged unless he or she is licensed under this Act to so act.

Penalty: 60 penalty units.

(2) A person must not employ or engage another person to act as a master or a crew member on a vessel in any capacity for which a certificate is required under the regulations unless that other person holds an appropriate certificate.

Penalty: 60 penalty units.

(3) The owner of a vessel must not cause or allow it to be operated on State waters unless it is crewed in accordance with the regulations by people who hold appropriate certificates.

Penalty: 60 penalty units.

(4) It is a defence to a charge under sub-section (2) or (3) for the person charged to prove that the person charged believed, after making all reasonable enquiries, that the person held an appropriate certificate, or the people held appropriate certificates, as the case may be.

95. Offence for pilot to endanger vessel

A pilot who is in charge of a vessel and who does or omits to do anything, whether wilfully or negligently, that is likely to endanger a vessel or its crew is guilty of an indictable offence and liable to imprisonment for a term of not more than 2 years or a fine of not more than 100 penalty units or both.

*Marine Act 1988**Act No. 52/1988*

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96. Offence not to use a pilot

- (1) Subject to sub-section (2), the master of a vessel must not—
- S. 96(1)
amended by
No. 28/1999
s. 12(c).
- (a) enter or leave port waters or attempt to enter or leave port waters; or
- S. 96(1)(a)
amended by
No. 82/1995
s. 174(1).
- (b) navigate the vessel within port waters or attempt to do so—
- S. 96(1)(b)
amended by
No. 82/1995
s. 174(1).
- without using the services of a pilot.
- Penalty: 100 penalty units (in addition to the amount that would have been payable for pilotage if the services of a pilot had actually been used).
- (2) Sub-section (1) does not apply to—
- (aa) port waters in which a licensed pilot is not required to be engaged; or
- S. 96(2)(aa)
inserted by
No. 82/1995
s. 174(2)(a).
- (a) port waters for which no pilot is licensed; or
- S. 96(2)(a)
amended by
No. 82/1995
s. 174(2)(b).
- (b) a pilot exempt master; or
- (c) a master who holds a local knowledge certificate for port waters and who, by virtue of the regulations, is not required to use the services of a pilot for those port waters; or
- S. 96(2)(c)
amended by
No. 82/1995
s. 174(2)(b)(c).
- (d) a vessel that is less than 35 metres long.
- S. 96(2)(d)
amended by
No. 20/1993
s. 25.

97. Offence to operate etc. unsurveyed vessel

- (1) The owner of a vessel must not operate the vessel on State waters, or allow it to be so operated, if there is no certificate of survey for the vessel in force in accordance with the regulations.

Penalty: 20 penalty units.

- (2) The master of a vessel must not operate the vessel on State waters if there is no certificate of survey for the vessel in force in accordance with the regulations.

Penalty: 10 penalty units.

98. Unsafe vessels

- (1) A vessel is an unsafe vessel for the purposes of this section if the operation of the vessel is likely to endanger any person because of—
- (a) the condition or equipment of the vessel; or
 - (b) the manner in which cargo or equipment on the vessel is stowed or secured; or
 - (c) the nature of the cargo; or
 - (d) the overloading of the vessel with persons or cargo; or
 - (e) the number or qualifications of its crew; or
 - (f) any other reason.

- (2) The owner of a vessel must not operate the vessel if the owner knows that it is an unsafe vessel.

Penalty: Imprisonment for 2 years or
240 penalty units.

- (3) The master of a vessel must not operate the vessel if the master knows that it is an unsafe vessel.

Penalty: Imprisonment for 2 years or
240 penalty units.

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- (4) The fact that an unsafe vessel has been detained under this section does not prevent a prosecution for an offence against sub-section (2) or (3).
- (5) The Director may order a vessel that is on State waters or in any other part of the State to be provisionally detained if it appears to the Director to be an unsafe vessel. **S. 98(5) amended by No. 77/2001 s. 31(1)(b).**
- (6) The following provisions apply if a vessel has been ordered to be provisionally detained—
- (a) the Director must, as soon as practicable, cause to be served on the master or owner of the vessel a notice of the detention and a written statement of the reasons for the detention; **S. 98(6)(a) amended by No. 77/2001 s. 31(1)(b).**
- (b) the Director must appoint an inspector to investigate and report to the Director under Division 3 of Part 8 on the condition and adequacy of the vessel and its equipment; **S. 98(6)(b) amended by No. 77/2001 s. 31(1)(b) (3)(e).**
- (c) the Director may, on receipt of the report—
- (i) order the release of the vessel; or **S. 98(6)(c) amended by No. 77/2001 s. 31(1)(b).**
- (ii) if of the opinion that it is an unsafe vessel, order it to be finally detained either absolutely or until the performance of such conditions as the Director considers necessary to ensure that the vessel is not an unsafe vessel; **S. 98(6)(c)(ii) amended by No. 77/2001 s. 31(1)(b).**
- (d) the Director may at any time (and without any report) order the release of the vessel (with or without conditions) if satisfied that the vessel is not an unsafe vessel; **S. 98(6)(d) amended by No. 77/2001 s. 31(1)(b).**
- (e) before an order for final detention is made, the Director must cause a copy of the report to be served on the master or owner of the vessel; **S. 98(6)(e) amended by No. 77/2001 s. 31(1)(b).**
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S. 98(6)(f)
amended by
No. 77/2001
s. 31(1)(b).

S. 98(7)
amended by
No. 77/2001
s. 31(1)(b).

S. 98(11)
amended by
No. 77/2001
s. 31(1)(b).

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- (f) the Director must cause a copy of an order for final detention to be served on the owner and master of the vessel (if their identity and whereabouts are known to the Director).
- (7) If an order for the final detention of a vessel is made, the vessel must not be released until the Director is satisfied that its further detention is no longer necessary, and orders its release.
- (8) The owner of a vessel must not cause or allow the vessel to be taken on a voyage if the owner knows that the vessel has been detained under this section and has not been duly released.
- Penalty: Imprisonment for 2 years or 240 penalty units.
- (9) The master of a vessel must not take the vessel on a voyage if the master knows that the vessel has been detained under this section and has not been duly released.
- Penalty: Imprisonment for 2 years or 240 penalty units.
- (10) An agent for a vessel that has been detained under this section and has not been duly released must not assist the owner or master of the vessel to contravene this section.
- Penalty: Imprisonment for 2 years or 240 penalty units.
- (11) A person must not obstruct or fail to comply with any reasonable requirement of a person appointed by the Director to take charge of a vessel detained under this section in connection with the exercise of that person's functions.
- Penalty: 20 penalty units.

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- (12) If a vessel is detained under this section without reasonable cause, the Director is liable to pay the owner of the vessel compensation for any loss or damage resulting from the detention.

S. 98(12)
 amended by
 No. 77/2001
 s. 31(1)(b).

99. Offences in relation to deck and load lines

- (1) The owner or master of a vessel must make sure that the vessel is marked in accordance with the regulations with any deck or load lines with which the regulations require it to be marked.

Penalty: 10 penalty units.

- (2) A person must not conceal, remove or alter any deck or load lines with which the regulations require a vessel to be marked.

Penalty: 10 penalty units.

- (3) The master of a vessel must make sure that the vessel is not, within State waters, so loaded that the load line is submerged.

Penalty: 10 penalty units.

99A. Order to remove obstructions in navigable waters

S. 99A
 inserted by
 No. 77/2001
 s. 28.

- (1) In this section "**obstruction to navigation**" means anything in, over or on navigable waters (including a vessel, whether wrecked or not) that—

(a) is a danger to the safe navigation of vessels;
 or

(b) is moored, berthed or placed in contravention of this Act or the regulations—

but does not include anything lawfully erected in, over or on navigable waters.

- (2) The Director may direct the owner of, or a person responsible for, an obstruction to navigation to remove the obstruction.

- (3) The direction must be given in writing and must specify by when the obstruction must be removed.
- (4) The person to whom the direction is given must comply with the direction within the time specified in the direction, unless the person has a reasonable excuse for not doing so.

Penalty: 20 penalty units.

99B. Director may remove obstructions to navigation

- (1) In this section "**obstruction to navigation**" has the same meaning as it has in section 99A.
- (2) The Director may remove, or authorise the removal of, any obstruction to navigation.
- (3) The Director may take action under this section regardless of—
 - (a) whether or not a direction for the removal of the obstruction has been given under section 99A; or
 - (b) if a direction under section 99A has been given, whether or not the time specified in the direction for compliance with the direction has expired.
- (4) Action taken under this section may include the removal of the obstruction by its destruction if it is reasonable to do so in the circumstances.
- (5) The Director may dispose of anything removed under this section.
- (6) The Director may recover any reasonable costs incurred in taking action under this section as a debt due and payable by the owner of, or the person responsible for, the obstruction.

99C. Issue of certificates of competency by the Director

- (1) The Director may issue a certificate to a person that authorises that person to act as a master or a crew member on vessels that are of the class of vessel set out on the certificate and in the capacity on any such vessel that is set out in the certificate.
- (2) The Director may impose conditions on any certificate of competency.

S. 99C
inserted by
No. 9/2004
s. 16.

99D. Offence not to comply with conditions on certificate of competency

The holder of a certificate of competency must comply with any condition imposed on the certificate by the Director under section 99C(2).

Penalty: 10 penalty units.

S. 99D
inserted by
No. 9/2004
s. 16.

99E. Issue of certificates of survey by the Director

- (1) The Director may issue a certificate to the owner of a vessel that sets out requirements as to all or any of the following—
 - (a) the design of the vessel;
 - (b) the construction of the vessel;
 - (c) the equipment that the vessel is required to be equipped with;
 - (d) the operation of the vessel.
- (2) The Director may impose conditions on any certificate of survey.

S. 99E
inserted by
No. 9/2004
s. 16.

99F. Offence not to comply with certificate of survey or conditions on certificate of survey

- (1) The owner of a vessel must ensure that all the requirements of the certificate of survey are complied with.

Penalty: 10 penalty units.

S. 99F
inserted by
No. 9/2004
s. 16.

- (2) The owner of a vessel must ensure that—
- (a) any condition imposed by the Director under section 99E(2) on a certificate of survey issued for the vessel is complied with; or
 - (b) any condition prescribed by the regulations that applies to a certificate of survey is complied with.

Penalty: 10 penalty units.

- (3) Any person who operates a vessel in respect of which a certificate of survey has been issued must ensure that the certificate of survey is complied with.

Penalty: 5 penalty units.

100. Jurisdiction

For the purpose of giving jurisdiction under this Act, an offence must be treated as having been committed, and a cause of complaint as having arisen, either in the place where it was committed or arose or in any place where the alleged offender or person claimed against is.

101. Service

- (1) If under this Act, the regulations or regulations made under the **Port Services Act 1995** that relate to local ports a notice, summons or other document is required or permitted to be served on a person it may be served in or out of the State by leaving it on board a vessel of the crew of which the person is a member with the person in charge of the vessel.
- (2) If under this Act, the regulations or regulations made under the **Port Services Act 1995** that relate to local ports a notice, summons or other document is required or permitted to be served on a person in respect of a recreational vessel, it may be served by posting it, addressed to the person, to

S. 101(1)
amended by
No. 9/2004
s. 17.

S. 101(2)
amended by
No. 9/2004
s. 17.

s. 101A

the registered address, or the residential address, of the owner of the vessel.

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| <p>(3) If under this Act, the regulations or regulations made under the Port Services Act 1995 that relate to local ports a notice, summons or other document is required or permitted to be served on the owner or master of a vessel, it may be served by serving it on the agent for the vessel or on the agent for the owner or operator of the vessel.</p> | <p>S. 101(3) inserted by No. 82/1995 s. 176, amended by Nos 77/2001 s. 29(1), 9/2004 s. 17.</p> |
| <p>(4) It is sufficient service for the purposes of this section if the notice, summons or other document is placed in a secure manner, having regard to the circumstances, in a conspicuous position near the controls of the vessel.</p> | <p>S. 101(4) inserted by No. 77/2001 s. 29(2).</p> |

101A. Disclosure of Information

S. 101A inserted by No. 93/2000 s. 19.

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|---|--|
| <p>(1) Subject to this section, the Director or a relevant person must not—</p> | <p>S. 101A(1) amended by No. 77/2001 s. 31(1)(b).</p> |
| <p style="padding-left: 40px;">(a) disclose information gained by the Director or in the course of the delegation, employment or engagement of the relevant person that is information of a personal nature or that has commercial sensitivity for the person about whom it is kept; or</p> | <p>S. 101A(1)(a) amended by No. 77/2001 s. 31(1)(b).</p> |
| <p style="padding-left: 40px;">(b) use the person's knowledge of any such information.</p> | |

Penalty: 100 penalty units.

- (2) Sub-section (1) does not prevent the disclosure or use of information, in accordance with the regulations (if any)—
- (a) in connection with the administration of this Act or the regulations; or
 - (b) for the purposes of any legal proceedings arising out of this Act or the regulations or for the purposes of any report of such proceedings; or
 - (c) made at the direction of the Minister; or
 - (d) made in circumstances in which the person believes on reasonable grounds that the disclosure or use is necessary to prevent or lessen a serious or imminent threat to the life or health of one or more people; or
 - (e) if the disclosure or use is required or authorised by law.
- (3) In this section, "**relevant person**" means a person who is or has been a delegate of or employed by or engaged to provide services for—
- (a) the Director; or
 - (b) any other person or body engaged to provide services for the Director.

S. 101A(3)(a)
amended by
No. 77/2001
s. 31(1)(b).

S. 101A(3)(b)
amended by
No. 77/2001
s. 31(1)(b).

102. Act presumed to apply to vessels

If in any proceedings under this Act the application of this Act to a vessel is in question, this Act must, in the absence of evidence to the contrary, be taken to apply to the vessel.

103. Seizure and sale of vessel and equipment

A court which orders the payment of any amount recoverable summarily under this Act may, if the amount is not paid at the time and in the manner specified in the order and if the person ordered to pay is the owner of a vessel, order that the amount outstanding be levied by distress and sale of the vessel and its equipment.

104. Limited liability of pilots

A pilot is not liable in negligence in respect of the voyage on which the pilot is engaged for more than \$200 plus the amount of pilotage in respect of that voyage.

105. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 5.
- (1A) The Governor in Council may make regulations for or with respect to any waters in respect of which a person has been engaged as a harbour master, including regulations as to the entry, departure or movement of any vessels in such waters, or all or any of the following matters—
 - (a) the entering or leaving of those waters by any vessels;
 - (b) the movement and navigation of any vessels in those waters;
 - (c) the securing and anchorage of any vessels in those waters;
 - (d) the taking into any vessel or discharging from any vessel of cargo, stores, fuel, fresh water or water ballast in those waters;

S. 105(1A)
inserted by
No. 9/2004
s. 18.

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- (e) the removing of any vessels in those waters;
 - (f) any other thing for or with respect to the management of the operation of any vessels in those waters.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or State waters or in a specified part of the State or State waters; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and

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- (b) so as to require a matter affected by the regulations to be—
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
- (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
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S. 105(4)
amended by
No. 77/2001
s. 31(1)(b).

- (4) If under sub-section (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Director causes notice to be published in the Government Gazette of that amendment the document, code, standard, rule, specification or method is to be taken to have not been so amended.
- (5) Sub-sections (3)(c)(ii) and (4) do not apply to the Uniform Shipping Laws Code.

106. Uniform Shipping Laws Code

A provision of the Uniform Shipping Laws Code that is applied, adopted or incorporated by the regulations has effect with any modifications that are necessary to give it effect, and in particular—

- (a) a reference to the Authority must be read as a reference to the Director; and
- (b) a reference to a surveyor must be read as a reference to a surveyor or an inspector.

107. Evidence

- (1) The production of a document purporting to be a copy of, or an extract from, the Commonwealth of Australia Gazette containing the Uniform Shipping Laws Code or any part of it is admissible in evidence—
 - (a) that the document is a copy of that Code or that part; and

S. 106(a)
amended by
No. 77/2001
s. 31(1)(b).

(b) that the Code has been adopted by the body of Commonwealth, State and Territory Ministers known as the Australian Transport Advisory Council—

and, in the absence of evidence to the contrary, is proof of those facts.

- (2) The certificate in writing of a surveyor or inspector that a vessel does (or does not) comply with a provision of the Uniform Shipping Laws Code is admissible in evidence of the fact that the vessel does (or does not) comply with that provision and, in the absence of evidence to the contrary, is proof of that fact.

107A. Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 31A(7).

S. 107A
inserted by
No. 20/1993
s. 14.

107AA. Supreme Court—limitation of jurisdiction

It is the intention of section 120 to alter or vary section 85 of the **Constitution Act 1975**.

S. 107AA
inserted by
No. 93/2000
s. 20.

107B. Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 31(9E).

S. 107B
inserted by
No. 17/1994
s. 22.

107C. Supreme Court—limitation of jurisdiction

It is the intention of sections 31(9E) and 32(9), as amended by section 27 of the **Road Safety (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 107C
inserted by
No. 14/2000
s. 29.

S. 108(1)(a)
amended by
Nos 82/1995
s. 177(a),
77/2001
s. 31(1)(b).

S. 108(1)(b)
amended by
Nos 82/1995
s. 177(b),
77/2001
s. 31(1)(b).

108. Fees, rates and charges

- (1) The Governor in Council may, by regulation, fix the fees, rates or charges to be imposed—
 - (a) by the Director for the issue of licences or certificates or the supply of equipment, goods or materials; and
 - (b) by the Director for the provision of services or the control of navigation or management of vessel movement in State waters outside ports; and
 - (c) by any other person or body that is empowered under this Act to charge fees, rates or charges.
- (2) The owner, agent, charterer and person in charge of a vessel at the time any fees, rates or charges are imposed under this Act on or in respect of the vessel are jointly and severally liable for those fees, rates or charges.
- (3) In fixing fees, rates or charges the Governor in Council may provide for all or any of the following matters—
 - (a) specific fees, rates and charges;
 - (b) maximum or minimum fees, rates and charges;
 - (c) maximum and minimum fees, rates and charges;
 - (d) ad valorem fees, rates and charges;
 - (e) the payment of fees, rates and charges either generally or under specified conditions or in specified circumstances;
 - (f) The reduction, waiver or refund, in whole or in part, of the fees, rates and charges.

- (4) If under sub-section (3)(f) the Governor in Council provides for a reduction, waiver or refund, in whole or in part, of a fee, rate or charge, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions;
 - (b) in respect of certain documents or classes of documents;
 - (c) when an event happens;
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of such matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (5) Regulations made under this section may be disallowed, in whole or in part, by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (6) Disallowance of a regulation under sub-section (5) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

108A. Fees for waterway managers

- (1) The Governor in Council may make regulations for or with respect to the fees that may be charged by waterway managers for services provided by waterway managers.

S. 108A
inserted by
No. 9/2004
s. 19.

S. 109(1)
substituted by
No. 93/2000
s. 21.

- (2) Regulations made under sub-section (1) may provide for all or any of the following matters—
 - (a) amounts of fees;
 - (b) fixing fees by reference to a maximum or minimum fee or both;
 - (c) the persons who are to be liable to pay the fees;
 - (d) exemptions from the requirement to pay fees;
 - (e) requirements as to notices to be given by waterway managers as to the fees.
- (3) Section 108 does not apply to regulations made under this section.

109. Fee for boating facilities and safety education

- (1) The Governor in Council may, by regulation, fix a fee or other amount to be imposed on licence holders, applicants for licences, persons in whose names vessels are registered or any other class of persons—
 - (a) for the provision and maintenance of boating facilities and services for the public; and
 - (b) for the conduct of boating safety, boating education and boating promotion programs for the public.
- (2) The person in whose name a vessel is registered must pay in accordance with the regulations any fee imposed by the Governor in Council under this section, unless—
 - (a) the person or vessel is exempted under section 67; or
 - (b) the vessel is a vessel referred to in section 10(3).

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- (3) Any money available for the purposes of this section must be used for the purposes specified in sub-section (1) and may, for those purposes, be paid to any person, authority or organisation approved by the Minister.
- (4) Sections 108(3) and 108(4) apply to and in relation to a fee imposed under this section.
- (5) Regulations made under this section may be disallowed, in whole or in part, by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (6) Disallowance of a regulation under sub-section (5) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

S. 109(3)
amended by
No. 31/1994
s. 3(Sch. 1
item 40).

110. Summary jurisdiction in indictable offences

No. 6705 s. 28.

- (1) The provisions of subdivision 3 of Part 4 of the **Magistrates' Court Act 1989** enabling the hearing of charges for certain indictable offences in a summary way has effect with respect to indictable offences under this Act subject to the following provisions:
- (a) Any consent required by those provisions to be given by the person charged may, in the absence of that person, be given on that person's behalf by that person's legal practitioner or the owner, charterer, manager or operator or the agent of the vessel in respect of which the offence is alleged to have occurred;
- (b) The court may hear and determine the charge in a summary way if it considers of its own motion at any time during or immediately after the hearing of the evidence for the prosecution and whether or not the person

S. 110(1)
amended by
No. 20/1993
s. 27(2)(a).

S. 110(1)(a)
amended by
Nos 46/1991
s. 47(a),
35/1996
s. 453(Sch. 1
item 55).

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S. 110(1)(c)
substituted by
No. 46/1991
s. 47(b).

S. 110(1)(d)
amended by
No. 46/1991
s. 47(c).

S. 110(3)
repealed by
No. 20/1993
s. 27(2)(b).

charged is present in court or represented in court that it is fitting for the charge to be disposed of summarily;

- (c) The court may impose a fine of not more than 500 penalty units, or imprisonment for 2 years, or both;
 - (d) If the person charged is for the time being out of the jurisdiction, service of any documents relating to the offence is sufficiently served on that person by being served on the agent (if any) of the owner, charterer, manager or operator of the vessel in respect of which the offence is alleged to have occurred.
- (2) Despite the provisions of any Act, law or usage to the contrary, a person who has been directed to be tried for an indictable offence under this Act may be proceeded against, tried and convicted of the offence in the person's absence.

* * * * *

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PART 10—WATERWAY MANAGERS

Pt 10
(Heading and
ss 111–147)
amended by
Nos 20/1993
s. 27(2)(c),
23/1995
ss 5, 6 (as
amended by
No. 27/1996
s. 3), 82/1995
s. 178, 27/1996
s. 5, 51/1996
ss 16, 17,
77/2001
ss 16(2), 17,
repealed by
No. 85/2003
s. 34(1)(b),
new Pt 10
(Heading and
ss 111, 112)
inserted by
No. 9/2004
s. 20.

111. Functions and powers of waterway managers

New s. 111
inserted by
No. 9/2004
s. 20.

- (1) A waterway manager has the following functions—
 - (a) the management of vessel activities on the waters under the control of the waterway manager;
 - (b) the management and allocation of moorings and berths in the waters under the control of the waterway manager;
 - (c) the provision and maintenance, in accordance with standards developed by the Director, of navigation aids, including appropriate signage as to water levels, hazards and laws applying to the waters under the control of the waterway manager;
 - (d) the control of navigation and vessel movement in the waters under the control of the waterway manager;

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- (e) the designation of areas in the waters under the control of the waterway manager in which anchorage of vessels is permitted and areas in which anchorage of vessels is not permitted;
 - (f) the altering or dredging of channels for navigation in the waters under the control of the waterway manager, in accordance with any directions of the Director and as so required by the Director;
 - (g) the removal or marking of obstructions in the waters under the control of the waterway manager.
- (2) A waterway manager must carry out its functions under sub-section (1) in a manner that—
- (a) ensures the safe operation of vessels in the waters under the control of the waterway manager; and
 - (b) minimises the risk of environmental damage from the operation of vessels in the waters under the control of the waterway manager.
- (3) A waterway manager has the following powers—
- (a) the power to enter into contracts and agreements for the carrying out of its functions under this section;
 - (b) the power to employ persons or enter into contracts or agency agreements with persons to assist in the carrying out of its functions;
 - (c) the powers to charge the fees prescribed by the regulations for any service provided by the waterway manager;
 - (d) the power to do all things necessary to enable its functions under this section to be carried out.

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112. Delegation powers of waterway managers

A waterway manager may delegate, by instrument, to any person employed by the waterway manager under section 111(3) any function or power conferred on the waterway manager by or under this Act, other than this power of delegation.

New s. 112
inserted by
No. 9/2004
s. 20.

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s. 113

Pt 10A
(Heading and
ss 113–135)
inserted by
No. 93/2000
s. 22.

Pt 10A
(Heading)
substituted by
No. 90/2001
s. 7(3).

New s. 113
inserted by
No. 93/2000
s. 22.

**PART 10A—OPERATION OF RECREATIONAL VESSELS
AND HIRE AND DRIVE VESSELS**

Division 1—Preliminary

113. Definitions

In this Part—

"general operator licence" means a licence issued under section 116(1);

"general recreational vessel" means a recreational vessel that—

- (a) is not a personal watercraft; and
- (b) is of a kind which is required by or under this Act to be registered;

"hire and drive personal watercraft" means a vessel that is a hire and drive vessel and that is of a kind that is required, by or under this Act, to be registered and that—

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

S. 113 def. of
"hire and
drive personal
watercraft"
inserted by
No. 90/2001
s. 5(1).

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"operate" means to be in charge of a vessel that is not—

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

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

S. 113 def. of "personal watercraft" amended by No. 90/2001 s. 5(2).

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

"personal watercraft endorsement" means an endorsement of a general operator licence or a restricted operator licence under section 118(1);

"restricted operator licence" means a licence issued under section 117(1).

"specialised hire and drive vessel" means—

- (a) a hire and drive vessel that has an engine that is able to propel the vessel at a speed of 10 knots or more; or

S. 113 def. of "specialised hire and drive vessel" inserted by No. 90/2001 s. 5(1).

- (b) a vessel that falls within any other class of hire and drive vessel specified by the regulations for the purposes of this paragraph—

but does not include a hire and drive personal watercraft.

114. Purposes of licensing

The purposes of licensing are to—

- (a) ensure that people who operate registered recreational vessels are competent operators; and
- (b) ensure that operators are aware of safe operating practices and relevant marine law; and
- (c) ensure that people who are, or who become, unsuited to operate registered recreational vessels are not permitted to do so; and
- (d) enable the identification of operators for the purposes of law enforcement and the investigation of and response to incidents and accidents.

Division 2—Offences for unlicensed operators of certain classes of recreational vessels

115. Offence to operate certain classes of recreational vessel without a licence

- (1) A person must not operate a general recreational vessel unless—
 - (a) the person is the holder of a licence issued under this Part that authorises the person to operate such a vessel; and

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s. 115A

(b) the person operates the vessel under and in accordance with the licence.

Penalty: 8 penalty units.

(2) A person must not operate a personal watercraft unless—

(a) the person is the holder of a licence issued under this Part that—

(i) authorises the person to operate a general recreational vessel; and

(ii) is endorsed to authorise the person to operate a personal watercraft; and

(b) the person operates the personal watercraft under and in accordance with the licence and endorsement.

Penalty: 10 penalty units.

115A. Offence to operate certain classes of hire and drive vessels without a licence

S. 115A
 inserted by
 No. 90/2001
 s. 6.

(1) A person must not operate a specialised hire and drive vessel unless—

(a) the person is the holder of a licence issued under this Part that authorises the person to operate a recreational vessel that has the physical characteristics of the specialised hire and drive vessel; and

(b) the person operates the vessel under and in accordance with the licence as if the vessel was a recreational vessel.

Penalty: 8 penalty units.

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- (2) A person must not operate a hire and drive personal watercraft unless—
- (a) the person is the holder of a licence issued under this Part that—
 - (i) authorises the person to operate a general recreational vessel; and
 - (ii) is endorsed to authorise the person to operate a personal watercraft; and
 - (b) the person operates the hire and drive personal watercraft under and in accordance with the licence and endorsement as if the hire and drive personal watercraft was a recreational vessel.

Penalty: 10 penalty units.

115B. Offence for person between 12 and 16 years of age to operate engine powered hire and drive vessel without licence

A person who is of or over the age of 12 years, and less than 16 years of age, must not operate a hire and drive vessel that has an engine that is used for propulsion, but that is not a regulated hire and drive vessel, unless—

- (a) the person is the holder of a restricted operator licence issued under this Part that authorises the person to operate a recreational vessel having the physical characteristics of the hire and drive vessel; and
- (b) the person operates the vessel under and in accordance with the licence as if the vessel was a recreational vessel.

Penalty: 8 penalty units.

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Division 3—General licensing provisions

116. General operator licence

New s. 116
inserted by
No. 93/2000
s. 22.

- (1) The Director may grant a general operator licence to a person if—
- (a) the person is of or over the age of 16 years; and
 - (b) the person has made an application for the licence in accordance with the regulations and the person is, in accordance with the regulations, eligible to apply for the licence; and
 - (c) the Director is satisfied that the person has satisfactorily completed any requirement of the Director under sub-section (2).
- (2) Before granting a general operator licence the Director may require the applicant—
- (a) to—
 - (i) pass any test about the operation of recreational vessels or undergo any training about the operation of recreational vessels that the Director considers is appropriate; or
 - (ii) have any prescribed qualification; and
 - (b) to comply with any prescribed procedures or requirements.
- (3) A general operator licence authorises the holder to operate the recreational vessels to which the licence applies for the term, and subject to any conditions, specified in the licence or prescribed by the regulations.

S. 116(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 116(1)(c)
amended by
No. 77/2001
s. 31(1)(b).

S. 116(2)
amended by
No. 77/2001
s. 31(1)(b).

S. 116(2)(a)(i)
amended by
No. 77/2001
s. 31(1)(b).

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S. 116(5)
amended by
No. 77/2001
s. 31(1)(b).

S. 116(6)
amended by
No. 77/2001
s. 31(1)(b).

New s. 117
inserted by
No. 93/2000
s. 22.

S. 117(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 117(1)(c)
amended by
No. 77/2001
s. 31(1)(b).

S. 117(2)
amended by
No. 77/2001
s. 31(1)(b).

S. 117(2)(a)(i)
amended by
No. 77/2001
s. 31(1)(b).

- (4) An application for a general operator licence must be made in accordance with the regulations.
- (5) The Director may grant, renew or vary a general operator licence or may refuse to grant, renew or vary such a licence.
- (6) When granting, renewing or varying a general operator licence, or, when refusing to grant, renew or vary such a licence, the Director must do so in accordance with the regulations.

117. Restricted operator licence

- (1) The Director may grant a restricted operator licence to a person if—
 - (a) the person is of or over the age of 12 years and less than 16 years of age; and
 - (b) the person has made an application for the licence in accordance with the regulations and the person is, in accordance with the regulations, eligible to apply for the licence; and
 - (c) the Director is satisfied that the person has satisfactorily completed any requirement of the Director under sub-section (2).
- (2) Before granting a restricted operator licence the Director may require the applicant—
 - (a) to—
 - (i) pass any test about the operation of recreational vessels or undergo any training about the operation of recreational vessels that the Director considers is appropriate; or
 - (ii) have any prescribed qualification; and

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- (b) to comply with any prescribed procedures or requirements.
- (3) A restricted operator licence authorises the holder to operate the recreational vessels to which the licence applies for the term, and subject to any conditions, specified in the licence or prescribed by the regulations.
- (4) An application for a restricted operator licence must be made in accordance with the regulations.
- (5) The Director may grant, renew or vary a restricted operator licence or may refuse to grant, renew or vary such a licence.
- (6) When granting, renewing or varying a restricted operator licence or when refusing to grant, renew or vary such a licence, the Director must do so in accordance with the regulations.
- (7) If the holder of a restricted licence attains 16 years of age, the licence held by that person is deemed to become a general operator licence.

S. 117(5)
amended by
No. 77/2001
s. 31(1)(b).

S. 117(6)
amended by
No. 77/2001
s. 31(1)(b).

118. Personal watercraft endorsement

New s. 118
inserted by
No. 93/2000
s. 22.

- (1) A person—
- (a) who has applied for an operator licence; or
- (b) who is the holder of an operator licence—
- and who satisfies the Director that he or she is qualified to operate a personal watercraft may, on application to the Director, have the licence issued to or held by that person endorsed to allow that person to operate a personal watercraft.

S. 118(1)
amended by
No. 77/2001
s. 31(1)(b).

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S. 118(4)
amended by
No. 77/2001
s. 31(1)(b).

S. 118(5)
amended by
No. 77/2001
s. 31(1)(b).

S. 118(6)
amended by
No. 77/2001
s. 31(1)(b).

S. 118(6)(a)(i)
amended by
No. 77/2001
s. 31(1)(b).

- (2) An endorsement authorises the holder of the licence that is endorsed to operate personal watercraft for the term, and subject to any conditions, specified in the endorsement or prescribed by the regulations.
- (3) An application for a personal watercraft endorsement under sub-section (1) must be made, in accordance with the regulations.
- (4) The Director may endorse an operator licence or renew or vary such an endorsement or may refuse to endorse such a licence or renew or vary such an endorsement.
- (5) When endorsing an operator licence or renewing or varying such an endorsement or when refusing to endorse such a licence or renew or vary such an endorsement, the Director must do so in accordance with the regulations.
- (6) The Director may, before making a personal watercraft endorsement, require the applicant—
 - (a) to—
 - (i) pass any test about the operation of personal watercraft or undergo any training about the operation of personal watercraft that the Director considers appropriate; or
 - (ii) have any prescribed qualification; and
 - (b) to comply with any prescribed procedures and requirements.
- (7) For the purposes of this Act a personal watercraft endorsement is to be taken to be part of the licence that is endorsed.

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119. Cancellation, suspension or variation of a licence and revocation of endorsement by the Director

S. 119
(Heading)
inserted by
No. 77/2001
s. 31(3)(f).
New s. 119
inserted by
No. 93/2000
s. 22.

(1) The Director—

S. 119(1)
amended by
No. 77/2001
s. 31(1)(b).

(a) must, if the regulations require the Director to do so; or

S. 119(1)(a)
amended by
No. 77/2001
s. 31(1)(b).

(b) may, if the regulations enable the Director to do so—

S. 119(1)(b)
amended by
No. 77/2001
s. 31(1)(b).

in accordance with the regulations—

(c) suspend an operator licence for the prescribed time;

(d) cancel an operator licence;

(e) revoke a personal watercraft endorsement;

(f) vary an operator licence or a personal watercraft endorsement;

(g) vary the conditions to which an operator licence or a personal watercraft endorsement is subject by imposing, removing or amending a condition.

(2) In suspending, in accordance with the regulations, an operator licence on the ground that it would be dangerous for the person to operate a regulated recreational vessel because of illness or bodily infirmity, defect or incapacity or because of the

S. 119(2)
amended by
No. 77/2001
s. 31(1)(b).

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effects of treatment for any of those things, the Director may do so on the basis of a report given by a registered medical practitioner and without conducting any other hearing or investigation into the matter before the suspension is imposed.

120. Power of Director to require tests to be undergone

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

to undergo a test or tests to find out if that person is unfit to operate a regulated recreational vessel, or if it is dangerous for that person to operate such a vessel.

- (2) A person may be required under sub-section (1) to undergo a test of health or competence or any other appropriate test to be carried out by a person specified by the Director.
- (3) A test must be carried out by a person of the class prescribed in relation to that class of test.
- (4) No action may be taken against a person who carries out a test under this section and who expresses to the Director an opinion formed by that person as a result of the test.

S. 120
(Heading)
inserted by
No. 77/2001
s. 31(3)(g).

New s. 120
inserted by
No. 93/2000
s. 22.

S. 120(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 120(2)
amended by
No. 77/2001
s. 31(1)(b).

S. 120(4)
amended by
No. 77/2001
s. 31(1)(b).

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s. 121

- (5) No action may be taken against a person who, in good faith, reports to the Director any information which discloses or suggests that a person is unfit to operate a regulated recreational vessel or that it may be dangerous to allow that person to hold or be granted an operator licence or a variation of such a licence.

S. 120(5)
amended by
No. 77/2001
s. 31(1)(b).

121. Power of court to cancel, suspend or vary licences

New s. 121
inserted by
No. 93/2000
s. 22.

- (1) If a court convicts a person of, or is satisfied that a person is guilty of, an offence against this Act or of any other offence in connection with the operating of a vessel, the court in any case may suspend for such time as it thinks fit or cancel any operator licence held by that person and, whether or not that person holds such a licence, disqualify him or her from obtaining one for such time (if any) as the court thinks fit.
- (2) Sub-section (1) does not affect the obligation of a court to cancel an operator licence and disqualify the offender in any case in which cancellation and disqualification are mandatory under section 22 or 28A.
- (3) A court must cause particulars of an order made under sub-section (1) to be sent immediately to the Director.
- (4) If under sub-section (1) a court disqualifies a person from obtaining an operator licence for any time without expressly cancelling any such licence held by that person, any such licence held by that person is, unless the order specifies otherwise, to be taken to have been cancelled by that order.

S. 121(1)
amended by
No. 90/2001
s. 7(4).

S. 121(3)
amended by
No. 77/2001
s. 31(1)(b).

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S. 121(5)
amended by
No. 90/2001
s. 7(4).

- (5) Sub-section (1) does not apply to an offence under section 31A(6) unless the court is satisfied that the person convicted or found guilty of the offence had operated a vessel less than 3 hours before the time of the offence.
- (6) A licence cancelled by a court is of no effect and a person whose licence is cancelled is (without affecting the power of the court to impose a longer period) disqualified from obtaining a further licence for the period specified by the court or, if no period is specified, for 3 months.
- (7) In this section "**vessel**" means—
 - (a) a regulated recreational vessel; or
 - (b) a regulated hire and drive vessel.

S. 121(7)
inserted by
No. 90/2001
s. 7(5).

122. Effect of suspension of licence

An operator licence suspended by a court or by the Director or by operation of this Act is, during the suspension, of no effect and a person whose licence is suspended is, during the suspension, disqualified from obtaining a further licence.

New s. 122
inserted by
No. 93/2000
s. 22,
amended by
No. 77/2001
s. 31(1)(b).

123. Disqualified person must not apply for licence

- (1) A person who is disqualified from obtaining an operator licence must not apply for or obtain such a licence.

Penalty: 5 penalty units.
- (2) A licence so obtained is of no effect.

New s. 123
inserted by
No. 93/2000
s. 22.

Division 4—Rights of appeal against licensing decisions

124. Definition

In this Division—

"affected person" means a person who has a right of appeal to the Magistrates' Court under section 125.

New s. 124
inserted by
No. 93/2000
s. 22.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 125

125. Appeal to Magistrates' Court

New s. 125
inserted by
No. 93/2000
s. 22.

(1) If the Director decides to—

S. 125(1)
amended by
No. 77/2001
s. 31(1)(b).

- (a) refuse an application for an operator licence or an application to renew or vary an operator licence;
- (b) refuse an application for a personal watercraft endorsement or an application to renew or vary such an endorsement;
- (c) impose or vary a condition on an operator licence or a personal watercraft endorsement;
- (d) suspend, cancel or vary an operator licence;
- (e) revoke a personal watercraft endorsement—

the applicant or holder may, in accordance with the regulations and subject to sub-section (2), appeal against that decision to the Magistrates' Court.

(2) On an appeal under sub-section (1) the court must—

- (a) re-determine the matter; and
- (b) hear any relevant evidence tendered by the appellant or the Director; and
- (c) without limiting its discretion, take into consideration anything that the Director ought to have considered.

S. 125(2)(b)
amended by
No. 77/2001
s. 31(1)(b).

S. 125(2)(c)
amended by
No. 77/2001
s. 31(1)(b).

(3) If the court is satisfied that the decision of the Director—

S. 125(3)
amended by
No. 77/2001
s. 31(1)(b).

- (a) results from a disqualification of the appellant in another State or Territory of the Commonwealth; or

(b) was required by the regulations—
the court must confirm the decision of the
Director.

126. Appeal to County Court

- (1) A person—
 - (a) who is disqualified from obtaining an operator licence by order of the Magistrates' Court; or
 - (b) whose operator licence is cancelled or suspended or varied by order of the Magistrates' Court—

may, under Division 4 of Part 4 of the **Magistrates' Court Act 1989**, appeal to the County Court against the order in the same manner as a person may appeal from summary conviction by the Magistrates' Court.

- (2) The giving of notice of appeal to the County Court does not stay the operation of the order but the court making the order may, in its discretion, stay the operation of the order pending the decision of the appeal.
- (3) This section does not apply to an order of the Magistrates' Court made on an appeal under section 28D or 125.

127. Director to notify affected person of right to appeal

- (1) The Director must notify any affected person that the person has a right of appeal under section 125.
- (2) A notice under sub-section (1) must be given within 14 days after the making of the decision against which the person has the right to appeal.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 128

128. Time for lodging appeal

- (1) If the affected person has not applied for a review of the decision under the regulations, within the time prescribed by the regulations, an appeal under section 125 must be made within 28 days after the person is notified of the decision.
- (2) If the affected person has applied for a review of the decision under the regulations within the time prescribed by the regulations, an appeal under section 125 must be made within 28 days after the making of the decision on the review.
- (3) The Magistrates' Court must cause particulars of an order made on an appeal to be sent immediately to the Director.
- (4) A person who appeals to the Magistrates' Court under section 125 must—
 - (a) provide notice in writing of the appeal to the clerk of the Magistrates' Court, requesting the clerk to endorse a copy of the notice with the date on which the appeal is to be heard; and
 - (b) serve on the Director the endorsed copy of the notice, not less than 14 days before the hearing date.

New s. 128 inserted by No. 93/2000 s. 22.

S. 128(3) amended by No. 77/2001 s. 31(1)(b).

S. 128(4)(b) amended by No. 77/2001 s. 31(1)(b).

Division 5—Recreational Vessel Licensing Offences

Pt 10A Div. 5 (Heading) amended by No. 90/2001 s. 7(6).

129. Offence of failing to comply with the conditions of the licence

New s. 129 inserted by No. 93/2000 s. 22.

- (1) A person must not operate a general recreational vessel in breach of any condition of the person's operator licence.

Penalty: 8 penalty units.

s. 130

- (2) A person must not operate a personal watercraft in breach of any condition of the person's personal watercraft endorsement or in breach of any condition of the endorsed licence.

Penalty: 10 penalty units.

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

A person, who is exempted under the regulations from the requirement to comply with section 115 because he or she holds an appropriate licence or certificate issued in another State, Territory or country, must not operate a regulated recreational vessel in breach of any condition of that licence or certificate.

Penalty: 8 penalty units.

131. Offence to operate a regulated recreational vessel while disqualified etc.

- (1) A person must not operate a regulated recreational vessel while any operator licence granted to him or her to do so is suspended or during a period of disqualification from obtaining such a licence.

Penalty: For a first offence, 10 penalty units;
For a subsequent offence, 30 penalty units.

* * * * *

New s. 130
inserted by
No. 93/2000
s. 22.

New s. 131
inserted by
No. 93/2000
s. 22.

S. 131(2)
repealed by
No. 90/2001
s. 8.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 132

132. Cancellation of registration by court

New s. 132
inserted by
No. 93/2000
s. 22.

- (1) A court convicting a person of an offence against section 131(1) may, if the circumstances warrant it, order the cancellation of the registration of the vessel in respect of which the offence was committed, if that vessel is owned by that person, and order the Director not to register that vessel again during such time (if any) as the court specifies.
- (2) If the court considers that another person who is not present in court may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.
- (3) On the return of the summons, the court may, after hearing the evidence brought before it—
 - (a) refuse to order that the registration be cancelled; or
 - (b) order that the registration be cancelled, and order the Director not to register that vessel again during such time (if any) as the court specifies.
- (4) A court must cause particulars of an order made under this section to be sent immediately to the Director and the Director must give effect to the order as soon as possible.

S. 132(1)
amended by
No. 77/2001
s. 31(1)(b).

S. 132(3)(b)
amended by
No. 77/2001
s. 31(1)(b).

S. 132(4)
amended by
No. 77/2001
s. 31(1)(b).

133. Offence not to have operator licence in person's possession

New s. 133
inserted by
No. 93/2000
s. 22.

A person who holds an operator licence must have the licence in his or her possession while operating a regulated recreational vessel.

Penalty: 2 penalty units.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 134

New s. 134
inserted by
No. 93/2000
s. 22.

134. Offence to allow a non-licensed person to operate a vessel

- (1) The owner of a general recreational vessel must not allow another person to operate that vessel unless that person is the holder of an operator licence which authorises that person to operate a general recreational vessel.

Penalty: 8 penalty units.

- (2) The owner of a personal watercraft must not allow another person to operate that watercraft unless that other person is the holder of an operator licence that is endorsed with a personal watercraft endorsement which authorises that person to operate a personal watercraft.

Penalty: 10 penalty units.

- (3) It is a defence to a charge under this section if the owner reasonably believes that the operator held the appropriate licence which has (where the case so requires) the appropriate endorsement.

Pt 10A Div. 5A
(Heading and
ss 134A–
134E)
inserted by
No. 90/2001
s. 9.

Division 5A—Hire and Drive Vessel Licensing Offences

S. 134A
inserted by
No. 90/2001
s. 9.

134A. Offence of failing to comply with the conditions of the licence

- (1) A person must not operate a specialised hire and drive vessel in breach of any condition of the person's operator licence that would apply to the vessel if the vessel was a general recreational vessel.

Penalty: 8 penalty units.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 134B

- (2) A person must not operate a hire and drive personal watercraft in breach of any condition of the person's personal watercraft endorsement or endorsed licence that would apply to the watercraft if the watercraft was a recreational vessel.

Penalty: 10 penalty units.

134B. Offence for overseas or interstate operator to fail to comply with the conditions of the licence or certificate

S. 134B
inserted by
No. 90/2001
s. 9.

A person, who is exempted under the regulations from the requirement to comply with section 115A or 115B because he or she holds an appropriate licence or certificate issued in another State, Territory or country, must not operate a regulated hire and drive vessel in breach of any condition of that licence or certificate.

Penalty: 8 penalty units.

134C. Offence to operate hire and drive vessel for recreational purposes while disqualified etc.

S. 134C
inserted by
No. 90/2001
s. 9.

- (1) A person must not operate for recreational purposes a hire and drive vessel that has an engine that is used for propulsion while any operator licence granted to him or her is suspended or during a period of disqualification from obtaining such a licence.

Penalty: For a first offence, 10 penalty units;

For a subsequent offence, 30 penalty units.

- (2) A reference to an operator licence in sub-section (1) includes a reference to an appropriate licence or certificate issued in another State, Territory or country if the suspension of the certificate or licence, or the period of disqualification applying in respect of the certificate or licence, was

imposed as a result of circumstances that, had they occurred in Victoria in relation to an operator licence, would have been likely to result in the imposition of a similar suspension or period of disqualification.

- (3) A person must not operate for recreational purposes a hire and drive vessel that has an engine that is used for propulsion if—
- (a) the person held an operator licence; and
 - (b) the licence was cancelled because of any illness or bodily infirmity, defect or incapacity of the person or because of the effects of treatment for any of those things.

Penalty: For a first offence, 10 penalty units;
For a subsequent offence, 30 penalty units.

- (4) Sub-section (3) does not apply if the person has—
- (a) an operator licence that is in effect; or
 - (b) a certificate dated after the date of the cancellation signed by a registered medical practitioner stating—
 - (i) that any illness or bodily infirmity, defect or incapacity or treatment effects that existed at the time that the licence was cancelled no longer exists; and
 - (ii) that there is no medical reason why the person cannot hold an operator licence.

134D. Offence not to have operator licence in person's possession

A person who holds an operator licence must have the licence in his or her possession while operating a regulated hire and drive vessel.

Penalty: 2 penalty units.

S. 134D
inserted by
No. 90/2001
s. 9.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 134E

134E. Offence to allow a non-licensed person to operate a vessel

S. 134E
inserted by
No. 90/2001
s. 9.

- (1) The owner of a specialised hire and drive vessel must not let the vessel to a person for hire or reward or for any other consideration unless that person is the holder of an operator licence which authorises that person to operate a general recreational vessel having the physical characteristics of the hire and drive vessel.

Penalty: 8 penalty units.

- (2) The owner of a hire and drive personal watercraft must not let the vessel to a person for hire or reward or for any other consideration unless that person is the holder of an operator licence that is endorsed with a personal watercraft endorsement which authorises that person to operate a personal watercraft.

Penalty: 10 penalty units.

- (3) The owner of a hire and drive vessel that has an engine that is used for propulsion, but that is not a regulated hire and drive vessel, must not let the vessel to a person who is of or over the age of 12 years, and less than 16 years of age, for hire or reward or for any other consideration unless that person is the holder of a restricted operator licence issued under this Part that authorises that person to operate a recreational vessel having the physical characteristics of the hire and drive vessel.

Penalty: 8 penalty units.

- (4) It is a defence to a charge under this section if the owner reasonably believes that the operator held the appropriate licence which has (where the case so requires) the appropriate endorsement.

Marine Act 1988
Act No. 52/1988

Part 10A—Operation of Recreational Vessels and Hire and Drive Vessels

s. 135

Division 6—Transitional provision

135. Application of Part

This Part does not apply to a person—

(a) who is operating a general recreational vessel or a specialised hire and drive vessel;
and

(b) who is of or over the age of 21 years—
until 12 months after the commencement of
section 22 of the **Marine (Amendment) Act 2000**.

Victorian Legislation and Parliamentary Documents

New s. 135
inserted by
No. 93/2000
s. 22.

S. 135(a)
amended by
No. 90/2001
s. 7(7).

**PART 11—SAVINGS AND TRANSITIONAL PROVISIONS,
REPEALS AND CONSEQUENTIAL AMENDMENTS**

Division 1—Savings and transitional provisions

148. Savings and transitional provisions

(1) In this section—

"former Board" means the Marine Board of
Victoria established under the **Marine Act
1958**; and

"new Board" means the Board established under
Part 8 of this Act.

(2) On the commencement of this section the former
Board is abolished and its members go out of
office.

(3) On that commencement—

(a) all rights, property and assets that
immediately before that commencement
were vested in the former Board are, by force
of this sub-section, vested in the new Board;
and

(b) all debts, liabilities and obligations of the
former Board existing immediately before
that commencement become, by force of this
sub-section, debts, liabilities and obligations
of the new Board; and

(c) the new Board is, by force of this sub-
section, substituted as a party to any
arrangement or contract entered into by or on
behalf of the former Board as a party and in
force immediately before that
commencement; and

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
Amendments

s. 149

- (d) the new Board is, by force of this subsection, substituted as a party to any proceedings pending in any court to which the former Board was a party immediately before that commencement; and
- (e) any reference to the former Board in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**, or in any other document, must, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, be construed as a reference to the new Board.

- (4) A person who was, immediately before the commencement of this section, employed under the **Public Service Act 1974** in the former Board continues, on and from that commencement, to be employed under the **Public Service Act 1974** in the new Board with terms and conditions no less favourable than those on which the person was employed immediately before that commencement and with the benefit of all rights accrued immediately before that commencement.

**Division 2—Transitional Provision—Marine (Amendment)
Act 2000**

New Pt 11
Div. 2
(Heading and
s. 149)
inserted by
No. 93/2000
s. 23.

149. Transitional provision—Interstate licences

A person—

- (a) who is, on the commencement of section 22 of the **Marine (Amendment) Act 2000**, the holder of a licence or authority issued in another State or Territory of the

New s. 149
inserted by
No. 93/2000
s. 23.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential Amendments

s. 150

Commonwealth, which is the equivalent of an operator licence; and

- (b) who is a resident of Victoria; and
- (c) who would, because of the operation of Part 10A of this Act be required to hold an operator licence to operate a regulated recreational vessel or a regulated hire and drive vessel—

S. 149(c) amended by No. 90/2001 s. 7(1).

is deemed to be the holder of an operator licence, with a personal watercraft endorsement, (where the licence held by the person so authorises) for a period of 3 years from the commencement of section 22 of that Act, unless the licence issued in the other State or Territory is cancelled or expires before that commencement.

* * * * *

Pt 11 Div. 2 repealed.⁴

Division 3—Transitional provisions—Marine (Further Amendment) Act 2001

Pt 11 Div. 3 (Heading and ss 160, 161) repealed by No. 20/1993 s. 27(2)(d), new Pt 11 Div. 3 (Heading and ss 150–153) inserted by No. 77/2001 s. 9.

150. Definitions

S. 150 inserted by No. 77/2001 s. 9.

In this Division—

"Board" means the Marine Board of Victoria established under this Act as in force immediately before the relevant day;

"relevant day" means the date of commencement of section 9 of the **Marine (Further Amendment) Act 2001**;

"transferred employee" means a person who, immediately before the relevant day, was an employee of the Board.

151. Transition from Marine Board to Director representing the Crown

- (1) On the relevant day—
- (a) the Board is abolished and each person holding office as a director of the board of directors of the Board goes out of office; and
 - (b) all rights, property and assets that, immediately before the relevant day, were vested in the Board, vest in the Director on behalf of the Crown; and
 - (c) all debts, liabilities and obligations of the Board existing immediately before the relevant day, become debts, liabilities and obligations of the Director, on behalf of the Crown; and
 - (d) the Director, on behalf of the Crown, is substituted as a party to any proceedings pending in any court or tribunal to which the Board was a party immediately before the relevant day; and
 - (e) the Director, on behalf of the Crown, is substituted as a party to any arrangement or contract entered into by or on behalf of the Board and in force immediately before the relevant day; and
 - (f) any reference to the Board in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the relevant day, and if not inconsistent with the context or subject-matter, must be construed as a reference to the Director, on behalf of the Crown.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
Amendments

s. 151

- (2) Nothing effected under sub-section (1) or done or suffered under sub-section (1)—
- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong;
 - (b) is to be regarded as placing any person in breach of, or as constituting a default under any Act or other law or obligation or any provision in any agreement or understanding, including, but not limited to, any provision or obligation prohibiting or restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information;
 - (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be regarded as frustrating any contract; or
 - (g) releases any surety or other obligor wholly or in part from any obligation.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
Amendments

s. 152

S. 152
inserted by
No. 77/2001
s. 9.

S. 153
inserted by
No. 77/2001
s. 9.

Victorian Legislation and Parliamentary Documents

152. Winding-up of the Marine Fund

All money standing to the credit of the Marine Fund immediately before the relevant day is to be paid into the Consolidated Fund.

153. Transfer of staff

- (1) A transferred employee is to be regarded as—
 - (a) having been employed under Part 3 of the **Public Sector Management and Employment Act 1998**, with effect from the relevant day; and
 - (b) despite section 151 being employed from the relevant day by the Secretary; and
 - (c) having been so employed on the same terms and conditions as those that applied to him or her immediately before the relevant day as an officer or employee of the Board; and
 - (d) having accrued an entitlement to benefits in connection with that employment under Part 3 of the **Public Sector Management and Employment Act 1998** that is equivalent to the entitlement that he or she had accrued, as an officer or employee of the Board, immediately before the relevant day.
- (2) The service of a transferred employee as an employee under Part 3 of the **Public Sector Management and Employment Act 1998** is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the relevant day, as an officer or employee of the Board.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the Board because of the operation of this section.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential Amendments

s. 154

- (4) A certificate purporting to be signed by the Secretary certifying that a person named in the certificate was, with effect from the relevant day, employed, by virtue of this section, under Part 3 of the **Public Sector Management and Employment Act 1998**, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (5) The superannuation entitlements of a transferred employee are to be taken not to be affected by that person becoming a transferred employee.
- (6) Nothing in this section prevents—
 - (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the relevant day; or
 - (b) a transferred employee from resigning or being dismissed at any time after that commencement in accordance with the then existing terms and conditions of his or her employment under Part 3 of the **Public Sector Management and Employment Act 1998**.

154. Saving of existing Orders

The substitution of clause 22 of Schedule 4 by section 21(1) of the **Marine (Further Amendment) Act 2001** does not affect the validity of any Order made under that clause that was in force immediately before the date of commencement of that section.

S. 154
 inserted by
 No. 77/2001
 s. 21(2).

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
Amendments

s. 155

Pt 11 Div. 4
(Heading and
s. 155)
inserted by
No. 46/2002
s. 16.

**Division 4—Transitional Provision—Road Safety
(Responsible Driving) Act 2002**

S. 155
inserted by
No. 46/2002
s. 16.

155. Transitional provision—failing a breath test offence

- (1) The amendment to section 28(1)(e) of this Act made by section 15 of the **Road Safety (Responsible Driving) Act 2002** only applies to offences alleged to have been committed after the commencement of that amendment.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement referred to in that sub-section, the offence is alleged to have been committed after that commencement.

Pt 11 Div. 5
(Heading and
ss 156–159)
inserted by
No. 9/2004
s. 21.

**Division 5—Transitional Provisions—Marine (Amendment)
Act 2004**

S. 156
inserted by
No. 9/2004
s. 21.

156. Saving of certain certificates of service

A person who was, immediately before the commencement of section 22(1) of the **Marine (Amendment) Act 2004** the holder of a certificate of service (within the meaning of this Act, and as in force immediately before that commencement) is deemed to continue to be, on and from that commencement, the holder of such a certificate, and Schedule 4 to this Act, as it applied to any such certificates, immediately before that commencement, is deemed to continue to so apply to such a certificate.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
 Amendments

s. 157

157. Saving of certain declarations of local authorities

S. 157
 inserted by
 No. 9/2004
 s. 21.

Despite the commencement of section 20 of the **Marine (Amendment) Act 2004**, a person or body that was, immediately before that commencement a local authority within the meaning of paragraph (b) of the definition of "local authority" (as in force immediately before that commencement) by virtue of a declaration made under section 3(3)(b), as so in force—

- (a) is deemed to be, on and from that commencement, a waterway manager for the waters in respect of which that person or body had been declared to be a local authority; and
- (b) any reference in the declaration made under section 3(3)(b) to the person or body as a local authority is to be construed as a reference to the person or body as a waterway manager and the declaration may be amended or revoked accordingly.

158. Saving of harbour master appointments

S. 158
 inserted by
 No. 9/2004
 s. 21.

A person who was, immediately before the commencement of section 8 of the **Marine (Amendment) Act 2004**—

- (a) a harbour master engaged under this Act as in force immediately before that commencement, continues on and from that commencement, to be so engaged; or
- (b) authorised to act as a harbour master under this Act, as in force immediately before that commencement, is deemed, on and from that commencement, to be so authorised, as if the authorisation had been made under section 26B of this Act.

Marine Act 1988
Act No. 52/1988

Part 11—Savings and Transitional Provisions, Repeals and Consequential
Amendments

s. 159

s. 159
inserted by
No. 9/2004
s. 21.

159. Saving of harbour master's directions

A direction made by a harbour master under this Act and in force immediately before the commencement of section 8 of the **Marine (Amendment) Act 2004**, continues in force, on and from that commencement, as if it were made under Part 3A.

SCHEDULES

SCHEDULE 1

Section 53

**CONVENTION ON THE INTERNATIONAL REGULATIONS FOR
PREVENTING COLLISIONS AT SEA, 1972**

ARTICLE I

General Obligations

The Parties to the present Convention undertake to give effect to the Rules and other Annexes constituting the International Regulations for Preventing Collisions at Sea, 1972, (hereinafter referred to as "the Regulations") attached hereto.

ARTICLE II

Signature, Ratification, Acceptance, Approval and Accession

1. The present Convention shall remain open for signature until 1 June 1973 and shall thereafter remain open for accession.
2. States Members of the United Nations, or of any of the Specialized Agencies, or the International Atomic Energy Agency, or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval;
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") which shall inform the Governments of States that have signed or acceded to the present Convention of the deposit of each instrument and of the date of its deposit.

Marine Act 1988
Act No. 52/1988

Sch. 1

ARTICLE III

Territorial Application

1. The United Nations in cases where they are the administering authority for a territory or any Contracting Party responsible for the international relations of a territory may at any time by notification in writing to the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General"), extend the application of this Convention to such a territory.
2. The present Convention shall, upon the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.
3. Any notification made in accordance with paragraph 1 of this Article may be withdrawn in respect of any territory mentioned in that notification and the extension of this Convention to that territory shall cease to apply after one year or such longer period as may be specified at the time of the withdrawal.
4. The Secretary-General shall inform all Contracting Parties of the notification of any extension or withdrawal of any extension communicated under this Article.

ARTICLE IV

Entry into force

1.
 - (a) The present Convention shall enter into force twelve months after the date on which at least 15 States, the aggregate of whose merchant fleets constitutes not less than 65 per cent by number or by tonnage of the world fleet of vessels of 100 gross tons and over have become Parties to it, whichever is achieved first.
 - (b) Notwithstanding the provisions in sub-paragraph (a) of this paragraph, the present Convention shall not enter into force before 1 January 1976.
2. Entry into force for States, which ratify, accept, approve or accede to this Convention in accordance with Article II after the conditions prescribed in sub-paragraph 1(a) have been met and before the Convention enters into force, shall be on the date of entry into force of the Convention.
3. Entry into force for States which ratify, accept, approve or accede after the date on which this Convention enters into force, shall be on the date of deposit of an instrument in accordance with Article II.

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4. After the date of entry into force of an amendment to this Convention in accordance with paragraph 4 of Article IV, any ratification, acceptance, approval or accession shall apply to the Convention as amended.
 5. On the date of entry into force of this convention, the Regulations replace and abrogate the International Regulations for Preventing Collisions at Sea, 1960.
 6. The Secretary-General shall inform the Governments of States that have signed or acceded to this Convention of the date of its entry into force.

ARTICLE V

Revision Conference

1. A conference for the purposes of revising this Convention or the Regulations or both may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting Parties for the purpose of revising this Convention or the Regulations or both at the request of not less than one-third of the Contracting Parties.

ARTICLE VI

Amendments to the Regulations

1. Any amendment to the Regulations proposed by a Contracting Party shall be considered in the Organization at the request of that Party.
 2. If adopted by a two-thirds majority of those present and voting in the Maritime Safety Committee of the Organization, such amendment shall be communicated to all Contracting Parties and Members of the Organization at least six months prior to its consideration by the Assembly of the Organization. Any Contracting Party which is not a Member of the Organization shall be entitled to participate when the amendment is considered by the Assembly.
 3. If adopted by a two-thirds majority of those present and voting in the Assembly, the amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.
 4. Such an amendment shall enter into force on a date to be determined by the Assembly at the time of its adoption unless, by a prior date determined by the Assembly at the same time, more than one-third of the Contracting Parties notify the Organization of their objection to the amendment. Determination by the Assembly of
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the dates referred to in this paragraph shall be by a two-thirds majority of those present and voting.

5. On entry into force any amendment shall, for all Contracting Parties which have not objected to the amendment, replace and supersede any previous provision to which the amendment refers.
6. The Secretary-General shall inform all Contracting Parties and Members of the Organization of any request and communication under this Article and the date on which any amendment enters into force.

ARTICLE VII

Denunciation

1. The present Convention may be denounced by a Contracting Party at any time after the expiry of five years from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Organization. The Secretary-General shall inform all other Contracting Parties of the receipt of the instrument of denunciation and of the date of its deposit.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument, after its deposit.

ARTICLE VIII

Deposit and Registration

1. The present Convention and the Regulations shall be deposited with the Organization, and the Secretary-General shall transmit certified true copies thereof to all Governments of States that have signed this Convention or acceded to it.
2. When the present Convention enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE IX

Languages

The present Convention is established, together with the Regulations, in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

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INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS
AT SEA, 1972

PART A—GENERAL

RULE 1

Application

- (a) These Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- (b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.
- (c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any State with respect to additional station or signal lights or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights for fishing vessels engaged in fishing as a fleet. These additional station or signal lights or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light or signal authorized elsewhere under these Rules.
- (d) Traffic separation schemes may be adopted by the Organization for the purpose of these Rules.
- (e) Whenever the Government concerned shall have determined that a vessel of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her Government shall have determined to be the closest

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possible compliance with these Rules in respect to that vessel.

RULE 2

Responsibility

- (a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.
- (b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

RULE 3

General Definitions

For the purpose of these Rules, except where the context otherwise requires:

- (a) The word "**vessel**" includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.
- (b) The term "**power-driven vessel**" means any vessel propelled by machinery.
- (c) The term "**sailing-vessel**" means any vessel under sail provided that propelling machinery, if fitted, is not being used.
- (d) The term "**vessel engaged in fishing**" means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability.
- (e) The word "**seaplane**" includes any aircraft designed to manoeuvre on the water.
- (f) The term "**vessel not under command**" means a vessel which through some exceptional circumstance is unable to manoeuvre as required by these Rules and

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is therefore unable to keep out of the way of another vessel.

- (g) The term "**vessel restricted in her ability to manoeuvre**" means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.

The following vessels shall be regarded as vessels restricted in their ability to manoeuvre:

- (i) a vessel engaged in laying, servicing or picking up a navigation mark, submarine cable or pipeline;
 - (ii) a vessel engaged in dredging, surveying or underwater operations;
 - (iii) a vessel engaged in replenishment or transferring persons, provisions or cargo while underway;
 - (iv) a vessel engaged in the launching or recovery of aircraft;
 - (v) a vessel engaged in mine sweeping operations;
 - (vi) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.
- (h) The term "**vessel constrained by her draught**" means a power-driven vessel which because of her draught in relation to the available depth of water is severely restricted in her ability to deviate from the course she is following.
- (i) The word "**underway**" means that a vessel is not at anchor, or made fast to the shore, or aground.
 - (j) The words "**length**" and "**breadth**" of a vessel mean her length overall and greatest breadth.
- (k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.
- (l) The term "**restricted visibility**" means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

PART B—STEERING AND SAILING RULES

**SECTION I—CONDUCT OF VESSELS IN ANY CONDITION OF
VISIBILITY**

RULE 4

Application

Rules in this Section apply in any condition of visibility.

RULE 5

Look-out

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

RULE 6

Safe speed

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
- (i) the state of visibility;
 - (ii) the traffic density including concentrations of fishing vessels or any other vessels;
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
 - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;
 - (v) the state of wind, sea and current, and the proximity of navigational hazards;
 - (vi) the draught in relation to the available depth of water.

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- (b) Additionally, by vessels with operational radar:
- (i) the characteristics, efficiency and limitations of the radar equipment;
 - (ii) any constraints imposed by the radar range scale in use;
 - (iii) the effect on radar detection of the sea state, weather and other sources of interference;
 - (iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
 - (v) the number, location and movement of vessels detected by radar;
 - (vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

RULE 7

Risk of Collision

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
 - (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
 - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large

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vessel or a tow or when approaching a vessel at close range.

RULE 8

Action to avoid collision

- (a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
- (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
- (e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

RULE 9

Narrow channels

- (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
- (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.

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- (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
- (e)
 - (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).
 - (ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.
- (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).
- (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

RULE 10

Traffic separation schemes

- (a) This Rule applies to traffic separation schemes adopted by the Organization.
- (b) A vessel using a traffic separation scheme shall:
 - (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;
 - (ii) so far as practicable keep clear of a traffic separation line or separation zone;
 - (iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from the side shall do so at as small an angle to the general direction of traffic flow as practicable.

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- (c) A vessel shall so far as practicable avoid crossing traffic lanes, but if obliged to do so shall cross as nearly as practicable at right angles to the general direction of traffic flow.
- (d) Inshore traffic zones shall not normally be used by through traffic which can safely use the appropriate traffic lane within the adjacent traffic separation scheme.
- (e) A vessel, other than a crossing vessel, shall not normally enter a separation zone or cross a separation line except:
 - (i) in cases of emergency to avoid immediate danger;
 - (ii) to engage in fishing within a separation zone.
- (f) A vessel navigating in areas near the termination of traffic separation schemes shall do so with particular caution.
- (g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.
- (h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.
- (i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.
- (j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

SECTION II—CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

RULE 11

Application

Rules in this Section apply to vessels in sight of one another.

RULE 12

Sailing vessels

- (a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:

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- (i) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;
 - (ii) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward;
 - (iii) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.
- (b) For the purposes of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

RULE 13

Overtaking

- (a) Notwithstanding anything contained in the Rules of this Section any vessel overtaking any other shall keep out of the way of the vessel being overtaken.
- (b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.
- (c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.
- (d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

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RULE 14

Head on situation

- (a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.
- (b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
- (c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

RULE 15

Crossing Situation

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

RULE 16

Action by give-way vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

RULE 17

Action by stand-on vessel

- (a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
- (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

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- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.
 - (c) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
 - (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

RULE 18

Responsibilities between vessels

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing;
 - (iv) a sailing vessel.
- (b) A sailing vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre.
- (d) (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28.

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- (ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition.
- (e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

SECTION 111—CONDUCT OF VESSELS IN RESTRICTED VISIBILITY

RULE 19

Conduct of vessels in restricted visibility

- (a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- (b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- (c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section 1 of this Part.
- (d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
 - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
 - (ii) an alteration of course towards a vessel abeam or abaft the beam.
- (e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she

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can be kept on her course. She shall if necessary take all her way off and in any event navigate with extreme caution until danger of collision is over.

PART C—LIGHTS AND SHAPES

RULE 20

Application

- (a) Rules in this Part shall be complied with in all weathers.
- (b) The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out.
- (c) The lights prescribed by these Rules shall, if carried, also be exhibited in all other circumstances when it is deemed necessary.
- (d) The Rules concerning shapes shall be complied with by day.
- (e) The lights and shapes specified in these Rules shall comply with the provisions of Annex to these Regulations.

RULE 21

- (a) "**Masthead light**" means a white light placed over the fore and aft centreline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22·5 degrees abaft the beam on either side of the vessel.
- (b) "**Sidelights**" means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112·5 degrees and so fixed as to show the light from light ahead to 22·5 degrees abaft the beam on its respective side. In a vessel of less than 20 metres in length the sidelights may be combined in one lantern carried on the fore and aft centreline of the vessel.

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- (c) "**Sternlight**" means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67·5 degrees from right aft on each side of the vessel.
- (d) "**Towing light**" means a yellow light having the same characteristics as the "**sternlight**" defined in paragraph (c) of this Rule.
- (e) "**All-round light**" means a light showing an unbroken light over an arc of the horizon of 360 degrees.
- (f) "**Flashing light**" means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.

RULE 22

Visibility of Lights

The lights prescribed in these Rules shall have an intensity as specified in Section 8 of Annex I to these Regulations so as to be visible at the following minimum ranges:

- (a) In vessels of 50 metres or more in length:
 - a masthead light, 6 miles;
 - a sidelight, 3 miles;
 - a sternlight, 3 miles;
 - a towing light, 3 miles;
 - a white, red, green or yellow all-round light, 3 miles.
- (b) In vessels of 12 metres or more in length but less than 50 metres in length:
 - a masthead light, 5 miles; except that where the length of the vessel is less than 20 metres, 3 miles;
 - a sidelight, 2 miles;
 - a sternlight, 2 miles;
 - a towing light, 2 miles;
 - a white, red, green or yellow all-round light, 2 miles.

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- (c) In vessels of less than 12 metres in length:
- a masthead light, 2 miles;
 - a sidelight, 1 mile;
 - a sternlight, 2 miles;
 - a towing light, 2 miles;
 - a white, red, green or yellow all-round light, 2 miles.

RULE 23

Power-driven vessels underway

- (a) A power-driven vessel underway shall exhibit:
- (i) a masthead light forward;
 - (ii) a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 metres in length shall not be obliged to exhibit such light but may do so;
 - (iii) sidelights;
 - (iv) a sternlight.
- (b) An air-cushion vessel when operating in the non-displacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit an all-round flashing yellow light.
- (c) A power-driven vessel of less than 7 metres in length and whose maximum speed does not exceed 7 knots may, in lieu of the lights prescribed in paragraph (a) of this Rule, exhibit an all-round white light. Such vessel shall, if practicable, also exhibit sidelights.

RULE 24

Towing and pushing

- (a) A power-driven vessel when towing shall exhibit:
- (i) instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line. When the length of the tow, measuring from the stem of the towing vessel to the after end of the tow exceeds 200 metres, three such lights in a vertical line;
 - (ii) sidelights;
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- (iii) a sternlight;
 - (iv) a towing light in a vertical line above the sternlight;
 - (v) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23.
- (c) A power-driven vessel when pushing ahead or towing alongside, except in the case of a composite unit, shall exhibit:
- (i) instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line;
 - (ii) sidelights;
 - (iii) a sternlight.
- (d) A power-driven vessel to which paragraphs (a) and (c) of this Rule apply shall also comply with Rule 23(a)(ii).
- (e) A vessel or object being towed shall exhibit:
- (i) sidelights;
 - (ii) a sternlight;
 - (iii) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel:
- (i) a vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights.
 - (ii) a vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights.
- (g) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights prescribed in paragraph (e) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of the unlighted vessel or object.

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RULE 25

Sailing vessels underway and vessels under oars

- (a) A sailing vessel underway shall exhibit:
 - (i) sidelights;
 - (ii) a sternlight.
- (b) In a sailing vessel of less than 12 metres in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.
- (c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper light being red and the lower green, but these lights shall not be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule.
- (d)
 - (i) A sailing vessel of less than 7 metres in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
 - (ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downwards.

RULE 26

Fishing vessels

- (a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.

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- (b) A vessel when engaged in trawling, by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit:
- (i) two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
 - (ii) a masthead light abaft of and higher than the all-round green light; a vessel of less than 50 metres in length shall not be obliged to exhibit such a light but may do so;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (c) A vessel engaged in fishing, other than trawling, shall exhibit:
- (i) two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
 - (ii) when there is outlying gear extending more than 150 metres horizontally from the vessel, an all-round white light or a cone apex upwards in the direction of the gear;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (d) A vessel engaged in fishing in close proximity to other vessels engaged in fishing may exhibit the additional signals described in Annex II to these Regulations.
- (e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule, but only those prescribed for a vessel of her length.
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RULE 27

Vessels not under command or restricted in their ability to manoeuvre

- (a) A vessel not under command shall exhibit:
 - (i) two all-round red lights in a vertical line where they can best be seen;
 - (ii) two balls or similar shapes in a vertical line where they can best be seen;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (b) A vessel restricted in her ability to manoeuvre, except a vessel engaged in minesweeping operations, shall exhibit:
 - (i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;
 - (ii) three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;
 - (iii) when making way through the water, masthead lights, sidelights and a sternlight, in addition to the lights prescribed in sub-paragraph (i);
 - (iv) when at anchor, in addition to the lights or shapes prescribed in sub-paragraphs (i) and (ii), the light, lights or shape prescribed in Rule 30.
- (c) A vessel engaged in a towing operation such as renders her unable to deviate from her course shall, in addition to the lights or shapes prescribed in sub-paragraphs (b)(i) and (ii) of this Rule, exhibit the lights or shape prescribed in Rule 24(a).
- (d) A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, shall exhibit the lights and shapes prescribed in paragraph (b) of this Rule and shall in addition, when an obstruction exists, exhibit:
 - (i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;

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- (ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, masthead lights, sidelights and a sternlight;
 - (iv) a vessel to which this paragraph applies when at anchor shall exhibit the lights or shapes prescribed in sub-paragraphs (i) and (ii) instead of the lights or shape prescribed in Rule 30.
- (e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit the shapes prescribed in paragraph (d) of this Rule, a rigid replica of the International Code flag "A" not less than 1 metre in height shall be exhibited. Measures shall be taken to ensure all-round visibility.
- (f) A vessel engaged in minesweeping operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited at or near the foremast head and one at each end of the fore yard. These lights or shapes indicate that it is dangerous for another vessel to approach closer than 1,000 metres astern or 500 metres on either side of the minesweeper.
- (g) Vessels of less than 7 metres in length shall not be required to exhibit the lights prescribed in this Rule.
- (h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV of these Regulations.

RULE 28

Vessels constrained by their draught

A vessel constrained by her draught may, in addition to the lights prescribed for power-driven vessels in Rule 23, exhibit where they can best be seen three all-round red lights in a vertical line, or a cylinder.

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RULE 29

Pilot vessels

- (a) A vessel engaged on pilotage duty shall exhibit:
 - (i) at or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red;
 - (ii) when underway, in addition, sidelights and a sternlight;
 - (iii) when at anchor, in addition to the lights prescribed in sub-paragraph (i), the anchor light, lights or shape.
- (b) A pilot vessel when not engaged on pilotage duty shall exhibit the lights or shapes prescribed for a similar vessel of her length.

RULE 30

Anchored vessels and vessels aground

- (a) A vessel at anchor shall exhibit where it can best be seen:
 - (i) in the fore part, an all-round white light or one ball;
 - (ii) at or near the stern and at a lower level than the light prescribed in sub-paragraph (i), an all-round white light;
- (b) A vessel of less than 50 metres in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule.
- (c) A vessel at anchor may, and a vessel of 100 metres and more in length shall, also use the available working or equivalent lights to illuminate her decks.
- (d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b) of this Rule and in addition, where they can best be seen:
 - (i) two all-round red lights in a vertical line;
 - (ii) three balls in a vertical line.

- (e) A vessel of less than 7 metres in length, when at anchor or aground, not in or near a narrow channel, fairway or anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shapes prescribed in paragraphs (a), (b) or (d) of this Rule.

RULE 31

Seaplanes

Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

PART D—SOUND AND LIGHT SIGNALS

RULE 32

Definitions

- (a) The word "**whistle**" means any sound signalling appliance capable of producing the prescribed blasts and which complies with the specifications in Annex III to these Regulations;
- (b) The term "**short blast**" means a blast of about one second's duration;
- (c) The term "**prolonged blast**" means a blast of from four to six seconds' duration.

RULE 33

Equipment for sound signals

- (a) A vessel of 12 metres or more in length shall be provided with a whistle and a bell and a vessel of 100 metres or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of a bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Regulations. The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the required signals shall always be possible.

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- (b) A vessel of less than 12 metres in length shall not be obliged to carry the sound signalling appliances prescribed in paragraph (a) of this Rule but if she does not, she shall be provided with some other means of making an efficient sound signal.

RULE 34

Manoeuvring and warning signals

- (a) When vessels are in sight of one another, a power-driven vessel underway, when manoeuvring as authorized or required by these Rules, shall indicate that manoeuvre by the following signals on her whistle:
- one short blast to mean "I am altering my course to starboard";
 - two short blasts to mean "I am altering my course to port";
 - three short blasts to mean "I am operating astern propulsion".
- (b) Any vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals, repeated as appropriate, whilst the manoeuvre is being carried out:
- (i) these light signals shall have the following significance:
 - one flash to mean "I am altering my course to starboard";
 - two flashes to mean "I am altering my course to port";
 - three flashes to mean "I am operating astern propulsion";
 - (ii) the duration of each flash shall be about one second, the interval between flashes shall be about one second, and the interval between successive signals shall be not less than ten seconds;
 - (iii) the light used for this signal shall, if fitted, be an all-round white light, visible at a minimum range of 5 miles, and shall comply with the provisions of Annex I.
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- (c) When in sight of one another in a narrow channel or fairway:
- (i) a vessel intending to overtake another shall in compliance with Rule 9(e)(i) indicate her intention by the following signals on her whistle:
 - two prolonged blasts followed by one short blast to mean "I intend to overtake you on your starboard side";
 - two prolonged blasts followed by two short blasts to mean "I intend to overtake you on your port side";
 - (ii) the vessel about to be overtaken when acting in accordance with Rule 9(e)(i) shall indicate her agreement by the following signal on her whistle:
 - one prolonged, one short, one prolonged and one short blast, in that order.
- (d) When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. Such signal may be supplemented by a light signal of at least five short and rapid flashes.
- (e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. Such signal shall be answered with a prolonged blast by any approaching vessel that may be within hearing around the bend or behind the intervening obstruction.
- (f) If whistles are fitted on a vessel at a distance apart of more than 100 metres, one whistle only shall be used for giving manoeuvring and warning signals.

RULE 35

Sound signals in restricted visibility

In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows:

- (a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.
- (b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.
- (c) A vessel not under command, a vessel restricted in her ability to manoeuvre, a vessel constrained by her draught, a sailing vessel, a vessel engaged in fishing and a vessel engaged in towing or pushing another vessel shall, instead of the signals prescribed in paragraphs (a) or (b) of this Rule, sound at intervals of not more than 2 minutes three blasts in succession, namely one prolonged followed by two short blasts.
- (d) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession, namely one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.
- (e) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.
- (f) A vessel at anchor shall at intervals of not more than one minute ring the bell rapidly for about 5 seconds. In a vessel of 100 metres or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

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- (g) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.
- (h) A vessel of less than 12 metres in length shall not be obliged to give the above-mentioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.
- (i) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (f) of this Rule sound an identity signal consisting of four short blasts.

RULE 36

Signals to attract attention

If necessary to attract the attention of another vessel any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel.

RULE 37

Distress signals

When a vessel is in distress and requires assistance she shall use or exhibit the signals prescribed in Annex IV to these Regulations.

PART E—EXEMPTIONS

RULE 38

Exemptions

Any vessel (or class of vessels) provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960, the keel of which is laid or which is at a corresponding stage of construction before the entry into force of these Regulations may be exempted from compliance therewith as follows:

- (a) The installation of lights with ranges prescribed in Rule 22, until four years after the date of entry into force of these Regulations.

- (b) The installation of lights with colour specifications as prescribed in Section 7 of Annex I to these Regulations, until four years after the date of entry into force of these Regulations.
- (c) The repositioning of lights as a result of conversion from Imperial to metric units and rounding off measurement figures, permanent exemption.
- (d)
 - (i) The repositioning of masthead lights on vessels of less than 150 metres in length, resulting from the prescriptions of Section 3(a) of Annex I, permanent exemption.
 - (ii) The repositioning of masthead lights on vessels of 150 metres or more in length, resulting from the prescriptions of Section 3(a) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.
- (e) The repositioning of masthead lights resulting from the prescriptions of Section 2(b) of Annex I, until nine years after the date of entry into force of these Regulations.
- (f) The repositioning of sidelights resulting from the prescriptions of Sections 2(g) and 3(b) of Annex I, until nine years after the date of entry into force of these Regulations.
- (g) The requirements for sound signal appliances prescribed in Annex III, until nine years after the date of entry into force of these Regulations.

ANNEX I

POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. Definition

The term "**height above the hull**" means height above the uppermost continuous deck.

2. Vertical positioning and spacing of lights

- (a) On a power-driven vessel of 20 metres or more in length the masthead lights shall be placed as follows:
 - (i) the forward masthead light, or if only one masthead light is carried, then that light, at a height above the hull of not less than 6 metres,

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and, if the breadth of the vessel exceeds 6 metres, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 12 metres;

- (ii) when two masthead lights are carried the after one shall be at least 4.5 metres vertically higher than the forward one.
- (b) The vertical separation of masthead lights of power-driven vessels shall be such that in all normal conditions of trim the after light will be seen over and separate from the forward light at a distance of 1000 metres from the stem when viewed from sea level.
- (c) The masthead light of a power-driven vessel of 12 metres but less than 20 metres in length shall be placed at a height above the gunwale of not less than 2.5 metres.
- (d) A power-driven vessel of less than 12 metres in length may carry the uppermost light at a height of less than 2.5 metres above the gunwale. When however a masthead light is carried in addition to sidelights and a sternlight, then such masthead light shall be carried at least 1 metre higher than the sidelights.
- (e) One of the two or three masthead lights prescribed for a power-driven vessel when engaged in towing or pushing another vessel shall be placed in the same position as the forward masthead light of a power-driven vessel.
- (f) In all circumstances the masthead light or lights shall be so placed as to be above and clear of all other lights and obstructions.
- (g) The sidelights of a power-driven vessel shall be placed at a height above the hull not greater than three quarters of that of the forward masthead light. They shall not be so low as to be interfered with by deck lights.
- (h) The sidelights, if in a combined lantern and carried on a power-driven vessel of less than 20 metres in length, shall be placed not less than 1 metre below the masthead light.

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- (i) When the Rules prescribe two or three lights to be carried in a vertical line, they shall be spaced as follows:
 - (i) on a vessel of 20 metres in length or more such lights shall be spaced not less than 2 metres apart, and the lowest of these lights shall, except where a towing light is required, not be less than 4 metres above the hull;
 - (ii) on a vessel of less than 20 metres in length such lights shall be spaced not less than 1 metre apart and the lowest of these lights shall, except where a towing light is required, not be less than 2 metres above the gunwale;
 - (iii) when three lights are carried they shall be equally spaced.
 - (j) The lower of the two all-round lights prescribed for a fishing vessel when engaged in fishing shall be at a height above the sidelights not less than twice the distance between the two vertical lights.
 - (k) The forward anchor light, when two are carried, shall not be less than 4.5 metres above the after one. On a vessel of 50 metres or more in length this forward anchor light shall not be less than 6 metres above the hull.

3. Horizontal positioning and spacing of lights

- (a) When two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them shall not be less than one half of the length of the vessel but need not be more than 100 metres. The forward light shall be placed not more than one quarter of the length of the vessel from the stem.
- (b) On a vessel of 20 metres or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.

4. Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in, underwater operations

- (a) The light indicating the direction of the outlying gear from a vessel engaged in fishing as prescribed in Rule 26(c)(ii) shall be placed at a horizontal distance of not less than 2 metres and not more than 6 metres away

from the two all-round red and white lights. This light shall be placed not higher than the all-round white light prescribed in Rule 26(c)(i) and not lower than the sidelights.

- (b) The lights and shapes on a vessel engaged in dredging or underwater operations to indicate the obstructed side and/or the side on which it is safe to pass, as prescribed in Rule 27(d)(i) and (ii), shall be placed at the maximum practical horizontal distance, but in no case less than 2 metres, from the lights or shapes prescribed in Rule 27(b)(i) and (ii). In no case shall the upper of these lights or shapes be at a greater height than the lower of the three lights or shapes prescribed in Rule 27(b)(i) and (ii).

5. Screens for sidelights

The sidelights shall be fitted with inboard screens painted matt black, and meeting the requirements of Section 9 of this Annex. With a combined lantern, using a single vertical filament and a very narrow division between the green and red sections, external screens need not be fitted.

6. Shapes

- (a) Shapes shall be black and of the following sizes:
- (i) a ball shall have a diameter of not less than 0.6 metre;
 - (ii) a cone shall have a base diameter of not less than 0.6 metre and a height equal to its diameter;
 - (iii) a cylinder shall have a diameter of at least 0.6 metre and a height of twice its diameter;
 - (iv) a diamond shape shall consist of two cones as defined in (ii) above having a common base.
- (b) The vertical distance between shapes shall be at least 1.5 metres.
- (c) In a vessel of less than 20 metres in length shapes of lesser dimensions but commensurate with the size of the vessel may be used and the distance apart may be correspondingly reduced.

7. Colour specification of lights

The chromaticity of all navigation lights shall conform to the following standards, which lie within the boundaries of the area of the diagram specified for each colour by the International Commission on Illumination (CIE).

The boundaries of the area for each colour are given by indicating the corner co-ordinates, which are as follows:

(i) White

x 0.525 0.525 0.452 0.310 0.310 0.443

y 0.382 0.440 0.440 0.348 0.283 0.382

(ii) Green

x 0.028 0.009 0.300 0.203

y 0.385 0.723 0.511 0.356

(iii) Red

x 0.680 0.660 0.735 0.721

y 0.320 0.320 0.265 0.259

(iv) Yellow

x 0.612 0.618 0.575 0.575

y 0.382 0.382 0.425 0.406

8. Intensity of lights

- (a) The minimum luminous intensity of lights shall be calculated by using the formula:

$$I = 3.43 \times 10^6 \times T \times D^2 \times K^{-D}$$

where I is luminous intensity in candelas under service conditions,

T is threshold factor 2×10^{-7} lux,

D is range of visibility (luminous range) of the light in nautical miles,

K is atmospheric transmissivity.

For prescribed lights the value of K shall be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

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- (b) A selection of figures derived from the formula is given in the following table:

<i>Range of visibility (luminous range) of light in nautical miles</i>	<i>Luminous intensity of light in candelas for K = 0.8</i>
<i>D</i>	<i>I</i>
1	0.9
2	4.3
3	12
4	27
5	52
6	94

Note: The maximum luminous intensity of navigation lights should be limited to avoid undue glare.

9. Horizontal Sectors

- (a) (i) In the forward direction, sidelights as fitted on the vessel must show the minimum required intensities. The intensities must decrease to reach practical cut-off between 1 degree and 3 degrees outside the prescribed sectors.
- (ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21. From 5 degrees within the prescribed sectors the intensity may decrease by 50 per cent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed limits.
- (b) All-round lights shall be so located as not to be obscured by masts, topmasts or structures within angular sectors of more than 6 degrees, except anchor lights, which need not be placed at an impracticable height above the hull.

10. Vertical Sectors

- (a) The vertical sectors of electric lights, with the exception of lights on sailing vessels shall ensure that:
 - (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
 - (ii) at least 60 per cent of the required minimum intensity is maintained from 7.5 degrees above to 7.5 degrees below the horizontal.
- (b) In the case of sailing vessels the vertical sectors of electric lights shall ensure that:
 - (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
 - (ii) at least 50 per cent of the required minimum intensity is maintained from 25 degrees above to 25 degrees below the horizontal.
- (c) In the case of lights other than electric these specifications shall be met as closely as possible.

11. Intensity of non-electric lights

Non-electric lights shall so far as practicable comply with the minimum intensities, as specified in the Table given in Section 8 of this Annex.

12. Manoeuvring light

Notwithstanding the provisions of paragraph 2(f) of this Annex the manoeuvring light described in Rule 34(b) shall be placed in the same fore and aft vertical plane as the masthead light or lights and, where practicable, at a minimum height of 2 metres vertically above the forward masthead light, provided that it shall be carried not less than 2 metres vertically above or below the after masthead light. On a vessel where only one masthead light is carried the manoeuvring light, if fitted, shall be carried where it can best be seen, not less than 2 metres vertically apart from the masthead light.

13. Approval

The construction of lanterns and shapes and the installation of lanterns on board the vessel shall be to the satisfaction of the appropriate authority of the State where the vessel is registered.

ANNEX II

**ADDITIONAL SIGNALS FOR FISHING VESSELS FISHING IN
CLOSE PROXIMITY**

1. General

The lights mentioned herein shall, if exhibited in pursuance of Rule 26(d), be placed where they can best be seen. They shall be at least 0.9 metre apart but at a lower level than lights prescribed in Rule 26(b)(i) and (c)(i). The lights shall be visible all round the horizon at a distance of at least 1 mile but at a lesser distance than the lights prescribed by these Rules for fishing vessels.

2. Signals for Trawlers

- (a) Vessels when engaged in trawling, whether using demersal or pelagic gear, may exhibit:
 - (i) when shooting their nets: two white lights in a vertical line;
 - (ii) when hauling their nets: one white light over one red light in a vertical line;
 - (iii) when the net has come fast upon an obstruction: two red light in a vertical line.
- (b) Each vessel engaged in pair trawling may exhibit:
 - (i) by night, a searchlight directed forward and in the direction of the other vessel of the pair;
 - (ii) when shooting or hauling their nets or when their nets have come fast upon an obstruction, the lights prescribed in 2(a) above.

3. Signals for purse seiners

Vessels engaged in fishing with purse seine gear may exhibit two yellow lights in a vertical line. These lights shall flash alternately every second and with equal light and occultation duration. These lights may be exhibited only when the vessel is hampered by its fishing gear.

ANNEX III

TECHNICAL DETAILS OF SOUND SIGNAL APPLIANCES

1. Whistles

- (a) *Frequencies and range of audibility.* The fundamental frequency of the signal shall lie within the range 70–700 Hz.

The range of audibility of the signal from a whistle shall be determined by those frequencies, which may include the fundamental and/or one or more higher frequencies, which lie within the range 180–700 Hz (± 1 per cent) and which provide the sound pressure levels specified in paragraph 1(c) below.

- (b) *Limits of fundamental frequencies.* To ensure a wide variety of whistle characteristics, the fundamental frequency of a whistle shall be between the following limits:
- (i) 70–200 Hz, for a vessel 200 metres or more in length;
 - (ii) 130–350 Hz, for a vessel 75 metres but less than 200 metres in length;
 - (iii) 250–700 Hz, for a vessel less than 75 metres in length.

- (c) *Sound signal intensity and range of audibility.* A whistle fitted in a vessel shall provide, in the direction of maximum intensity of the whistle and at a distance of 1 metre from it, a sound pressure level in at least one $\frac{1}{3}$ rd-octave band within the range of frequencies 180–700 Hz (± 1 per cent) of not less than the appropriate figure given in the table below.

<i>Length of vessel in metres</i>	<i>$\frac{1}{3}$rd-octave band level at 1 metre in dB referred to $2 \times 10^{-5} \text{ N/m}^2$</i>	<i>Audibility range in nautical miles</i>
200 or more	143	2
75 but less than 200	138	1.5
20 but less than 75	130	1
Less than 20	120	0.5

The range of audibility in the table above is for information and is approximately the range at which a

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whistle may be heard on its forward axis with 90 per cent probability in conditions of still air on board a vessel having average background noise level at the listening posts (taken to be 68 dB in the octave band centred on 250 Hz and 63 dB in the octave band centred on 500 Hz).

In practice the range at which a whistle may be heard is extremely variable and depends critically on weather conditions; the values given can be regarded as typical but under conditions of strong wind or high ambient noise level at the listening post the range may be much reduced.

- (d) *Directional properties.* The sound pressure level of a directional whistle shall be not more than 4 dB below the sound pressure level on the axis at any direction in the horizontal plane within ± 45 degrees of the axis. The sound pressure level at any other direction in the horizontal plane shall be not more than 10 dB below the sound pressure level on the axis, so that the range in any direction will be at least half the range on the forward axis. The sound pressure level shall be measured in that $\frac{1}{3}$ rd-octave band which determines the audibility range.
- (e) *Positioning of whistles.* When a directional whistle is to be used as the only whistle on a vessel, it shall be installed with its maximum intensity directed straight ahead.
- A whistle shall be placed as high as practicable on a vessel, in order to reduce interception of the emitted sound by obstructions and also to minimize hearing damage risk to personnel. The sound pressure level of the vessel's own signal at listening posts shall not exceed 110 dB (A) and so far as practicable should not exceed 100 dB (A).
- (f) *Fitting of more than one whistle.* If whistles are fitted at a distance apart of more than 100 metres, it shall be so arranged that they are not sounded simultaneously.
- (g) *Combined whistle systems.* If due to the presence of obstructions the sound field of a single whistle or of one of the whistles referred to in paragraph 1(f) above is likely to have a zone of greatly reduced signal level, it is recommended that a combined whistle system be fitted so as to overcome this reduction. For the purposes of the Rules a combined whistle system is to

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be regarded as a single whistle. The whistles of a combined system shall be located at a distance apart of not more than 100 metres and arranged to be sounded simultaneously. The frequency of any one whistle shall differ from those of the others by at least 10 Hz.

2. Bell or gong

- (a) *Intensity of signal.* A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less than 110 dB at 1 metre.
- (b) *Construction.* Bells and gongs shall be made of corrosion-resistant material and designed to give a clear tone. The diameter of the mouth of the bell shall be not less than 300 mm for vessels of more than 20 metres in length, and shall be not less than 200 mm for vessels of 12 to 20 metres in length. Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 per cent of the mass of the bell.

3. Approval

The construction of sound signal appliances, their performance and their installation on board the vessel shall be to the satisfaction of the appropriate authority of the State where the vessel is registered.

ANNEX IV

DISTRESS SIGNALS

1. The following signals, used or exhibited either together or separately, indicate distress and need of assistance:
 - (a) a gun or other explosive signal fired at intervals of about a minute;
 - (b) a continuous sounding with any fog-signalling apparatus;
 - (c) rockets or shells, throwing red stars fired one at a time at short intervals;
 - (d) a signal made by radiotelegraphy or by any other signalling method consisting of the group ...---... (SOS) in the Morse Code;

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- (e) a signal sent by radiotelephony consisting of the spoken word "Mayday";
 - (f) the International Code Signal of distress indicated by N.C.;
 - (g) a signal consisting of a square flag having above or below it a ball or anything resembling a ball;
 - (h) flames on the vessel (as from a burning tar barrel, oil barrel, etc.);
 - (i) a rocket parachute flare or a hand flare showing a red light;
 - (j) a smoke signal giving off orange-coloured smoke;
 - (k) slowly and repeatedly raising and lowering arms outstretched to each side;
 - (l) the radiotelegraph alarm signal;
 - (m) the radiotelephone alarm signal;
 - (n) signals transmitted by emergency position-indicating radio beacons.
2. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other signals which may be confused with any of the above signals is prohibited.
3. Attention is drawn to the relevant sections of the International Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals:
- (a) a piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air);
 - (b) a dye marker.
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Section 53

**INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT
SEA, 1974**

ARTICLE I

General Obligations under the Convention

- (a) The Contracting Governments undertake to give effect to the provisions of the present Convention and the Annex thereto, which shall constitute an integral part of the present convention. Every reference to the present Convention constitutes at the same time a reference to the Annex.
- (b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended.

ARTICLE II

Application

The present Convention shall apply to ships entitled to fly the flag of States the Governments of which are Contracting Governments.

ARTICLE III

Laws, Regulations

The Contracting Governments undertake to communicate to and deposit with the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization"):

- (a) a list of non-governmental agencies which are authorized to act in their behalf in the administration of measures for safety of life at sea for circulation to the Contracting Governments for the information of their officers;

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- (b) the text of laws, decrees, orders and regulations which shall have been promulgated on the various matters within the scope of the present Convention;
- (c) a sufficient number of specimens of their Certificates issued under the provisions of the present Convention for circulation to the Contracting Governments for the information of their officers.

ARTICLE IV

Cases of Force Majeure

- (a) A ship, which is not subject to the provisions of the present Convention at the time of its departure on any voyage, shall not become subject to the provisions of the present Convention on account of any deviation from its intended voyage due to stress of weather or any other cause of force majeure.
- (b) Persons who are on board a ship by reason of force majeure or in consequence of the obligation laid upon the master to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to a ship of any provisions of the present Convention.

ARTICLE V

Carriage of Persons in Emergency

- (a) For the purpose of evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention.
- (b) Such permission shall not deprive other Contracting Governments of any right of control under the present Convention over such ships which come within their ports.
- (c) Notice of any such permission, together with a statement of the circumstances, shall be sent to the Secretary-General of the Organization by the Contracting Government granting such permission.

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ARTICLE VI

Prior Treaties and Conventions

- (a) As between the Contracting Governments, the present Convention replaces and abrogates the International Convention for the Safety of Life at Sea which was signed in London on 17 June 1960.
- (b) All other treaties, conventions and arrangements relating to safety of life at sea, or matters appertaining thereto, at present in force between Governments parties to the present Convention shall continue to have full and complete effect during the terms thereof as regards:
 - (i) ships to which the present Convention does not apply;
 - (ii) ships to which the present Convention applies, in respect of matters for which it has not expressly provided.
- (c) To the extent, however, that such treaties, conventions or arrangements conflict with the provisions of the present Convention, the provisions of the present Convention shall prevail.
- (d) All matters which are not expressly provided for in the present Convention remain subject to the legislation of the Contracting Governments.

ARTICLE VII

Special Rules drawn up by Agreement

When in accordance with the present Convention special rules are drawn up by agreement between all or some of the Contracting Governments, such rules shall be communicated to the Secretary-General of the Organization for circulation to all Contracting Governments.

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ARTICLE VIII

Amendments

- (a) The present Convention may be amended by either of the procedures specified in the following paragraphs.
- (b) Amendments after consideration within the Organization:
 - (i) Any amendment proposed by a Contracting Government shall be submitted to the Secretary-General of the Organization, who shall then circulate it to all Members of the Organization and all Contracting Governments at least six months prior to its consideration.
 - (ii) Any amendment proposed and circulated as above shall be referred to the Maritime Safety Committee of the Organization for consideration.
 - (iii) Contracting Governments of States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.
 - (iv) Amendments shall be adopted by a two-thirds majority of the Contracting Governments present and voting in the Maritime Safety Committee expanded as provided for in subparagraph (iii) of this paragraph (hereinafter referred to as "the expanded Maritime Safety Committee") on condition that at least one-third of the Contracting Governments shall be present at the time of voting.
 - (v) Amendments adopted in accordance with subparagraph (iv) of this paragraph shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
 - (vi) (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Contracting Governments.

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- (2) An amendment to the Annex other than Chapter I shall be deemed to have been accepted:
- (aa) at the end of two years from the date on which it is communicated to Contracting Governments for acceptance; or
 - (bb) at the end of a different period, which shall not be less than one year, if so determined at the time of its adoption by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee.

However, if within the specified period either more than one-third of Contracting Governments, or Contracting Governments the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, notify the Secretary-General of the Organization that they object to the amendment, it shall be deemed not to have been accepted.

- (vii) (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall enter into force with respect to those Contracting Governments which have accepted it, six months after the date on which it is deemed to have been accepted, and with respect to each Contracting Government which accepts it after that date, six months after the date of that Contracting Government's acceptance.
- (2) An amendment to the Annex other than Chapter I shall enter into force with respect to all Contracting Governments, except those which have objected to the amendment under sub-paragraph (vi)(2) of this paragraph and which have not withdrawn such objections, six months

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after the date on which it is deemed to have been accepted. However, before the date set for entry into force, any Contracting Government may give notice to the Secretary-General of the Organization that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee at the time of the adoption of the amendment.

- (c) Amendment by a Conference:
- (i) Upon the request of a Contracting Government concurred in by at least one-third of the Contracting Governments, the Organization shall convene a Conference of Contracting Governments to consider amendments to the present Convention.
 - (ii) Every amendment adopted by such a Conference by a two-thirds majority of the Contracting Governments present and voting shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
 - (iii) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in sub-paragraphs (b)(vi) and (b)(vii) respectively of this Article, provided that references in these paragraphs to the expanded Maritime Safety Committee shall be taken to mean references to the Conference.
- (d) (i) A contracting Government which has accepted an amendment to the Annex which has entered into force shall not be obliged to extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph

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- (b)(vi)(2) of this Article, has objected to the amendment and has not withdrawn such an objection, but only to the extent that such certificates relate to matters covered by the amendment in question.
- (ii) A Contracting Government which has accepted an amendment to the Annex which has entered into force shall extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph (b)(vii)(2) of this Article, has notified the Secretary-General of the Organization that it exempts itself from giving effect to the amendment.
- (e) Unless expressly provided otherwise, any amendment to the present Convention made under this Article, which relates to the structure of a ship, shall apply only to ships the keels of which are laid or which are at a similar stage of construction, on or after the date on which the amendment enters into force.
- (f) Any declaration of acceptance of, or objection to, an amendment or any notice given under sub-paragraph (b)(vii)(2) of this Article shall be submitted in writing to the Secretary-General of the Organization, who shall inform all Contracting Governments of any such submission and the date of its receipt.
- (g) The Secretary-General of the Organization shall inform all Contracting Governments of any amendments which enter into force under this Article, together with the date on which each such amendment enters into force.

ARTICLE IX

Signature, Ratification, Acceptance, Approval and Accession

- (a) The present Convention shall remain open for signature at the Headquarters of the Organization from 1 November 1974 until 1 July 1975 and shall thereafter remain open for accession. States may become parties to the present Convention by:
- (i) signature without reservation as to ratification, acceptance or approval; or

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- (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
- (c) The Secretary-General of the Organization shall inform the Governments of all States which have signed the present Convention or acceded to it of any signature or of the deposit of any instrument of ratification, acceptance, approval or accession and the date of its deposit.

ARTICLE X

Entry into Force

- (a) The present Convention shall enter into force twelve months after the date on which not less than twenty-five States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become parties to it in accordance with Article IX.
- (b) Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Convention enters into force shall take effect three months after the date of deposit.
- (c) After the date on which an amendment to the present Convention is deemed to have been accepted under Article VIII, any instrument of ratification, acceptance, approval or accession deposited shall apply to the Convention as amended.

ARTICLE XI

Denunciation

- (a) The present Convention may be denounced by any Contracting Government at any time after the expiry of five years from the date on which the Convention enters into force for that Government.
- (b) Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Organization who shall notify all the other Contracting Governments of any instrument of

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denunciation received and of the date of its receipt as well as the date on which such denunciation takes effect.

- (c) A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General of the Organization.

ARTICLE XII

Deposit and Registration

- (a) The present Convention shall be deposited with the Secretary-General of the Organization who shall transmit certified true copies thereof to the Governments of all States which have signed the present Convention or acceded to it.
- (b) As soon as the present Convention enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretary-General of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XIII

Languages

The present Convention is established in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

ANNEX

CHAPTER I

GENERAL PROVISIONS

PART A—APPLICATION, DEFINITIONS, ETC.

Regulation 1

Application

- (a) Unless expressly provided otherwise, the present Regulations apply only to ships engaged on international voyages.

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- (b) The classes of ships to which each Chapter applies are more precisely defined, and the extent of the application is shown, in each Chapter.

Regulation 2

Definitions

For the purpose of the present Regulations, unless expressly provided otherwise:

- (a) "**Regulations**" means the Regulations contained in the Annex to the present Convention.
- (b) "**Administration**" means the Government of the State whose flag the ship is entitled to fly.
- (c) "**Approved**" means approved by the Administration.
- (d) "**International voyage**" means a voyage from a country to which the present Convention applies to a port outside such country, or conversely.
- (e) A passenger is every person other than:
 - (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
 - (ii) a child under one year of age.
- (f) A passenger ship is a ship which carries more than twelve passengers.
- (g) A cargo ship is any ship which is not a passenger ship.
- (h) A tanker is a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of an inflammable⁵ nature.
- (i) A fishing vessel is a vessel used for catching fish, whales, seals, walrus or other living resources of the sea.
- (j) A nuclear ship is a ship provided with a nuclear power plant.
- (k) "**New ship**" means a ship the keel of which is laid or which is at a similar stage of construction on or after the date of coming into force of the present Convention.

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- (l) **"Existing ship"** means a ship which is not a new ship.
 - (m) A mile is 1,852 metres or 6,080 feet.

Regulation 3

Exceptions

- (a) The present Regulations, unless expressly provided otherwise, do not apply to:
 - (i) Ships of war and troopships.
 - (ii) Cargo ships of less than 500 tons gross tonnage.
 - (iii) Ships not propelled by mechanical means.
 - (iv) Wooden ships of primitive build.
 - (v) Pleasure yachts not engaged in trade.
 - (vi) Fishing vessels.
- (b) Except as expressly provided in Chapter V, nothing herein shall apply to ships solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

Regulation 4

Exemptions

- (a) A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Administration from any of the requirements of the present Regulations provided that it complies with safety requirements which are adequate in the opinion of the Administration for the voyage which is to be undertaken by the ship.
- (b) The Administration may exempt any ship which embodies features of a novel kind from any of the provisions of Chapters II-1, II-2, III and IV of these Regulations the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages. Any such ship shall, however, comply with safety requirements which, in the opinion of that Administration, are adequate for the

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service for which it is intended and are such as to ensure the overall safety of the ship and which are acceptable to the Governments of the States to be visited by the ship. The Administration which allows any such exemption shall communicate to the Organization particulars of same and the reasons therefor which the Organization shall circulate to the Contracting Governments for their information.

Regulation 5

Equivalents

- (a) Where the present Regulations require that a particular fitting, material, appliance or apparatus or type thereof, shall be fitted or carried in a ship, or that any particular provision shall be made, the Administration may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made in that ship, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the present Regulations.
- (b) Any Administration which so allows, in substitution, a fitting, material, appliance or apparatus, or type thereof, or provision, shall communicate to the Organization particulars thereof together with a report on any trials made and the Organization shall circulate such particulars to other Contracting Governments for the information of their officers.

CHAPTER V

SAFETY OF NAVIGATION

Regulation 1

Application

This Chapter, unless otherwise expressly provided in this Chapter, applies to all ships on all voyages, except ships of war and ships solely navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada.

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Regulation 2

Danger Messages

- (a) The master of every ship which meets with dangerous ice, a dangerous derelict, or any other direct danger to navigation, or a tropical storm, or encounters sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received, is bound to communicate the information by all the means at his disposal to ships in the vicinity, and also to the competent authorities at the first point on the coast with which he can communicate. The form in which the information is sent is not obligatory. It may be transmitted either in plain language (preferably English) or by means of the International Code of Signals. It should be broadcast to all ships in the vicinity and sent to the first point on the coast to which communication can be made, with a request that it be transmitted to the appropriate authorities.
- (b) Each Contracting Government will take all steps necessary to ensure that when intelligence of any of the dangers specified in paragraph (a) of this Regulation is received, it will be promptly brought to the knowledge of those concerned and communicated to other interested Governments.
- (c) The transmission of messages respecting the dangers specified is free of cost to the ships concerned.
- (d) All radio messages issued under paragraph (a) of this Regulation shall be preceded by the Safety Signal, using the procedure as prescribed by the Radio Regulations as defined in Regulation 2 of Chapter IV.

Regulation 3

Information required in Danger Messages

The following information is required in danger messages:

- (a) Ice, Derelicts and other Direct Dangers to Navigation
 - (i) The kind of ice, derelict or danger observed.
 - (ii) The position of the ice, derelict or danger when last observed.

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- (iii) The time and date (Greenwich Mean Time) when danger last observed.
- (b) *Tropical Storms* (Hurricanes in the West Indies, Typhoons in the China Sea, Cyclones in Indian waters, and storms of a similar nature in other regions.)
 - (i) A statement that a tropical storm has been encountered. This obligation should be interpreted in a broad spirit, and information transmitted whenever the master has good reason to believe that a tropical storm is developing or exists in his neighbourhood.
 - (ii) Time, date (Greenwich Mean Time) and position of ship when the observation was taken.
 - (iii) As much of the following information as is practicable should be included in the message:
 - barometric pressure, preferably corrected (stating millibars, millimetres, or inches, and whether corrected or uncorrected);
 - barometric tendency (the change in barometric pressure during the past three hours);
 - true wind direction;
 - wind force (Beaufort scale);
 - state of the sea (smooth, moderate, rough, high);
 - swell (slight, moderate, heavy) and the true direction from which it comes. Period or length of swell (short, average, long) would also be of value;
 - true course and speed of ship.
- (c) *Subsequent Observations*

When a master has reported a tropical or other dangerous storm, it is desirable, but not obligatory, that further observations be made and transmitted hourly, if practicable, but in any case at intervals of not more than three hours, so long as the ship remains under the influence of the storm.

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- (d) *Winds of force 10 or above on the Beaufort scale for which no storm warning has been received*

This is intended to deal with storms other than the tropical storms referred to in paragraph (b) of this Regulation; when such a storm is encountered, the message should contain similar information to that listed under that paragraph but excluding the details concerning sea and swell.

- (e) *Sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures*
- (i) Time and date (Greenwich Mean Time).
 - (ii) Air temperature.
 - (iii) Sea temperature (if practicable).
 - (iv) Wind force and direction.

Examples

Ice

TTT Ice. Large berg sighted in 4605N., 4410W., at 0800 GMT. May 15.

Derelicts

TTT Derelict. Observed derelict almost submerged in 4006N., 1243W., at 1630 GMT. April 21.

Danger to Navigation

TTT Navigation. Alpha lightship not on station. 1800 GMT. January 3.

Tropical Storm

TTT Storm. 0030 GMT. August 18. 2004N., 11354E. Barometer corrected 994 millibars, tendency down 6 millibars. Wind NW., force 9, heavy squalls. Heavy easterly swell. Course 067, 5 knots.

TTT Storm. Appearances indicate approach of hurricane. 1300 GMT. September 14. 2200N., 7236 W. Barometer corrected 29.64 inches, tendency down .015 inches. Wind NE., force 8, frequent rain squalls. Course 035, 9 knots.

TTT Storm. Conditions indicate intense cyclone has formed. 0200 GMT. May 4. 1620 N., 9203E. Barometer uncorrected 753 millimetres, tendency down 5 millimetres. Wind S. by W., force 5, Course 300, 8 knots.

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TTT Storm. Typhoon to southeast. 0300 GMT. June 12. 1812N., 12605 E. Barometer falling rapidly. Wind increasing from N.

TTT Storm. Wind force 11, no storm warning received. 0300 GMT. May 4. 4830N., 30W. Barometer corrected 983 millibars, tendency down 4 millibars. Wind SW., force 11 veering. Course 260, 6 knots.

Icing

TTT experiencing icing. 1400 GMT. March 2. 69N., 10 W. Air temperature 29. Wind NE., force 8.

Regulation 4

Meteorological Services

- (a) The Contracting Governments undertake to encourage the collection of meteorological data by ships at sea and to arrange for their examination, dissemination and exchange in the manner most suitable for the purpose of aiding navigation. Administrations shall encourage the use of instruments of a high degree of accuracy, and shall facilitate the checking of such instruments upon request.
- (b) In particular, the Contracting Governments undertake to co-operate in carrying out, as far as practicable, the following meteorological arrangements:
 - (i) To warn ships of gales, storms and tropical storms, both by the issue of radio messages and by the display of appropriate signals at coastal points.
 - (ii) To issue daily, by radio, weather bulletins suitable for shipping, containing data of existing weather, waves and ice, forecasts and, where practicable, sufficient additional information to enable simple weather charts to be prepared at sea and also to encourage the transmission of suitable facsimile weather charts.
 - (iii) To prepare and issue such publications as may be necessary for the efficient conduct of meteorological work at sea and to arrange, if practicable, for the publication and making available of daily weather charts for the information of departing ships.

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- (iv) To arrange for selected ships to be equipped with tested instruments (such as a barometer, a barograph, a psychrometer, and suitable apparatus for measuring sea temperature) for use in this service, and to take meteorological observations at main standard times for surface synoptic observations (at least four times daily, whenever circumstances permit) and to encourage other ships to take observations in a modified form, particularly when in areas where shipping is sparse; these ships to transmit their observations by radio for the benefit of the various official meteorological services, repeating the information for the benefit of ships in the vicinity. When in the vicinity of a tropical storm, or of a suspected tropical storm, ships should be encouraged to take and transmit their observations at more frequent intervals whenever practicable, bearing in mind navigational preoccupations of ships' officers during storm conditions.
- (v) To arrange for the reception and transmission by coast radio stations of weather messages from and to ships. Ships which are unable to communicate direct with shore shall be encouraged to relay their weather messages through ocean weather ships or through other ships which are in contact with shore.
- (vi) To encourage all masters to inform ships in the vicinity and also shore stations whenever they experience a wind speed of 50 knots or more (force 10 on the Beaufort scale).
- (vii) To endeavour to obtain a uniform procedure in regard to the international meteorological services already specified, and, as far as is practicable, to conform to the Technical Regulations and recommendations made by the World Meteorological Organization, to which the Contracting Governments may refer for study and advice any meteorological question which may arise in carrying out the present Convention.
- (c) The information provided for in this Regulation shall be furnished in form for transmission and transmitted in the order of priority prescribed by the Radio
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Regulations, and during transmission "to all stations" of meteorological information, forecasts and warnings, all ship stations must conform to the provisions of the Radio Regulations.

- (d) Forecasts, warnings, synoptic and other meteorological reports intended for ships shall be issued and disseminated by the national service in the best position to serve various zones and areas, in accordance with mutual arrangements made by the Contracting Governments concerned.

Regulation 5

Ice Patrol Service

- (a) The Contracting Governments undertake to continue an ice patrol and a service for study and observation of ice conditions in the North Atlantic. During the whole of the ice season the south-eastern, southern and south-western limits of the regions of icebergs in the vicinity of the Grand Banks of Newfoundland shall be guarded for the purpose of informing passing ships of the extent of this dangerous region; for the study of ice conditions in general; and for the purpose of affording assistance to ships and crews requiring aid within the limits of operation of the patrol ships. During the rest of the year the study and observation of ice conditions shall be maintained as advisable.
- (b) Ships and aircraft used for the ice patrol service and the study and observation of ice conditions may be assigned other duties by the managing Government, provided that such other duties do not interfere with their primary purpose or increase the cost of this service.

Regulation 6

Ice Patrol. Management and Cost

- (a) The Government of the United States of America agrees to continue the management of the ice patrol service and the study and observation of ice conditions, including the dissemination of information received therefrom. The Contracting Governments specially interested in these services undertake to contribute to the expense of maintaining and operating these services; each contribution to be based upon the total gross tonnage of the vessels of each

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contributing Government passing through the regions of icebergs guarded by the Ice Patrol; in particular, each Contracting Government specially interested undertakes to contribute annually to the expense of maintaining and operating these services a sum determined by the ratio which the total gross tonnage of that Contracting Government's vessels passing during the ice season through the regions of icebergs guarded by the Ice Patrol bears to the combined total gross tonnage of the vessels of all contributing Governments passing during the ice season through the regions of icebergs guarded by the Ice Patrol. Non-contracting Governments specially interested may contribute to the expense of maintaining and operating these services on the same basis. The managing Government will furnish annually to each contributing Government a statement of the total cost of maintaining and operating the Ice Patrol and of the proportionate share of each contributing Government.

- (b) Each of the contributing Governments has the right to alter or discontinue its contribution, and other interested Governments may undertake to contribute to the expense. The contributing Government which avails itself of this right will continue responsible for its current contribution up to 1 September following the date of giving notice of intention to alter or discontinue its contribution. To take advantage of the said right it must give notice to the managing Government at least six months before the said 1 September.
- (c) If, at any time, the United States Government should desire to discontinue these services, or if one of the contributing Governments should express a wish to relinquish responsibility for its pecuniary contribution, or to have its contribution altered, or another Contracting Government should desire to undertake to contribute to the expense, the contributing Governments shall settle the question in accordance with their mutual interests.
- (d) The contributing Governments shall have the right by common consent to make from time to time such alterations in the provisions of this Regulation and of Regulation 5 of this Chapter as appear desirable.

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- (e) Where this Regulation provides that a measure may be taken after agreement among the contributing Governments, proposals made by any Contracting Government for effecting such a measure shall be communicated to the managing Government which shall approach the other contributing Governments with a view to ascertaining whether they accept such proposals, and the results of the enquiries thus made shall be sent to the other contributing Governments and the Contracting Government making the proposals. In particular, the arrangements relating to contributions to the cost of the services shall be reviewed by the contributing Governments at intervals not exceeding three years. The managing Government shall initiate the action necessary to this end.

Regulation 7

Speed Near Ice

When ice is reported on or near his course the master of every ship at night is bound to proceed at a moderate speed or to alter his course so as to go well clear of the danger zone.

Regulation 8

Routeing

- (a) The practice of following, particularly in converging areas, routes adopted for the purpose of separation of the traffic including avoidance of passage through areas designated as areas to be avoided by ships or certain classes of ships, or for the purpose of avoiding unsafe conditions, has contributed to the safety of navigation and is recommended for use by all ships concerned.
- (b) The Organization is recognised as the only international body for establishing and adopting measures on an international level concerning routeing and areas to be avoided by ships or certain classes of ships. It will collate and disseminate to Contracting Governments all relevant information.
- (c) The selection of the routes and the initiation of action with regard to them, and the delineation of what constitutes converging areas, will be primarily the responsibility of the Governments concerned. In the development of routeing schemes which impinge upon international waters, or such other schemes they

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may wish adopted by the Organization, they will give due consideration to relevant information published by the Organization.

- (d) Contracting Governments will use their influence to secure the appropriate use of adopted routes and will do everything in their power to ensure adherence to the measures adopted by the Organization in connexion with routeing of ships.
- (e) Contracting Governments will also induce all ships proceeding on voyages in the vicinity of the Grand Banks of Newfoundland to avoid, as far as practicable, the fishing banks of Newfoundland north of latitude 43°N and to pass outside regions known or believed to be endangered by ice.

Regulation 9

Misuse of Distress Signals

The use of an international distress signal, except for the purpose of indicating that a ship or aircraft is in distress, and the use of any signal which may be confused with an international distress signal, are prohibited on every ship or aircraft.

Regulation 10

Distress Messages—Obligations and Procedures

- (a) The master of a ship at sea, on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so. If he is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress.
- (b) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress.

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- (c) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation when he learns that one or more ships other than his own have been requisitioned and are complying with the requisition.
- (d) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation, and, if his ship has been requisitioned, from the obligation imposed by paragraph (b) of this Regulation, if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer necessary.
- (e) The provisions of this Regulation do not prejudice the International Convention for the unification of certain rules with regard to Assistance and Salvage at Sea, signed at Brussels on 23 September 1910, particularly the obligation to render assistance imposed by Article 11 of that Convention.

Regulation 11

Signalling Lamps

All ships of over 150 tons gross tonnage, when engaged on international voyages, shall have on board an efficient daylight signalling lamp which shall not be solely dependent upon the ship's main source of electrical power.

Regulation 12

Shipborne Navigational Equipment

- (a) All ships of 1600 tons gross tonnage and upwards shall be fitted with a radar of a type approved by the Administration. Facilities for plotting radar readings shall be provided on the bridge in those ships.
- (b) All ships of 1600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio direction-finding apparatus complying with the provisions of Regulation 12 of Chapter IV. The Administration may, in areas where it considers it unreasonable or unnecessary for such apparatus to be carried, exempt any ship of less than 5000 tons gross tonnage from this requirement, due regard being had to the fact that radio direction-finding apparatus is of value both as a navigational instrument and as an aid to locating ships, aircraft or survival craft.

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- (c) All ships of 1600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with a gyro-compass in addition to the magnetic compass. The Administration, if it considers it unreasonable or unnecessary to require a gyro-compass, may exempt any ship of less than 5000 tons gross tonnage from this requirement.
- (d) All new ships of 500 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with an echo-sounding device.
- (e) Whilst all reasonable steps shall be taken to maintain the apparatus in an efficient condition, malfunction of the radar equipment, the gyro-compass or the echo-sounding device shall not be considered as making the ship unseaworthy or as a reason for delaying the ship in ports where repair facilities are not readily available.
- (f) All new ships of 1600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio equipment for homing on the radiotelephone distress frequency complying with the relevant provisions of paragraph (b) of Regulation 12 of Chapter IV.

Regulation 13

Manning

The Contracting Governments undertake, each for its national ships, to maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned.

Regulation 14

Aids to Navigation

The Contracting Governments undertake to arrange for the establishment and maintenance of such aids to navigation, including radio beacons and electronic aids as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned.

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Regulation 15

Search and Rescue

- (a) Each Contracting Government undertakes to ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea round its coasts. These arrangements should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, so far as possible, afford adequate means of locating and rescuing such persons.
- (b) Each Contracting Government undertakes to make available information concerning its existing rescue facilities and the plans for changes therein, if any.

Regulation 16

Life-Saving Signals

The following signals shall be used by life-saving stations and maritime rescue units when communicating with ships or persons in distress and by ships or persons in distress when communicating with life-saving stations and maritime rescue units. The signals used by aircraft engaged in search and rescue operations to direct ships are indicated in paragraph (d) below. An illustrated table describing the signals listed below shall be readily available to the officer of the watch of every ship to which this Chapter applies.

- (a) Replies from life-saving stations or maritime rescue units to distress signals made by a ship or person:

<i>Signal</i>	<i>Signification</i>
<i>By day</i> —Orange smoke signal or combined light and sound signal (thunderlight) consisting of three single signals which are fired at intervals of approximately one minute.	"You are seen— assistance will be given as soon as possible."
<i>By night</i> —White star rocket consisting of three single signals which are fired at intervals of approximately one minute.	(Repetition of such signals shall have the same meaning.)

If necessary the day signals may be given at night or the night signals by day.

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- (b) Landing signals for the guidance of small boats with crews or persons in distress:

<i>Signal</i>	<i>Signification</i>
<p><i>By day</i>—Vertical motion of a white flag or the arms or firing of a green star-signal or signalling the code letter "K" (-.-) given by light or sound-signal apparatus.</p>	<p>"This is the best place to land."</p>
<p><i>By night</i>—Vertical motion of a white light or flare, or firing of a green star-signal or signalling the code letter "K" (-.-) given by light or sound-signal apparatus. A range (indication of direction) may be given by placing a steady white light or flare at a lower level and in line with the observer.</p>	
<p><i>By day</i>—Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.</p>	<p>"Landing here highly dangerous."</p>
<p><i>By night</i>—Horizontal motion of a white light or flare or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.</p>	

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By day—Horizontal motion of a white flag, followed by the placing of the white flag in the ground and the carrying of another white flag in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by the code letter "R" (.-) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (.-) if a better landing place for the craft in distress is located more to the left in the direction of approach.

"Landing here highly dangerous. A more favourable location for landing is in the direction indicated."

By night—Horizontal motion of a white light or flare, followed by the placing of the white light or flare on the ground and the carrying of another white light or flare in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by code letter "R" (.-) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (.-) if a better landing place for the craft in distress is located more to the left in the direction of approach.

"Landing here highly dangerous. A more favourable location is in the direction indicated."

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- (c) Signals to be employed in connexion with the use of shore-life saving apparatus:

<i>Signal</i>	<i>Signification</i>
<i>By day</i> —Vertical motion of a white flag or the arms or firing of a green star—	In general— "Affirmative. Specifically: "Rocket line is held."
<i>By night</i> —Vertical motion of a white light or flare or firing of a green star-signal.	"Tail block is made fast." "Hawser is made fast." "Man is in the breeches buoy." "Haul away."
<i>By day</i> —Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal.	In general— "Negative. Specifically: "Slack away." "Avast hauling."
<i>By night</i> —Horizontal motion of a white light or flare or firing of a red star-signal.	

- (d) Signals used by aircraft engaged on search and rescue operations to direct ships towards an aircraft, ship or person in distress (see explanatory Note below):

- (i) The following procedures performed in sequence by an aircraft mean that the aircraft is directing a surface craft towards an aircraft or a surface craft in distress:

- (1) circling the surface craft at least once;
- (2) crossing the projected course of the surface craft close ahead at a low altitude, opening and closing the throttle or changing the propeller pitch;
- (3) heading in the direction in which the surface craft is to be directed.

Repetition of such procedures has the same meaning.

- (ii) The following procedure performed by an aircraft means that the assistance of the surface craft to which the signal is directed is no longer required:

—crossing the wake of the surface craft close astern at a low altitude, opening and closing the throttle or changing the propeller pitch.

Note: Advance notification of changes in these signals will be given by the Organization as necessary.

Regulation 17

Pilot Ladders and Mechanical Pilot Hoists

Ships engaged on voyages in the course of which pilots are likely to be employed shall comply with the following requirements:

(a) *Pilot Ladders*

- (i) The ladder shall be efficient for the purpose of enabling pilots to embark and disembark safely, kept clean and in good order and may be used by officials and other persons while a ship is arriving at or leaving a port.
- (ii) The ladder shall be secured in a position so that it is clear from any possible discharges from the ship, that each step rests firmly against the ship's side, that it is clear so far as is practicable of the finer lines of the ship and that the pilot can gain safe and convenient access to the ship after climbing not less than 1.5 metres (5 feet) and not more than 9 metres (30 feet). A single length of ladder shall be used capable of reaching the water from the point of access to the ship; in providing for this due allowance shall be made for all conditions of loading and trim of the ship and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 metres (30 feet), access from the pilot ladder to the ship shall be by means of an accommodation ladder or other equally safe and convenient means.

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- (iii) The steps of the pilot ladder shall be:
- (1) of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;
 - (2) not less than 480 millimetres (19 inches) long, 115 millimetres (4½ inches) wide, and 25 millimetres (1 inch) in depth, excluding any non-slip device;
 - (3) equally spaced not less than 300 millimetres (12 inches) nor more than 380 millimetres (15 inches) apart and be secured in such a manner that they will remain horizontal.
- (iv) No pilot ladder shall have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder and any steps so secured shall be replaced as soon as reasonably practicable by steps secured in position by the method used in the original construction of the ladder. When any replacement step is secured to the side ropes of the ladder by means of grooves in the sides of the step, such grooves shall be in the longer sides of the step.
- (v) The side ropes of the ladder shall consist of two uncovered manila ropes not less than 60 millimetres (2¼ inches) in circumference on each side. Each rope shall be continuous with no joints below the top step. Two man ropes properly secured to the ship and not less than 65 millimetres (2 inches) in circumference and a safety line shall be kept at hand ready for use if required.
- (vi) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1·80 metres (5 feet 10 inches) long shall be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten shall be on the fifth step from the bottom of the
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ladder and the interval between any batten and the next shall not exceed 9 steps.

- (vii) Means shall be provided to ensure safe and convenient passage on to or into and off the ship between the head of the pilot ladder or of any accommodation ladder or other appliance provided. Where such passage is by means of a gateway in the rails or bulwark, adequate handholds shall be provided. Where such passage is by means of a bulwark ladder, such ladder shall be securely attached to the bulwark rail or platform and two handhold stanchions shall be fitted at the point of boarding or leaving the ship not less than 0.70 metre (2 feet 3 inches) nor more than 0.80 metre (2 feet 7 inches) apart. Each stanchion shall be rigidly secured to the ship's structure at or near its base and also at a higher point, shall be not less than 40 millimetres (1½ inches) in diameter and shall extend not less than 1.20 metres (3 feet 11 inches) above the top of the bulwark.
- (viii) Lighting shall be provided at night such that both the pilot ladder overside and also the position where the pilot boards the ship shall be adequately lit. A lifebuoy equipped with a self-igniting light shall be kept at hand ready for use. A heaving line shall be kept at hand ready for use if required.
- (ix) Means shall be provided to enable the pilot ladder to be used on either side of the ship.
- (x) The rigging of the ladder and the embarkation and disembarkation of a pilot shall be supervised by a responsible officer of the ship.
- (xi) Where on any ship constructional features such as rubbing bands would prevent the implementation of any of these provisions, special arrangements shall be made to the satisfaction of the Administration to ensure that persons are able to embark and disembark safely.

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(b) *Mechanical Pilot Hoists*

- (i) A mechanical pilot hoist, if provided, and its ancillary equipment shall be of a type approved by the Administration. It shall be of such design and construction as to ensure that the pilot can be embarked and disembarked in a safe manner including a safe access from the hoist to the deck and vice versa.
- (ii) A pilot ladder complying with the provisions of paragraph (a) of this Regulation shall be kept on deck adjacent to the hoist and available for immediate use.

Regulation 18

VHF Radiotelephone Stations

When a Contracting Government requires ships navigating in an area under its sovereignty to be provided with a Very High Frequency (VHF) radiotelephone station to be used in conjunction with a system which it has established in order to promote safety of navigation, such station shall comply with the provisions of Regulation 17 of Chapter IV and shall be operated in accordance with Regulation 8 of Chapter IV.

Regulation 19

Use of the Automatic Pilot

- (a) In areas of high traffic density, in conditions of restricted visibility and in all other hazardous navigational situations where the automatic pilot is used, it shall be possible to establish human control of the ship's steering immediately.
- (b) In circumstances as above, it shall be possible for the officer of the watch to have available without delay the services of a qualified helmsman who shall be ready at all times to take over steering control.
- (c) The change-over from automatic to manual steering and vice versa shall be made by or under the supervision of a responsible officer.

Regulation 20

Nautical Publications

All ships shall carry adequate and up-to-date charts, sailing directions, lists of lights, notices to mariners, tide tables and all other nautical publications necessary for the intended voyage.

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Regulation 21

International Code of Signals

All ships which in accordance with the present Convention are required to carry a radiotelegraph or a radiotelephone installation shall carry the International Code of Signals. This publication shall also be carried by any other ship which in the opinion of the Administration has a need to use it.

SCHEDULE 3

Section 53

**PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL
CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974**

ARTICLE I

General Obligations

The Parties to the present Protocol undertake to give effect to the provisions of the present Protocol and the Annex hereto which shall constitute an integral part of the present Protocol. Every reference to the present Protocol constitutes at the same time a reference to the Annex hereto.

ARTICLE II

Application

1. The provisions of Articles II, III (other than paragraph (a)), IV, VI(b), (c) and (d), VII and VIII of the International Convention for the Safety of Life at Sea, 1974 (hereinafter referred to as "the Convention") are incorporated in the present Protocol, providing that references in those Articles to the convention and to Contracting Governments shall be taken to mean references to the present Protocol and to the Parties to the present Protocol, respectively.
2. Any ship to which the present Protocol applies shall comply with the provisions of the Convention, subject to the modifications and additions set out in the present Protocol.
3. With respect to the ships of non-parties to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships.

ARTICLE III

Communication of Information

The Parties to the present Protocol undertake to communicate to, and deposit with, the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization"), a list of nominated surveyors or recognized organizations which are authorized to act on their behalf in the administration of measures for safety of life at sea for circulation to the Parties for information of their officers. The Administration

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shall therefore notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

ARTICLE IV

Signature, Ratification, Acceptance, Approval and Accession

1. The present Protocol shall be open for signature at the Headquarters of the Organization from 1 June 1978 to 1 March 1979 and shall thereafter remain open for accession. Subject to the provisions of paragraph 3 of this Article, States may become Parties to the present Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
2. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
3. The present Protocol may be signed without reservation, ratified, accepted, approved or acceded to only by States which have signed without reservation, ratified, accepted, approved or acceded to the Convention.

ARTICLE V

Entry into Force

1. The present Protocol shall enter into force six months after the date on which not less than fifteen States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become Parties to it in accordance with Article IV of the present Protocol, provided however that the present Protocol shall not enter into force before the Convention has entered into force.
2. Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Protocol enters into force shall take effect three months after the date of deposit.
3. After the date on which an amendment to the present Protocol is deemed to have been accepted under Article VIII of the Convention, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

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ARTICLE VI

Denunciation

1. The present Protocol may be denounced by any Party at any time after the expiry of five years from the date on which the present Protocol enters into force for that party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Organization.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General of the Organization.
4. A denunciation of the Convention by a Party shall be deemed to be a denunciation of the present Protocol by that Party.

ARTICLE VII

Depositary

1. The present Protocol shall be deposited with the Secretary-General of the Organization (hereinafter referred to as "the Depositary").
2. The Depositary shall:
 - (a) inform all States which have signed the present Protocol or acceded thereto of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which it was received and the date on which the denunciation takes effect;
 - (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.
3. As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

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ARTICLE VIII

Languages

The present Protocol is established in a single original in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

ANNEX

**MODIFICATIONS AND ADDITIONS TO THE INTERNATIONAL
CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974**

CHAPTER I

GENERAL PROVISIONS

PART A—APPLICATION, DEFINITIONS, ETC.

Regulation 2

Definitions

The following paragraph is added to the existing text:

- (n) "**Age of a ship**" means the elapsed period of time determined from the year of build as indicated on the ship's registry papers.

CHAPTER V

SAFETY OF NAVIGATION

Regulation 12

Shipborne Navigational Equipment

The existing text of paragraph (a) is replaced by the following:

- (a) All ships of 1,600 tons gross tonnage and upwards but less than 10,000 tons gross tonnage shall be fitted with at least one radar. All ships of 10,000 tons gross tonnage and upwards shall be fitted with at least two radars, each capable of operating independently of the other. All radars fitted in compliance with this Regulation shall be of a type approved by the Administration and shall conform to operational standards not inferior to those adopted by the

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Organization. Facilities for plotting radar readings shall be provided on the bridge in those ships.

Regulation 19

Use of the Automatic Pilot

The following paragraph is added to the existing text:

- (d) The manual steering shall be tested after prolonged use of the automatic pilot, and before entering areas where navigation demands special caution.

The following new Regulations are added to this Chapter:

Regulation 19-1

Operation of Steering Gear

In areas where navigation demands special caution, ships shall have more than one steering gear power unit in operation when such units are capable of simultaneous operation.

Regulation 19-2

Steering Gear—Testing and Drills

- (a) Within 12 hours before departure, the ship's steering gear shall be checked and tested by the ship's crew. The test procedure shall include, where applicable, the operation of the following:
 - (i) the main steering gear;
 - (ii) the auxiliary steering gear;
 - (iii) the remote steering gear control systems;
 - (iv) the steering positions located on the navigating bridge;
 - (v) the emergency power supply;
 - (vi) the rudder angle indicators in relation to the actual position of the rudder;
 - (vii) the remote steering gear control system power failure alarms; and
 - (viii) the steering gear power unit failure alarms.

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- (b) The checks and tests shall include:
 - (i) the full movement of the rudder according to the required capabilities of the steering gear;
 - (ii) a visual inspection of the steering gear and its connecting linkage; and
 - (iii) the operation of the means of communication between the navigating bridge and steering gear compartment.
- (c)
 - (i) Simple operating instructions with a block diagram showing the change-over procedures for remote steering gear control systems and steering gear power units shall be permanently displayed on the navigating bridge and in the steering gear compartment.
 - (ii) All officers concerned with the operation and/or maintenance of steering gear shall be familiar with the operation of the steering systems fitted on the ship and with the procedures for changing from one system to another.
- (d) In addition to the routine checks and tests prescribed in paragraphs (a) and (b) of this Regulation, emergency steering drills shall take place at least once every three months in order to practise emergency steering procedures. These drills shall include direct control from within the steering gear compartment, the communications procedure with the navigating bridge and, where applicable, the operation of alternative power supplies.
- (e) The Administration may waive the requirement to carry out the checks and tests prescribed in paragraphs (a) and (b) of this Regulation for ships which regularly ply on voyages of short duration. Such ships shall carry out these checks and tests at least once every week.
- (f) The date upon which the checks and tests prescribed in paragraphs (a) and (b) of this Regulation are carried out and the date and details of emergency steering drills carried out under paragraph (d) of this Regulation, shall be recorded in the log book as may be prescribed by the Administration.

SCHEDULE 4

Section 66

PARTICULAR POWERS OF THE DIRECTOR

Sch. 4
(Heading)
amended by
No. 77/2001
s. 31(3)(h).

CERTIFICATES OF COMPETENCY

1. To issue, cancel or suspend certificates of competency for the crew of vessels.
2. To inquire into the conduct of people holding certificates of competency.
3. To detain vessels crewed by people not holding the necessary certificates of competency.

* * * * *

Sch. 4
(Heading
preceding
item 4)
repealed by
No. 9/2004
s. 22(1)(a).

* * * * *

Sch. 4
items 4–6
repealed by
No. 9/2004
s. 22(1)(b).

PILOTS AND PILOT EXEMPT MASTERS

7. To issue, cancel or suspend the licences of pilots and of pilot exempt masters.
8. To inquire into the conduct of pilots and pilot exempt masters.
- 8AA. To impose conditions on licences of pilots or pilot exempt masters and to vary any conditions so imposed.

Sch. 4
item 8AA
inserted by
No. 28/1999
s. 13(1).

Marine Act 1988
Act No. 52/1988

Sch. 4

Sch. 4
(Heading
preceding
item 8A)
inserted by
No. 82/1995
s. 179(1).

HARBOUR MASTERS

Sch. 4 item 8A
inserted by
No. 82/1995
s. 179(1),
amended by
No. 9/2004
s. 22(2).

8A. To issue, cancel or suspend the licences of harbour masters and to amend, vary or revoke licences of harbour masters.

Sch. 4 item 8B
inserted by
No. 82/1995
s. 179(1).

8B. To inquire into the conduct of harbour masters.

Sch. 4
(Heading
preceding
item 8C)
inserted by
No. 28/1999
s. 13(2).

PILOTAGE SERVICES PROVIDERS

Sch. 4 item 8C
inserted by
No. 28/1999
s. 13(2).

8C. To register or renew the registration of pilotage services providers.

Sch. 4 item 8D
inserted by
No. 28/1999
s. 13(2).

8D. To issue certificates of registration to pilotage services providers.

Sch. 4 item 8E
inserted by
No. 28/1999
s. 13(2).

8E. To cancel or suspend registration of pilotage services providers.

Sch. 4 item 8F
inserted by
No. 28/1999
s. 13(2).

8F. To inspect vessels and equipment of pilotage services providers to ensure compliance with safety standards.

CREWING REQUIREMENTS

9. To determine crewing requirements for vessels.

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SURVEY OF VESSELS

10. To issue and revoke certificates of survey for vessels and for that purpose to determine the tests and requirements to be met before a certificate of survey is issued, including the number of passengers that can be carried.
11. To survey and register all vessels.
12. To cause vessels to be inspected to make sure that the vessels and their equipment comply with this Act and the regulations.
13. To cause unseaworthy vessels to be detained.

DECK LINES AND LOAD LINES

14. To make sure that vessels are marked with appropriate deck lines and load lines.
15. To determine—
 - (a) the manner of measuring the length and other dimensions of a vessel; and
 - (b) the strength of vessels and the manner of measuring that strength; and
 - (c) the manner of calculating and assigning freeboards; and
 - (d) the specification of marks and lines associated with deck lines and load lines and the form and manner of marking them; and
 - (e) the loading limits of vessels; and
 - (f) any necessary approvals and the form and manner of applications; and
 - (g) particulars to be included in official log books.

TONNAGE

- 15A. To determine the tonnage of vessels.

Sch. 4
(Heading
preceding
item 15A)
inserted by
No. 82/1995
s. 179(2).

Sch. 4
item 15A
inserted by
No. 82/1995
s. 179(2).

Marine Act 1988
Act No. 52/1988

Sch. 4

NAVIGATION

16. To determine the charts, appliances and other equipment that must be carried by vessels for the safe navigation of vessels and the safety of life at sea.
17. To detain vessels not equipped as required.
18. To determine the requirements for preventing collisions and with respect to lights, fog-signals and sailing rules.
- 18A. To provide and maintain, in accordance with the standards developed by the Director, navigation aids in State waters for which the Director is the waterway manager.
- 18B. To develop standards for the provision and maintenance of navigation aids in State waters the navigation of which is under the control of Any port management body, local port manager or any waterway manager.
- 18C. To give directions (not being directions that would endanger the life of any person on the vessel) prohibiting the entry into, or requiring the removal from, any State waters of any vessel that it has reasonable cause to believe is unseaworthy or in imminent danger of sinking and causing an obstruction to navigation or is in imminent danger of causing serious damage to the marine environment or property in State waters.
- 18D. If it considers it desirable to do so for the safety or convenience of navigation in State waters, by notice served on the owner or person in possession or control of a light (including a fire, lamp, illuminated sign, street light or other illuminating device) to require that owner or person to extinguish, remove, relocate, alter or modify the light as specified in the notice or do or refrain from doing any specified thing in relation to the light.

Sch. 4
item 18A
inserted by
No. 82/1995
s. 179(3),
amended by
Nos 77/2001
s. 31(3)(i),
85/2003
s. 34(2)(b),
substituted by
No. 9/2004
s. 25(Sch.
item 9(a)).

Sch. 4
item 18B
inserted by
No. 82/1995
s. 179(3),
amended by
Nos 85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 9(b)).

Sch. 4
item 18C
inserted by
No. 82/1995
s. 179(3).

Sch. 4
item 18D
inserted by
No. 82/1995
s. 179(3).

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18E. To control navigation and vessel movements in State waters for which the Director is the waterway manager.

Sch. 4
item 18E
inserted by
No. 82/1995
s. 179(3),
amended by
No. 85/2003
s. 34(2)(b),
substituted by
No. 9/2004
s. 25(Sch.
item 9(c)).

18F. To designate anchorage areas in State waters for which the Director is the waterway manager.

Sch. 4
item 18F
inserted by
No. 82/1995
s. 179(3),
amended by
No. 85/2003
s. 34(2)(b),
substituted by
No. 9/2004
s. 25(Sch.
item 9(c)).

18G. To develop standards for the dredging and maintenance of channels the navigation of which is under the control of the Victorian Regional Channels Authority or a channel operator or any other port management body, local port manager or any waterway manager.

Sch. 4
item 18G
inserted by
No. 82/1995
s. 179(3),
amended by
Nos 85/2003
s. 34(2)(b),
9/2004
s. 25(Sch.
item 9(d)).

18H. To direct persons who manage and control channels to publish information about the depths and configurations of the channels.

Sch. 4
item 18H
inserted by
No. 82/1995
s. 179(3).

ACCIDENTS

19. To inquire into—

- (a) accidents involving any vessel; or
- (b) incidents tending to the loss or destruction of, or damage to, any vessel or other property or tending to endanger any person.

Sch. 4
item 19
substituted by
No. 20/1993
s. 26.

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Victorian Legislation and Parliamentary Documents

Sch. 4
item 20
amended by
No. 82/1995
s. 154(15)(a).

Sch. 4
item 20(a)
amended by
Nos 82/1995
s. 154(15)(b),
77/2001
s. 31(3)(i).

Sch. 4
item 20(b)
amended by
Nos 82/1995
s. 154(15)(b),
77/2001
s. 31(3)(i).

Sch. 4
item 21A
inserted by
No. 77/2001
s. 20.

Sch. 4
(Heading
preceding
item 22)
inserted by
No. 82/1995
s. 179(4).

Sch. 4 item 22
inserted by
No. 82/1995
s. 179(4),
substituted by
No. 77/2001
s. 21(1).

Sch. 4
item 22(a)
amended by
No. 9/2004
s. 25(Sch.
item 10).

AGREEMENTS

20. To enter into agreements or contracts with government departments or other public statutory bodies with respect to—
- (a) the exercise by the Director and the government department or other public statutory body of their respective functions or the carrying out or providing by the Director for the government department or other public statutory body of any works or services; or
 - (b) the use or joint use by the Director and the government department or other public statutory body of their respective facilities or the services of their respective staff.
21. To enter into agreements on marine matters with a department or public statutory body of the Commonwealth or of another State or a Territory of the Commonwealth.
- 21A. To enter into agreements with any person or body concerning the provision of services or facilities in relation to marine pollution incidents.

VICTORIAN MARINE POLLUTION CONTINGENCY PLAN

22. To direct—
- (a) port management bodies, local port managers, waterway managers, channel operators, port operators (as defined in the **Port Services Act 1995**), committees of management of Crown land within designated ports, oil terminal operators and chemical terminal operators; and

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- (b) any other person or body, or person or body who is a member of a class of person or body, specified in an Order made by the Governor in Council for the purposes of this clause and published in the Government Gazette—

to participate in the Victorian Marine Pollution Contingency Plan by providing and maintaining equipment, training personnel and responding to marine pollution incidents as directed by the Director.

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SCHEDULE 5

Section 105

SUBJECT MATTER FOR REGULATIONS

CERTIFICATES OF COMPETENCY

1. Applications for certificates of competency, the dates by which applications must be made and the information and evidence that must accompany applications.
2. Requirements that must be complied with before certificates of competency may be granted, varied or renewed.
3. The conditions on which certificates of competency may be granted, varied or renewed.
4. The date on which a certificate of competency commences and the period for which it remains in force.
5. The examination (including medical examination) of applicants for certificates of competency.
6. The grades of certificates of competency that the Director may issue.
7. The cancellation or suspension of certificates of competency.
8. The acceptance by the Director of certificates or a class of certificate issued by an authority as being equivalent to certificates of competency issued by the Director and the withdrawal of that acceptance.

Sch. 5 item 6
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5 item 8
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5
(Heading
preceding
item 9)
repealed by
No. 9/2004
s. 23(1)(a).

Sch. 5
items 9–12
repealed by
No. 9/2004
s. 23(1)(b).

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*	*	*	*	*	Sch. 5 item 13 amended by No. 77/2001 s. 31(3)(j), repealed by No. 9/2004 s. 23(1)(b).
*	*	*	*	*	Sch. 5 items 14, 15 repealed by No. 9/2004 s. 23(1)(b).
*	*	*	*	*	Sch. 5 item 16 amended by No. 77/2001 s. 31(3)(j), repealed by No. 9/2004 s. 23(1)(b).

PILOTS AND PILOT EXEMPT MASTERS

17. Applications for pilot licences and exemption certificates, the dates by which applications must be made and the information and evidence that must accompany applications.
18. Requirements to be complied with before pilot licences or exemption certificates may be granted, varied or renewed.
19. The conditions on which pilot licences or exemption certificates may be granted, varied or renewed.
20. The date on which pilot licences or exemption certificates commence and the period for which they remain in force.
21. The examination of people as to their competency to act as pilots.
22. The examination of masters as to their competency to act as pilot to the vessels of which they are masters.
23. Fixing the age at which licensed pilots must retire from service.

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Sch. 5
(Heading
preceding
item 23A)
inserted by
No. 82/1995
s. 180(1).

HARBOUR MASTERS

Sch. 5
item 23A
inserted by
No. 82/1995
s. 180(1).

23A. Applications for harbour master licences, the dates by which applications must be made and the information and evidence that must accompany applications.

Sch. 5
item 23B
inserted by
No. 82/1995
s. 180(1).

23B. Requirements to be complied with before harbour master licences may be granted, varied or renewed.

Sch. 5
item 23C
inserted by
No. 82/1995
s. 180(1).

23C. The conditions on which harbour master licences may be granted, varied or renewed.

Sch. 5
item 23D
inserted by
No. 82/1995
s. 180(1).

23D. The date on which harbour master licences commence and the period for which they remain in force.

Sch. 5
item 23E
inserted by
No. 82/1995
s. 180(1).

23E. The qualifications and experience required on the part of harbour masters and the examination of people as to their competency to act as harbour masters.

LOCAL KNOWLEDGE REQUIREMENTS

24. The examination of masters as to their local knowledge and the issuing of local knowledge certificates.

25. The circumstances in which a master with a local knowledge certificate need not use the services of a pilot.

CREWING OF VESSELS

Sch. 5 item 26
amended by
No. 9/2004
s. 23(1)(c).

26. The crewing of vessels generally or any class of vessel, and the certificates of competency that are required to be held by the crew of any vessel or any class of vessel.

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27. The accommodation to be provided, on vessels generally or any class of vessel, for the crew.

SURVEY OF VESSELS

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| 28. The survey of vessels by surveyors or inspectors appointed by the Director. | Sch. 5 item 28 amended by No. 77/2001 s. 31(3)(j). |
| 28A. The carriage and display of certificates of survey or certified copies of such certificates on vessels. | Sch. 5 item 28A inserted by No. 93/2000 s. 24(1). |
| 28B. Requirements to be complied with before a certificate of survey may be granted. | Sch. 5 item 28B inserted by No. 77/2001 s. 30(a). |
| 28C. Applying any requirements referred to in clause 28B to government vessels. | Sch. 5 item 28C inserted by No. 77/2001 s. 30(a). |
| 28D. The issue of, and the conditions applying to, permits for vessels undergoing sea trials. | Sch. 5 item 28D inserted by No. 77/2001 s. 30(a). |

CONSTRUCTION AND EQUIPMENT OF VESSELS

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| 29. The construction of vessels, including prescribing the materials to be used in the construction of vessels, the handling of those materials and the standards for them. | |
| 30. The machinery and other equipment that must be installed in vessels. | |
| 30A. The use and maintenance of machinery and other equipment that must be installed in vessels. | Sch. 5 item 30A inserted by No. 77/2001 s. 30(b). |

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Sch. 5
item 30B
inserted by
No. 77/2001
s. 30(b).

Sch. 5
item 30C
inserted by
No. 77/2001
s. 30(b).

30B. Requirements to ensure that machinery and other equipment that must be installed in vessels is accessible.

30C. Requiring and regulating the installation and use of radios and compasses.

31. The adjustment of compasses and the transmission of deviation tables.

32. Requiring and regulating the installation and use of radiotelephony on vessels.

33. The division of vessels into classes having regard to length, gross tonnage or propulsion power.

34. The measurement of vessels, including the determination of tonnage.

FEES, RATES AND CHARGES

35. The matters for which fees, rates and charges are payable, the amounts of those fees, rates and charges and the people by whom they are payable.

36. The method of payment and collection of those fees, rates and charges.

MARINE INFRINGEMENTS

37. Prescribing marine infringements for which a marine infringement notice may be served.

38. The form of a marine infringement notice and the particulars to be contained in it.

39. The form of a withdrawal notice.

40. The method of service of a withdrawal notice.

41. The penalties for any marine infringements.

42. The method of payment of penalties.

43. The form of the document setting out particulars of prior convictions.

44. The form of notices to be endorsed on the document setting out particulars of prior convictions.

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Act No. 52/1988

Sch. 5

REGISTRATION OF VESSELS

45. The categories of vessels for registration purposes.
46. The exemption of classes of vessel from the requirement to be registered.
47. Applications for registration, renewal of registration or transfer of registration, the dates by which applications must be made and the information and evidence to accompany applications.
48. Requirements to be complied with before registration may be granted, renewed or transferred, including the setting of standards that must be met.
49. The conditions on which registration may be granted or renewed.
50. The date on which registration commences and the period for which it remains in force, including making special provision for shortening the period for registration without any reduction in fees where application for registration is made outside the prescribed time.
51. Procedures for achieving a common registration expiry date for two or more vessels registered in the same name.
52. The grounds on which registration may be cancelled or suspended and the procedures to be followed in those cases.
53. The inspection and testing of vessels.
54. The grounds on which, and the procedures by which, the use of a vessel on State waters may be prohibited and the conditions on which a prohibition may be made or revoked.
55. Requiring the Director to be notified of alterations or damage to registered vessels. **Sch. 5 item 55**
amended by
No. 77/2001
s. 31(3)(j).
56. Requiring the Director to be notified of changes in the ownership or description of registered vessels. **Sch. 5 item 56**
amended by
No. 77/2001
s. 31(3)(j).
57. Applications for registration permits, the information and evidence to accompany applications, the grounds on which applications may be refused, the procedure to be followed where an application is refused, and the conditions on which registration permits may be granted.

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Sch. 5 item 59
amended by
No. 9/2004
s. 23(2).

58. The issue of identification numbers, registration labels and plates, and certificates of registration, including the issue of duplicates; the circumstances in which registration labels and plates must be returned and the procedures for their return.
59. The issue of special plates or marks, the circumstances in which they may be issued, the information that is to be contained on them and the conditions on which they may be used.

SAFE NAVIGATION

Sch. 5
item 60A
inserted by
No. 82/1995
s. 180(2).

60. The safe operation of vessels.
- 60A. The safety of navigation in State waters.

Sch. 5
item 60B
inserted by
No. 82/1995
s. 180(2).

- 60B. The safe anchoring, mooring, riding and securing of vessels in State waters.

Sch. 5
item 60C
inserted by
No. 82/1995
s. 180(2).

- 60C. The stability, direction and control of vessels in State waters.

Sch. 5
item 60D
inserted by
No. 82/1995
s. 180(2).

- 60D. The slipping, careening and repairing of vessels in State waters.

Sch. 5
item 60E
inserted by
No. 82/1995
s. 180(2).

- 60E. Cutting and welding operations on vessels in State waters and the safety measures required for the protection of persons and property.

Sch. 5
item 60F
inserted by
No. 82/1995
s. 180(2).

- 60F. Ballast and ballast water.

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60G. The removal of wrecks and obstructions to navigation in State waters.	Sch. 5 item 60G inserted by No. 82/1995 s. 180(2).
60GA. Requirements concerning the disposal of obstructions to navigation removed under section 99B.	Sch. 5 item 60GA inserted by No. 77/2001 s. 30(c).
60H. The regulation and control of the use of lights and fire on board any vessel in State waters.	Sch. 5 item 60H inserted by No. 82/1995 s. 180(2).
60I. Fire-fighting on board vessels in State waters.	Sch. 5 item 60I inserted by No. 82/1995 s. 180(2).
60J. Access to and from vessels in State waters and the safety of persons embarking or disembarking from such vessels.	Sch. 5 item 60J inserted by No. 82/1995 s. 180(2).
60K. Bunkering operations.	Sch. 5 item 60K inserted by No. 82/1995 s. 180(2).
60L. The provision, use and maintenance of navigation lights or shapes.	Sch. 5 item 60L inserted by No. 77/2001 s. 30(d).
60M. The provision, use and maintenance of sound signalling devices.	Sch. 5 item 60M inserted by No. 77/2001 s. 30(d).

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Sch. 5
item 60N
inserted by
No. 77/2001
s. 30(d).

60N. The carriage of stability data.

Sch. 5
item 60O
inserted by
No. 77/2001
s. 30(d).

60O. Requiring operators of vessels and passengers to wear or carry safety equipment.

Sch. 5
item 60P
inserted by
No. 77/2001
s. 30(d).

60P. The operation of hire and drive vessels.

61. The prevention of collisions between vessels.

62. The use of State waters by bathers and others, to the extent that the use affects the operation of vessels.

ALCOHOL

Sch. 5
item 62A
inserted by
No. 5/1990
s. 18.

62A. Devices for the purposes of section 29; the handling, storage, use and maintenance of those devices; the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results.

Sch. 5
item 62B
inserted by
No. 5/1990
s. 18.

62B. The handling, storage, use and maintenance of breath analysing instruments used for the purposes of section 31 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results.

Sch. 5
item 62C
inserted by
No. 5/1990
s. 18,
amended by
Nos 23/1994
s. 118(Sch. 1
item 34.6),
14/2000 s. 30.

62C. The methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples.

Sch. 5
item 62CA
inserted by
No. 93/2000
s. 24(2).

62CA. The persons responsible for the safe-keeping of samples of blood taken under section 31A and the methods of storage to be used by them.

Marine Act 1988
Act No. 52/1988

Sch. 5

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| 62CB. The delivering of portions of samples of blood taken under section 31A to the people from whom they are taken and to members of the police force. | Sch. 5
item 62CB
inserted by
No. 93/2000
s. 24(2). |
| 62D. The methods to be used by analysts in determining the concentration of alcohol in a blood sample. | Sch. 5
item 62D
inserted by
No. 5/1990
s. 18. |
| 62E. The procedures to be adopted in transmitting samples of blood to an analyst for analysis. | Sch. 5
item 62E
inserted by
No. 5/1990
s. 18. |
| 62F. The regulation and control of people concerned in the taking, delivering and analysis of blood samples. | Sch. 5
item 62F
inserted by
No. 5/1990
s. 18. |

CARRIAGE OF GOODS

63. The safe carriage of goods.

MARINE POLLUTION

**Sch. 5
(Heading
preceding
item 63A)
inserted by
No. 82/1995
s. 180(3).**

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|---|---|
| 63A. The implementation, administration and co-ordination of the Victorian Marine Pollution Contingency Plan. | Sch. 5
item 63A
inserted by
No. 82/1995
s. 180(3). |
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PASSENGERS

64. Regulating the conduct of passengers, including empowering the person in charge of a vessel to require people to leave the vessel.
65. The maximum number of passengers to be carried on particular vessels or classes of vessel.

Marine Act 1988
Act No. 52/1988

Sch. 5

Sch. 5
item 65A
inserted by
No. 77/2001
s. 30(e).

Sch. 5
item 65B
inserted by
No. 77/2001
s. 30(e).

65A. The refuelling of vessels if passengers are on board.

65B. Prohibiting passengers from doing anything (including smoking) that might create a risk of explosion while a vessel is being refuelled.

INSPECTIONS AND INVESTIGATIONS

- 66. Manner of conducting inspections and investigations.
- 67. Remuneration of assessors appointed under section 58.
- 68. Costs of inspections and investigations.
- 69. Witnesses expenses.
- 70. Enforcing the attendance of witnesses.

DECK AND LOAD LINES

- 71. The manner of determining the length of vessels and of making other measurements relevant to the manner and conditions of assignment of deck and load lines.
- 72. The necessary strength of vessels and the manner of determining that strength.
- 73. Surveys and inspections of vessels for the purposes of deck and load lines.
- 74. The manner of calculation and assignment of freeboards.
- 75. The specifications of the marks and lines to be used as, or associated with, deck lines and load lines and the manner of using those marks and lines in order to indicate the maximum load line under different circumstances, in different seasons and at different places.
- 76. The limits of loading vessels under different circumstances, in different seasons and at different places and the manner of determining those limits.
- 77. The approvals and certificates that are required for load lines and the manner and conditions of giving and issuing them or granting exemptions from the requirements.
- 78. The circumstances in which certificates may be extended or cancelled.

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79. Particulars that for the purposes of deck and load lines are required to be included in the official log book of a vessel and the manner of publicising the particulars on board the vessel and otherwise.

80. The application of the regulations to the owner or master, or both the owner and master, of a vessel.

TONNAGE

Sch. 5
(Heading
preceding
item 81)
inserted by
No. 82/1995
s. 180(4).

81. The ascertainment of the tonnage of vessels.

Sch. 5
item 81
inserted by
No. 82/1995
s. 180(4).

HIRE AND DRIVE VESSELS

Sch. 5
(Heading
preceding
item 81A)
inserted by
No. 90/2001
s. 10.

81A. The operation and use of hire and drive vessels.

Sch. 5
item 81A
inserted by
No. 90/2001
s. 10.

81B. Requiring specified information to be given to the operators of hire and drive vessels and specifying the manner in which the information is to be given.

Sch. 5
item 81B
inserted by
No. 90/2001
s. 10.

81C. Requiring the creation and retention of documentary evidence that any information required by the regulations has been given.

Sch. 5
item 81C
inserted by
No. 90/2001
s. 10.

81D. Requiring the operators of hire and drive vessels to operate the vessels in accordance with any conditions or restrictions specified in the regulations and to have any documents required by the regulations in their possession while operating the vessels.

Sch. 5
item 81D
inserted by
No. 90/2001
s. 10.

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Sch. 5

Sch. 5
item 81E
inserted by
No. 90/2001
s. 10.

81E. Requiring the creation, maintenance and retention of documents relating to safety or the handling of emergencies.

Sch. 5
item 81F
inserted by
No. 90/2001
s. 10.

81F. Making provision for the audit of any documents required by the regulations.

Sch. 5
item 81G
inserted by
No. 90/2001
s. 10.

81G. Requiring the display of specified information in or on hire and drive vessels.

Sch. 5
item 81H
inserted by
No. 90/2001
s. 10.

81H. Making the issue of a certificate of survey in relation to a hire and drive vessel conditional on the approval of any documents required by the regulations relating to safety or the handling of emergencies.

Sch. 5
item 81I
inserted by
No. 90/2001
s. 10.

81I. Requiring the operators of hire and drive vessels to provide information to the owners (or agents of the owners) of hire and drive vessels concerning any operator licences they hold or have held.

LICENSING OF OPERATORS

Sch. 5
(Heading
preceding
item 82)
inserted by
No. 93/2000
s. 25(Sch.).

Sch. 5 item 82
inserted by
No. 93/2000
s. 25(Sch.).

82. The categories of recreational vessels for licensing purposes.

Sch. 5 item 83
inserted by
No. 93/2000
s. 25(Sch.).

83. Applications for an operator licence or for the variation, renewal or extension of an operator licence; the dates by which applications must be made and the information and evidence to accompany applications.

Sch. 5 item 84
inserted by
No. 93/2000
s. 25(Sch.).

84. Requirements to be complied with before an operator licence may be granted, varied or renewed.

Marine Act 1988
Act No. 52/1988

Sch. 5

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| 85. The conditions on which an operator licence may be granted, varied or renewed. | Sch. 5 item 85
inserted by
No. 93/2000
s. 25(Sch.). |
| 86. The requirements to be complied with before a personal watercraft endorsement may be made or varied. | Sch. 5 item 86
inserted by
No. 93/2000
s. 25(Sch.). |
| 87. The conditions on which a personal watercraft endorsement may be made, varied or renewed. | Sch. 5 item 87
inserted by
No. 93/2000
s. 25(Sch.). |
| 88. The date on which an operator licence commences and the period for which it remains in force. | Sch. 5 item 88
inserted by
No. 93/2000
s. 25(Sch.). |
| 89. The taking of photographs or making of digitised images for inclusion in operator licence documents. | Sch. 5 item 89
inserted by
No. 93/2000
s. 25(Sch.). |
| 90. The information to be included in licence documents. | Sch. 5 item 90
inserted by
No. 93/2000
s. 25(Sch.). |
| 91. The issue of duplicate operator licence documents. | Sch. 5 item 91
inserted by
No. 93/2000
s. 25(Sch.). |
| 92. The issue of different classes of operator licence documents. | Sch. 5 item 92
inserted by
No. 93/2000
s. 25(Sch.). |
| 93. The exemption of persons or classes of persons from the requirement to obtain an operator licence. | Sch. 5 item 93
inserted by
No. 93/2000
s. 25(Sch.). |
| 94. Tests and operator training. | Sch. 5 item 94
inserted by
No. 93/2000
s. 25(Sch.). |
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Sch. 5 item 95
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5 item 96
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5 item 97
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5 item 98
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5 item 99
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j).

Sch. 5
item 100
inserted by
No. 93/2000
s. 25(Sch.).

Sch. 5
item 101
inserted by
No. 93/2000
s. 25(Sch.).

95. The grounds on which an operator licence may be cancelled, suspended or varied by the Director and the procedures to be followed in such cases.
96. The grounds on which a personal watercraft endorsement may be revoked or varied by the Director and the procedures to be followed in such cases.
97. The circumstances in which the Director is required to cancel, suspend or vary an operator licence or refuse an application for an operator licence or an operator licence variation and the procedures to be followed in those cases.
98. The circumstances in which the Director is required to revoke or vary a personal watercraft endorsement or refuse an application for a personal watercraft endorsement or a variation of an endorsement and the procedures to be followed in these cases.
99. The surrender of licence documents if the licence has been cancelled or suspended by the Director or by a court.
100. Approving tests or courses or conducting tests or courses for the purposes of operator licences or endorsements.
101. The circumstances in which licence documents may be replaced.

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| 102. The information the Director may require an applicant for a licence or endorsement or the holder of a licence or an endorsed licence to give to the Director. | Sch. 5
item 102
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j). |
| 103. Procedures for reviewing decisions of the Director in relation to operator licences or personal watercraft endorsements. | Sch. 5
item 103
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j). |
| 104. Requirements for interstate or overseas licence holders. | Sch. 5
item 104
inserted by
No. 93/2000
s. 25(Sch.). |
| 105. Records to be kept about licence holders. | Sch. 5
item 105
inserted by
No. 93/2000
s. 25(Sch.). |

RIGHT OF APPEAL OR REVIEW

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| 106. Conferring a right of appeal or review to a specified court or tribunal against any decision of the Director and prescribing the procedures to be followed in those cases. | Sch. 5
(Heading
preceding
item 106)
inserted by
No. 93/2000
s. 25(Sch.). |
| | Sch. 5
item 106
inserted by
No. 93/2000
s. 25(Sch.),
amended by
No. 77/2001
s. 31(3)(j). |

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Sch. 5
(Heading
preceding
item 107)
inserted by
No. 93/2000
s. 25(Sch.).

FORMS

Sch. 5
item 107
inserted by
No. 93/2000
s. 25(Sch.).

107. Forms.

Sch. 5
(Heading
preceding
item 108)
inserted by
No. 77/2001
s. 30(f).

MISCELLANEOUS

Sch. 5
item 108
inserted by
No. 77/2001
s. 30(f).

108. The suspension or cancellation of any licence, certificate or registration granted under this Act if the holder of the licence, certificate or registration has used a vessel to commit any offence against any Act or regulations.

Sch. 5
item 109
inserted by
No. 9/2004
s. 23(3).

109. Licences, certificates, registrations, permits or authorisations granted, issued or made by the Commonwealth or other States or a Territory of the Commonwealth that may be recognised as being the equivalent of licences, certificates, registrations, permits or authorisations granted, issued or made under this Act or the regulations.

SCHEDULE 6

SAFETY STANDARDS FOR PILOTAGE SERVICES PROVIDERS

DEFINITIONS

In this Schedule—

"pilot vessel" means a vessel transporting or transferring a pilot to and from a vessel for which services provided by a pilot are required;

"transfer deck" means the area of the pilot vessel's deck used for embarkation and disembarkation of a pilot;

"navigation position" means the position on a pilot vessel from which the vessel is controlled and navigated;

"pilot" includes pilot exempt master.

Sch. 6 amended by No. 20/1993 s. 27(1)(a)(b), repealed by No. 20/1993 s. 27(2)(c), new Sch. 6 inserted by No. 28/1999 s. 14.

Sch. 6 def. of "navigation position" amended by No. 9/2004 s. 24(1).

Sch. 6 def. of "pilot" inserted by No. 9/2004 s. 24(2).

VISIBILITY

1. The transfer deck of the pilot vessel shall be clearly visible from the navigation position.
2. The overboard recovery position on a pilot vessel's deck shall permit visibility of the sea 1 metre from the side of the pilot vessel on which the overboard recovery position is located.
3. The navigation position shall permit clear observation of the embarkation and disembarkation of a pilot and the overboard recovery position of the pilot vessel.

WORKING DECKS

4. The transfer deck of the pilot vessel shall be not less than 1 square metre and shall be clear of obstructions.
5. The transfer deck of the pilot vessel shall be provided with inboard guardrails capable of withstanding a load of 12 kilonewtons (in both a horizontal and vertical direction) that will provide a secure holding point for the pilot and a crew member of the pilot vessel. The provision of such

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guardrails shall not impede or in any way interfere with the transfer of the pilot to and from the pilot ladder provided by the vessel to be piloted.

6. A non-skid deck area not less than 30 centimetres in width and a rigid horizontal safety rail, with harness carriage, preformed to follow the shape of the pilot vessel's wheelhouse or cabin shall be provided between the wheelhouse or cabin of the pilot vessel and the transfer deck. The safety rail and harness carriage shall be capable of withstanding a load of 12 kilonewtons in both a horizontal and vertical direction.

EQUIPMENT

7. In addition to equipment required by the regulations according to the vessel's class, the pilot vessel shall also be equipped with the following—
 - (a) a means of attaching to the vessel a safety harness that is capable of withstanding a load of 12 kilonewtons in both a horizontal and vertical direction;
 - (b) a VHF radio with marine bands;
 - (c) a loud hailer;
 - (d) a searchlight with a minimum of one-million candela and which is capable of illuminating the surface of the sea in all directions up to 100 metres from the pilot vessel;
 - (e) a means of illuminating the surface of the sea within 5 metres of the pilot vessel of not less than 200 lux; and
 - (f) a rescue crook or boat hook of sufficient length to pull an unconscious person in the sea to a position immediately below the vessel's overboard recovery position; and
 - (g) a manual or mechanical means for lifting an unconscious person from the water and which is capable of lifting on board a person with a mass of 150 kilograms from a floating position below the vessel's overboard recovery position in not less than 5 minutes in calm conditions.

PERSON OVERBOARD RECOVERY

8. The overboard recovery position of the pilot vessel's deck shall be not less than 2 square metres and shall be clear of obstructions.

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9. The entrance to the wheelhouse or cabin of the pilot vessel shall have a clear width of at least 600 millimetres to allow a person to be carried through on a stretcher.

PILOT VESSEL MARKING

10. The word "PILOT" shall be clearly marked on both sides of the pilot vessel in letters not less than 30 centimetres high.

PERSONAL EQUIPMENT

11. A pilot on duty shall be provided with a personal flotation device that meets Australian Standard AS 1512 (Personal Flotation Devices—Type 1) and a safety harness that meets Australian Standard AS 2227 (Yachting Harnesses and Lines—Conventional Lines).
12. A crew member working outside the wheelhouse or cabin of a pilot vessel shall be provided with a personal flotation device that meets Australian Standard AS 1512 and a safety harness that meets Australian Standard AS 2227.

PILOT TRANSFER BY MEANS OTHER THAN VESSEL

13. All arrangements, equipment, instructions and training in respect of the transfer of pilots to and from a vessel by means other than a pilot vessel shall comply with the Australian Code of Safe Practice for Ship Helicopter Transfers, published from time to time by the Australian Maritime Safety Authority (AMSA).

FATIGUE MANAGEMENT

14. A pilot fatigue management system incorporating the following requirements shall be in place—
- (a) in any 24 hour period, a pilot provided by a pilotage services provider must not work more than 14 hours and must rest for no less than 10 hours during that period. The rest period may be divided into not more than two periods, one of which shall be a continuous period of at least 6 hours; and
- (b) in any 14 day period, a pilot provided by the provider must not work more than 144 hours and must rest for no less than 192 hours during that period, which rest period must include a continuous period of at least 48 hours or two continuous periods each of at least 24 hours; and

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- (c) in any 12 months period, a pilot provided by the provider must take not less than 4 weeks recreation leave, including one continuous period of at least 2 weeks.

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Sch. 7
inserted by
No. 20/1993
s. 15,
repealed by
No. 17/1994
s. 20.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 October 1987

Legislative Council: 19 April 1988

The long title for the Bill for this Act was "A Bill to re-enact with amendments the law relating to the registration and operation of vessels and the pollution of State waters, to implement certain international conventions, to repeal the **Marine Act 1958**, the **Motor Boating Act 1961**, the **Navigable Waters (Oil Pollution) Act 1960** and the **Harbor Boards Act 1958** and to amend the **Port of Melbourne Authority Act 1958**, the **Port of Geelong Authority Act 1958**, the **Port of Portland Authority Act 1958** and certain other Acts and for other purposes."

The **Marine Act 1988** was assented to on 31 May 1988 and came into operation as follows:

All of Act (*except* section 159(4)) on 20 December 1988: Special Gazette (No. 105) 20 December 1988 page 1; section 159(4) on 1 July 1989: Government Gazette 28 June 1989 page 1558.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Marine Act 1988** by Acts and subordinate instruments.

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: Ss 16, 39(3), Sch. 2 items 42.1, 42.11, 42.12 on 6.6.89: s. 2(2); s. 39(2) on 16.12.86: s. 2(3); s. 42(1) on 1.11.89: s. 2(4); s. 42(2) on 1.11.89: s. 2(5); s. 42(3) on 11.11.89: s. 2(6); rest of Act on 1.7.89: s. 2(1)
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Road Safety (Amendment) Act 1990, No. 5/1990

Assent Date: 3.4.90
Commencement Date: S. 18 on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Pollution of Waters by Oil and Noxious Substances (Amendment) Act 1991, No. 46/1991

Assent Date: 25.6.91
Commencement Date: 1.3.92: Government Gazette 19.2.92 p. 378
Current State: All of Act in operation

Transport (Amendment) Act 1992, No. 85/1992

Assent Date: 24.11.92
Commencement Date: Ss 1, 2 on 24.11.92: s. 2(1); rest of Act on 1.12.92: Special Gazette (No. 65) 1.12.92 p. 1
Current State: All of Act in operation

Marine (Amendment) Act 1993, No. 20/1993

Assent Date: 25.5.93
Commencement Date: All of Act (*except* ss 16, 27(1)) on 25.5.93: s. 2(1); s. 16 on 6.4.93: s. 2(2); s. 27(1) on 31.5.88: s. 2 (3)
Current State: All of Act in operation

Road Safety (Amendment) Act 1994, No. 17/1994

Assent Date: 10.5.94
Commencement Date: Ss 1, 2, 8 on 10.5.94: s. 2(1); rest of Act on 1.8.94: s. 2(3)
Current State: All of Act in operation

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Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 items 34.1–34.6) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 40) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**; s. 4(Sch. 2 items 50.1, 50.2) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Road Safety (Amendment) Act 1995, No. 7/1995

Assent Date: 19.4.95
Commencement Date: 19.4.95
Current State: All of Act in operation

Ports Acts (Amendment) Act 1995, No. 23/1995 (as amended by No. 27/1996)

Assent Date: 16.5.95
Commencement Date: Ss 5, 6 on 16.11.95: Government Gazette 16.11.95 p. 3170
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Road Safety (Miscellaneous Amendments) Act 1995, No. 58/1995

Assent Date: 20.6.95
Commencement Date: S. 28 on 1.8.94: s. 2(2)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Port Services Act 1995, No. 82/1995 (as amended by No. 27/1996)

Assent Date: 28.11.95
Commencement Date: Ss 153(1), 169 on 14.12.95: Government Gazette 14.12.95 p. 3488—see **Interpretation of Legislation Act 1984**; ss 155–165, 170–180 on 1.1.96: Government Gazette 14.12.95 p. 3488; ss 166–168 on 6.2.96: Special Gazette (No. 6) 6.2.96 p. 1; ss 153(2), 154(1)–(4)(8)(11)–(15) on 1.3.96: Special Gazette (No. 14) 27.2.96 p. 1; s. 196(1)–(4) repealed by No. 27/1996 s. 4(2); s. 154(5)–(7)(9)(10) repealed by No. 27/1996 s. 4(1)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: Pt 15 (s. 33) on 1.8.94: s. 2(2)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

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Superannuation Acts (Amendment) Act 1996, No. 4/1996

Assent Date: 18.6.96
Commencement Date: S. 134(6) on 18.6.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Statute Law Revision (Marine) Act 1996, No. 27/1996

Assent Date: 24.9.96
Commencement Date: S. 3 on 16.11.95: s. 2(2); ss 4(2), 5 on 14.12.95: s. 2(3); s. 4(1) on 1.3.96: s. 2(4); rest of Act on 24.9.96: s. 2(1)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 55) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Port Services and Marine (Amendment) Act 1996, No. 51/1996

Assent Date: 26.11.96
Commencement Date: All of Act (*except* s. 13) on 26.11.96: s. 2(1); s. 13 on 14.12.95: s. 2(2)
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 57) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Marine (Amendment) Act 1999, No. 28/1999

Assent Date: 1.6.99
Commencement Date: 1.6.99
Current State: All of Act in operation

Road Safety (Amendment) Act 2000, No. 14/2000

Assent Date: 18.4.00
Commencement Date: Ss 27–30 on 1.12.00: s. 2(4)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

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Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 76) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Marine (Amendment) Act 2000, No. 93/2000 (as amended by No. 23/2001)

Assent Date: 5.12.00
Commencement Date: 3.12.01: Government Gazette 29.11.01 p. 2939
Current State: All of Act in operation

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 46) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001, No. 23/2001

Assent Date: 29.5.01
Commencement Date: Ss 17–22 on 28.6.01: Government Gazette 21.6.01 p. 1339
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 78) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Marine (Further Amendment) Act 2001, No. 77/2001

Assent Date: 27.11.01
Commencement Date: Ss 18, 22, 23(1)(2), 24–26, 29 on 28.11.01: s. 2(1); ss 3–9, 31 on 7.2.02: s. 2(2); ss 10–15, 19–21, 23(3), 27, 28, 30 on 7.2.02: Government Gazette 31.1.02 p. 140; ss 16, 17 on 1.1.03: s. 2(4)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Marine (Hire and Drive Vessels) Act 2001, No. 90/2001

Assent Date: 11.12.01
Commencement Date: Ss 8, 10 on 12.12.01: s. 2(1); ss 3–7, 9 on 1.2.02: Government Gazette 31.1.02 p. 140
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 44) on 7.2.02: s. 2(2)(e)
Current State: This information relates only to the provision/s amending the **Marine Act 1988**

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Road Safety (Responsible Driving) Act 2002, No. 46/2002

Assent Date: 22.10.02
Commencement Date: S. 15 on 23.10.02: s. 2(1); s. 16 on 15.12.02:
Government Gazette 31.10.02 p. 2906
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

Port Services (Port Management Reform) Act 2003, No. 85/2003

Assent Date: 11.11.03
Commencement Date: S. 34(2) on 1.4.04: Government Gazette 1.4.04 p. 714;
s. 34(1) on 1.7.04: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

Road Safety (Amendment) Act 2003, No. 94/2003

Assent Date: 25.11.03
Commencement Date: Ss 34, 36–39 on 26.11.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

Marine (Amendment) Act 2004, No. 9/2004

Assent Date: 11.5.04
Commencement Date: Ss 3–25, Sch. on 1.7.04: Government Gazette 1.7.04
p. 1843
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 18) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

Transport Legislation (Miscellaneous Amendments) Act 2004, No. 49/2004

Assent Date: 16.6.04
Commencement Date: S. 3 on 17.6.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Marine Act 1988**

3. Explanatory Details

¹ S. 3(1) def. of "vessel": There is a definition of "vessel" in section 53 for the purposes of Part 6.

² S. 33(2): Section 28 of the **Marine (Amendment) Act 1993**, No. 20/1993 reads as follows:

28. Transitional

The Principal Act as amended by section 10(2) of this Act applies only to a hearing commencing more than 28 days after the commencement of section 10(2).

³ SS 40–44:

S. 40 amended by No. 46/1991 s. 42(a)–(c), repealed by No. 82/1995 s. 160.

S. 41 amended by No. 46/1991 s. 43(1)(2)(a)(b)(i)–(vii)(c), repealed by No. 82/1995 s. 160.

S. 42 repealed by No. 82/1995 s. 160.

S. 43 amended by No. 46/1991 s. 44, repealed by No. 82/1995 s. 160.

S. 44 repealed by No. 82/1995 s. 160.

⁴ Pt 11 Div. 2:

Pt 11 Div. 2 (Heading) repealed by No. 4/1996 s. 134(6).

Ss 149–158 repealed by No. 52/1988 s. 159(4)(b).

S. 159 repealed by No. 4/1996 s. 134(6).

⁵ Sch. 2 Annex Ch. I Pt A reg. 2(h): "Inflammable" has the same meaning as "flammable".