



New South Wales

# Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012 No 90

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New South Wales

# **Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012 No 90**

Act No 90, 2012

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An Act to amend the *Marine Safety Act 1998* to apply as a law of this State a national law relating to domestic commercial vessels; to make consequential amendments to that Act and to other legislation; and for other purposes. [Assented to 20 November 2012]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1      Amendment of Marine Safety Act 1998 No 121

**[1] Section 4 Definitions**

Omit the definitions of *Australian fishing vessel*, *commercial vessel*, *interstate voyage*, *pleasure craft* and *registrable vessel* from section 4 (1).

**[2] Section 4 (1)**

Insert in alphabetical order:

*commercial purpose* means a purpose for which a vessel is used that results in the vessel being a commercial vessel.

*commercial vessel* has the same meaning as *domestic commercial vessel* in the National law.

*National law* means:

(a) the Commonwealth domestic commercial vessel national law within the meaning of section 9B, and

(b) the applied provisions within the meaning of section 9B.

*National licence* means a certificate or unique identifier issued under the National law.

*regulated Australian vessel* has the same meaning as in the National law.

*State registrable vessel* is defined in section 49.

**[3] Section 4 (1), definition of “overseas voyage”**

Omit “*Navigation Act 1912*”. Insert instead “*Navigation Act 2012*”.

**[4] Section 6 Meaning of vessel “connected with this State”**

Insert “, or the National law,” after “Commonwealth” in section 6 (b).

**[5] Section 7 Meaning of “owner” of vessel**

Insert “, National licence” after “relevant marine safety licence” in section 7 (2) (a).

**[6] Section 8**

Omit the section. Insert instead:

**8 Vessels and waters to which Act applies**

(1) This Act applies to and in respect of the following vessels (and their owners, masters, crew and passengers):

- (a) all vessels that are in State waters (including vessels proceeding on overseas voyages),
  - (b) all vessels that are proceeding on voyages other than overseas voyages (including vessels that have left State waters), except recreational vessels while they are in the waters of or adjacent to another State or Territory of the Commonwealth,
  - (c) all vessels connected with this State, wherever they may be.
- (2) Despite subsection (1), Parts 4 and 5 (other than sections 67 (b), 68A and 69) do not apply to or in respect of commercial vessels or regulated Australian vessels.
  - (3) This section is subject to any express provision of this Act to the contrary.
  - (4) The National law prevails over this Act to the extent of any inconsistency.

**[7] Part 1A**

Insert after Part 1:

**Part 1A Application of Commonwealth domestic commercial vessel national law**

**Division 1 Preliminary**

**9A Purpose of Part**

- (1) The purpose of this Part is to adopt in this State a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law).
- (2) Accordingly, this Part:
  - (a) applies the Commonwealth domestic commercial vessel national law as a law of this State, and
  - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of this State to be administered on a uniform basis by the Commonwealth (and by State officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

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**9B Definitions**

- (1) In this Part:
- applied provisions*** means the Commonwealth domestic commercial vessel national law that applies as a law of this State because of section 9C.
- Commonwealth administrative laws*** means the following Commonwealth Acts, regulations or other legislative instruments:
- (a) the *Administrative Appeals Tribunal Act 1975* (excluding Part IVA),
  - (b) the *Freedom of Information Act 1982*,
  - (c) the *Ombudsman Act 1976*,
  - (d) the *Privacy Act 1988*,
  - (e) the regulations and other legislative instruments in force under any of those Acts.
- Commonwealth domestic commercial vessel national law*** means the provisions of the following Acts, regulations or other legislative instruments:
- (a) the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth),
  - (b) the regulations and other legislative instruments in force under that Law,
  - (c) any other provision of a Commonwealth Act (or of a regulation or other legislative instrument in force under a Commonwealth Act) that is of a savings or transitional nature consequent on the enactment or amendment of that Law.
- (2) Terms used in this Part and also in the Commonwealth domestic commercial vessel national law have the same meanings in this Part as they have in that law.
- (3) In this Part, a reference to a Commonwealth Act includes a reference to:
- (a) that Commonwealth Act, as amended and in force for the time being, and
  - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

## **Division 2 The applied provisions**

### **9C Application of Commonwealth laws as laws of this State**

- (1) The Commonwealth domestic commercial vessel national law, as in force from time to time, applies as a law of this State.
- (2) The Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which this State may make laws:
  - (a) whether or not the Commonwealth may make laws in relation to those matters, and
  - (b) even though the Commonwealth domestic commercial vessel national law provides that it applies only to specified matters with respect to which the Commonwealth may make laws.
- (3) Subsection (2) does not operate to exclude a law of this State relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law.
- (4) The regulations made under this Act may provide that the Commonwealth domestic commercial vessel national law applies under this section as if an amendment to that law:
  - (a) made by a law of the Commonwealth, and
  - (b) specified in the regulations made under this Part, had not taken effect.

### **9D Interpretation of Commonwealth domestic commercial vessel national law**

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions, and so applies as if the applied provisions were a Commonwealth Act or were regulations or other legislative instruments under a Commonwealth Act, as the case requires.
- (2) The *Interpretation Act 1987* does not apply to the applied provisions.

## **Division 3 Functions and powers under applied provisions**

### **9E Functions and powers of National Regulator and other authorities and officers**

The National Regulator and other authorities and officers referred to in the applied provisions have the same functions and

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powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth.

**9F Delegations by the National Regulator**

Any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

**Division 4 Offences**

**9G Object of this Division**

- (1) The object of this Division is to further the purpose of this Part by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):
  - (a) the investigation and prosecution of offences, and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and
  - (e) the sentencing, punishment and release of persons convicted of offences, and
  - (f) fines, penalties and forfeitures, and
  - (g) infringement notices in connection with offences, and
  - (h) liability to make reparation in connection with offences, and
  - (i) proceeds of crime, and
  - (j) spent convictions.
- (3) For the purposes of this Division, offences include contraventions for which a civil penalty may be imposed.



**9H Application of Commonwealth criminal laws to offences against applied provisions**

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions:
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth, and
  - (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Part.

**9I Functions and powers conferred on Commonwealth officers and authorities relating to offences**

- (1) A Commonwealth law applying because of section 9H that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth domestic commercial vessel national law.

**9J No double jeopardy for offences against applied provisions**

If:

- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth domestic commercial vessel national law, and
  - (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law,
- the offender is not liable to be punished for the offence under the applied provisions.

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## **Division 5      Administrative laws**

### **9K    Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of this State to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions:
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth, and
  - (b) is taken not to be a matter arising in relation to laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Part.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this State) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

### **9L    Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 9K that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

## **Division 6 Fees and fines**

### **9M Fees payable to officers or employees of State acting as delegates**

Regulations may be made under this Act for or with respect to fees payable to this State in relation to anything done under the Commonwealth domestic commercial vessel national law (as that law applies as a law of the Commonwealth), or under the applied provisions, by a delegate of the National Regulator, or an accredited person, who is an officer or employee of this State or an agency of this State.

### **9N Infringement notice fines**

- (1) Any amount paid to this State by the National Regulator under section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth in relation to an infringement notice is payable into the Waterways Fund established under the *Ports and Maritime Administration Act 1995*.
- (2) Any amount payable by this State under section 10 (2) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth is payable out of that Fund.

### **9O Fines, fees etc not otherwise payable to State**

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.
- (2) Subsection (1) does not apply to any fees referred to in section 9M.

## **Division 7 Miscellaneous**

### **9P Things done for multiple purposes**

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth domestic commercial vessel national law.

### **9Q Reference in Commonwealth law to a provision of another law**

For the purposes of sections 9H and 9K, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

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**9R Regulations of this State**

The Governor may make regulations, not inconsistent with this Act or the applied provisions, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part or the applied provisions.

- [8] **Section 11 Speed limits, no wash zones and other restrictions on operation of vessels in navigable waters by display of notice**  
Insert “or the National law” after “marine legislation” in section 11 (7).
- [9] **Section 12 Restrictions on operation of vessels in navigable waters during special events by publication of notice**  
Insert “or the National law” after “marine legislation” in section 12 (7).
- [10] **Section 16 Removal of obstructions in navigable waters**  
Insert “or the National law” after “marine legislation” in section 16 (1) (b).
- [11] **Section 28A Cancellation and suspension of marine safety licences**  
Insert at the end of the section:  
**Note.** Section 135A deals with National licences.
- [12] **Section 29 Types of marine safety licences**  
Omit section 29 (b) and (d).
- [13] **Section 31 Conditions of licences**  
Omit the note to the section.
- [14] **Section 39 Cancellation and suspension of licences by court in connection with offence**  
Omit “see section 27.” from the note.  
Insert instead “see section 28A. Section 135A deals with National licences.”
- [15] **Section 49 Vessels requiring State registration**  
Omit “commercial and recreational” from section 49 (1).
- [16] **Clause 49 (2)**  
Omit “*registrable vessel*”. Insert instead “*State registrable vessel*”.
- [17] **Section 50 Vessels exempt from registration**  
Omit section 50 (1).

**[18] Section 51 Offence to operate unregistered vessel**

Omit “registrable vessel” wherever occurring.

Insert instead “State registrable vessel”.

**[19] Part 5, Division 3**

Omit the Division.

**[20] Part 5, Division 4**

Omit the Division.

**[21] Section 64 Exemption from requirement to hold boat driving licence**

Omit “under this Act” from section 64 (2) (a).

Insert instead “under the National law”.

**[22] Section 65 Recognised marine safety licences**

Omit “, a survey certificate or a certificate of competency” from section 65 (1).

**[23] Section 124 General provisions relating to functions under this Division**

Insert after section 124 (2):

- (3) A function exercisable by an authorised officer under this Division to make inquiries of any person or to require a person to supply information, answer questions or produce documents or other things extends to making any such inquiries or requirements to determine whether a vessel is a commercial vessel.

**[24] Section 135A**

Insert after section 135:

**135A Suspension or cancellation of licences by court in connection with offence**

- (1) A court may recommend to the National Regulator or a delegate of the National Regulator that the National Regulator take any of the following actions in relation to a person convicted of an offence against this Act:
- (a) suspend for a specified period or cancel a National licence that the person holds,
  - (b) disqualify the person from holding or obtaining a National licence for a specified period.

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- (2) A recommendation may be made under this section only if similar action could be taken under this Act to cancel or suspend a marine safety licence of a person convicted of the same offence or disqualify such a person from holding a marine safety licence.
- (3) A court may make a recommendation under this section in addition to imposing any penalty for the offence concerned.

**[25] Section 138 Adoption of codes, standards, treaties and other documents**

Omit “adopted by the Australian Transport Council as referred to in section 427 of the *Navigation Act 1912* of the Commonwealth” wherever occurring in section 138 (2) (a) and (b).

Insert instead “within the meaning of the National law”.

**[26] Section 139 Exemptions**

Omit “, 53, 57” from the note.

**[27] Section 140 Children employed on vessels—ILO Convention No 58**

Omit the section.

**[28] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

**[29] Schedule 4, clause 1 (4) (c)–(e)**

Insert after clause 1 (4) (b):

- (c) construing all references in this Act or the regulations, or specified references, to marine safety licences or a particular type of marine safety licence as meaning, or including a reference to, a certificate or other authorisation, or a particular type of certificate or other authorisation, issued under the National law,
- (d) continuing on the effect of any specified provision of this Act that has been repealed by the *Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012* and of specified regulations made under any such provision,
- (e) any matter of a savings or transitional nature that is consequent on the enactment or operation of the National law.

## **Schedule 2 Amendment of other Acts and regulations**

### **2.1 Co-operative Schemes (Administrative Actions) Act 2001 No 45**

**[1] Section 4 Co-operative schemes to which this Act applies—relevant State Acts**

Insert after section 4 (1) (a1):

(a2) Part 1A of the *Marine Safety Act 1998*, and

**[2] Section 4 (1)**

Insert “or part of an Act” after “Act” where fifthly and sixthly occurring.

**[3] Section 4 (2)**

Insert “or part of an Act” after “specified Act”.

### **2.2 Federal Courts (State Jurisdiction) Act 1999 No 22**

**[1] Section 3 Definitions**

Insert “or parts of Acts” after “following Acts” in the definition of *relevant State Act*.

**[2] Section 3, definition of “relevant State Act”**

Insert after paragraph (f):

(f1) Part 1A of the *Marine Safety Act 1998*

**[3] Section 3, definition of “relevant State Act”**

Insert “or part of an Act” after “prescribed Act” in paragraph (i).

### **2.3 Fisheries Management (General) Regulation 2010**

**[1] Clause 3 Interpretation**

Insert in alphabetical order in clause 3 (1):

*certificate of survey* means a certificate of survey in force under the National law (within the meaning of the *Marine Safety Act 1998*).

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**[2] Clause 145 Compliance with maximum boat specifications**

Omit “survey certificate” wherever occurring in clause 145 (3).  
Insert instead “certificate of survey”.

**[3] Clause 222 Definitions**

Omit the definition of *certificate of survey* from clause 222 (1).

**2.4 Housing Act 2001 No 52**

**Section 69B Access to information for preventing, investigating or prosecuting fraud**

Omit “registrable vessels” from section 69B (1) (f).  
Insert instead “State registrable vessels”.

**2.5 Management of Waters and Waterside Lands Regulations—N.S.W.**

**[1] Regulation 35 Classification of occupation licences and fees—boatshed or similar business activity etc**

Omit Regulation 35 (1) (a) (ii). Insert instead:

- (ii) the subject of a certificate of operation under the National law (within the meaning of the *Marine Safety Act 1998*) that is in force and is applicable to the navigable waters concerned, or

**[2] Regulation 35 (1) (f) (ii)**

Omit the subparagraph. Insert instead:

- (ii) the subject of a certificate of operation under the National law (within the meaning of the *Marine Safety Act 1998*) that is in force and is applicable to the navigable waters concerned, or

**[3] Regulation 35 (1) (f) (iii)**

Omit “*Water Traffic Regulations—N.S.W.*”.

Insert instead “*Marine Safety (General) Regulation 2009,*”.

**[4] Regulation 120 Application of section 30D—prescribed offences under the Commercial Vessels Act 1979**

Omit the Regulation.



## **2.6 Marine Pollution Act 2012 No 5**

### **Section 248 Service of instruments (except in proceedings for offences)**

Omit “the marine legislation” wherever occurring in section 248 (1) (d) and (3).

Insert instead “this Act”.

## **2.7 Marine Pollution Regulation 2006**

### **[1] Clause 25 Definitions**

Omit “clause 14 of the *Marine Safety (Commercial Vessels) Regulation 2010*” wherever occurring in the definitions of ***Class 1 commercial vessel*** and ***Class 4 commercial vessel***.

Insert instead “the National law within the meaning of the *Marine Safety Act 1998*”.

### **[2] Clause 29A**

Insert after clause 29:

#### **29A Certificates relating to holding tanks**

The owner of a vessel in which a holding tank is installed in compliance with clause 29 must ensure that the vessel is not used for commercial purposes unless:

- (a) the owner has obtained a report in writing by a naval architect or other suitably qualified person certifying that the holding tank complies with the requirements of that clause and that the stability of the vessel has not been, and is unlikely to be, affected adversely in a material way by the installation and intended use of the holding tank, and
- (b) that report has been submitted to the Authority and the Authority has acknowledged receipt of the report in writing to the owner.

Maximum penalty: 50 penalty units.

## **2.8 Maritime Services Act 1935 No 47**

### **Section 30D Penalty notices for certain offences**

Omit section 30D (1) (a), (c) and (d).

## **2.9 Navigation Act 1901 No 60**

### **Section 3 Definitions**

Omit the definitions of *certificate* and *surveyor* from section 3 (1).

## **2.10 Passenger Transport Act 1990 No 39**

### **[1] Section 46A Provision of information relating to safety to regulator**

Omit “or ferry” wherever occurring in section 46A (1) and (2).

### **[2] Section 46AA Provision of information to Chief Investigator**

Omit “or ferry”.

### **[3] Section 46B Persons must report notifiable occurrences**

Omit “or ferry” from section 46B (1).

### **[4] Section 46H Inspections by regulator of bus services**

Omit “or ferry” from section 46H (1).

### **[5] Section 46H (1B)**

Insert before section 46H (2):

- (1B) TfNSW may cause inspections to be carried out to ensure that a person who carries on a public passenger service by means of a ferry is complying with the terms of the person’s service contract under this Act.

### **[6] Section 53D Ferry operators to have approved safety management systems**

Omit the section.

## **2.11 Passenger Transport (Drug and Alcohol Testing) Regulation 2010**

### **Clause 29 Operator to notify regulator of certain matters**

Omit “the Maritime Authority” from paragraph (b) of the definition of *regulator* in clause 29 (1).

Insert instead “Roads and Maritime Services”.

## **2.12 Passenger Transport Regulation 2007**

**[1] Clause 211 Condition of ferries**

Omit the clause.

**[2] Clause 213 Notification of accidents and incidents**

Omit the clause.

**[3] Part 11 Special provisions relating to ferries**

Omit Division 2.

**[4] Schedule 3 Penalty notice offences**

Omit the matter relating to clauses 211 and 214 –216 from Part 2.

## **2.13 Ports and Maritime Administration Act 1995 No 13**

**[1] Section 3 Definitions**

Omit the definition of *commercial vessel* from section 3 (1).

Insert instead:

*commercial vessel* has the same meaning as in the *Marine Safety Act 1998*.

**[2] Section 3 (1), definition of “National law”**

Insert in alphabetical order:

*National law* has the same meaning as in the *Marine Safety Act 1998*.

**[3] Section 26A Minister may enter into contract for provision of pilotage services not provided by Port Corporation**

Insert “or the National law” after “marine legislation” wherever occurring in section 26A (4) and (5) (h).

**[4] Section 34 Maritime Advisory Council**

Insert “or the National law” after “marine legislation” in section 34 (4) (a).

**[5] Section 41 Functions of Authority**

Insert after section 41 (1) (a):

- (b) to exercise functions in relation to the implementation of the National law,

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**[6] Section 42 Waterways Fund**

Insert “or the National law” after “marine legislation” in section 42 (2) (b).

**[7] Section 48 Meaning of “owner” of vessel or cargo**

Insert “or the National law” after “marine legislation” in section 48 (2) (a).

**2.14 Sydney Harbour Foreshore Authority Regulation 2011**

**Clause 25 Activities not affected by Regulation**

Insert “or the National law (within the meaning of the *Marine Safety Act 1998*)” after “*Ports and Maritime Administration Act 1995*” in clause 25 (d).

**2.15 Transport Administration Act 1988 No 109**

**[1] Section 3H Review by relevant safety regulator of directions relating to transport safety matters**

Omit “or 53D” from the definition of *safety management system* in section 3H (1).

**[2] Section 3H (1), definition of “safety management system”**

Insert at the end of paragraph (b):

, or

- (c) under the National law (within the meaning of the *Marine Safety Act 1998*).

**[3] Section 49A General functions of RMS**

Insert “, the National law (within the meaning of the *Marine Safety Act 1998*)” after “transport legislation” in section 49A (1).

[Second reading speech made in—

Legislative Council on 17 October 2012

Legislative Assembly on 13 November 2012]