

Maritime Bill 1999

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

Maritime Bill 1999

A Bill for

An Act to —

- **enable the provision of the infrastructure necessary for the efficient and safe conduct of the maritime activities and industries of Western Australia;**
- **facilitate safety in relation to the design standards, construction, operation and navigation of vessels, and to provide for related matters.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Maritime Act 1999*.

2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Definitions

In this Act, unless the contrary intention appears —

10 **“appointed operator”** means a person appointed under Part 2 Division 2 to operate a port or a maritime facility or, if rights or obligations of that person under the appointment agreement are assigned under the appointment agreement to another person, that other person;

15 **“appointment agreement”** has the meaning given by section 14(1);

“approved” means approved by the Director General;

“authorization” means a licence, permit, approval, permission, certificate, registration or accreditation under this Act;

20 **“authorized officer”** means a person who is an authorized officer under section 130(1) for the purposes of this Act or for the purposes of the provision in which the term is used;

“blood alcohol content” means the number of grams of alcohol contained in 100 millilitres of a person’s blood;

25 **“certificated”**, in relation to a person, means holding a certificate of competency that is relevant and valid;

“certificate of competency” means —

- (a) a certificate of competency issued under the regulations; or
- (b) an external qualification recognized under the regulations;

5

“channel” includes a swinging basin, turning circle, area alongside a jetty, fairway or anchorage;

“condition” includes restriction or limitation;

“Court of Marine Inquiry” means a Court of Marine Inquiry established under Part 5 Division 2;

10

“dangerous thing” means —

- (a) a vessel or part of a vessel;
- (b) a wreck and any cargo, fuel or other thing on or in it; or
- (c) any other thing,

15

that is likely to be a danger to persons, navigation or the environment;

“Department” has the same meaning as it has in the *Transport Co-ordination Act 1966*;

20

“departmental area” means land, water or seabed —

- (a) the care, control and management of which have been placed with the Minister under the *Land Administration Act 1997* for the purposes of this Act or for other maritime or port purposes;
- (b) vested in the Minister under the *Transport Co-ordination Act 1966* for the purposes of this Act or for other maritime or port purposes;
- (c) which is otherwise under the care, control and management of the Minister for the purposes of this Act or for other maritime or port purposes; or

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(d) on which there is a jetty or other infrastructure provided by, or under the control of, the Minister or the Department;

5 “**Director General**” has the same meaning as it has in the *Transport Co-ordination Act 1966*;

“**exemption**” means an exemption under this Act;

“**external qualification**” means a certificate or other document that was issued outside the State and evidences competency;

“**goods**” includes —

- 10 (a) merchandise, wares, chattels and other articles, whether manufactured or of any other kind;
- (b) minerals and mineral products;
- (c) petroleum and hydrocarbon products;
- (d) forestry and agricultural products;
- 15 (e) fish products; and
- (f) livestock, agricultural products and other products of primary production;

20 “**harbour master**” means a person appointed under section 35 to be the harbour master or acting harbour master of a port or authorized under that section to perform the harbour master’s functions;

“**hinder**” includes assault, obstruct, intimidate, use abusive or offensive language to, or disobey;

25 “**infrastructure**” means facilities provided for or in relation to maritime activities or the administration of a place where maritime activities are carried out and includes —

- (a) maritime structures and other buildings, structures and enclosures;
- (b) railways; and
- 30 (c) machinery, equipment, vessels, vehicles and aircraft;

“jetty” includes —

- 5
- (a) a pier, wharf, quay, grid, slipway, landing place, stage, platform or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on, over or alongside any navigable waters; and
 - (b) a ramp that is or may be used for the purpose of launching or landing a vessel,

but does not include a registered vessel;

“marine incident” means an incident involving —

- 10
- (a) a vessel to which this Act applies; or
 - (b) a vessel that is on waters to which this Act applies;

“maritime activities” means —

- 15
- (a) the movement, mooring, hauling out, maintenance and launching of vessels;
 - (b) the movement of, and provision of services to, passengers of vessels; and
 - (c) the movement, handling and storage of goods;

“maritime facility” means a maritime facility declared under section 9;

20 **“maritime services”** means —

- (a) carrying out maritime activities;
 - (b) dredging, engineering, maritime civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilization and waste management services;
 - (c) supplying provisions or equipment to vessels;
 - (d) supplying water, fuel or electricity;
 - (e) providing for the use or hire of maritime structures or other infrastructure;
- 25

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- (f) providing labour for any purpose; and
- (g) any other services prescribed by regulation for the purposes of this definition;

“maritime structure” means —

- 5 (a) a jetty;
- (b) a breakwater, groyne or seawall;
- (c) a dredged channel;
- (d) a boat pen or vessel mooring;
- (e) a navigational aid; or
- 10 (f) a pipeline in, over, under or discharging into navigable waters (but not a pipeline discharging material from a dredging vessel);

“master” means any person having command or charge of a vessel otherwise than as a pilot;

15 **“Minister”** means the Minister administering the *Transport Co-ordination Act 1966*;

“mooring”, in relation to vessels, includes anchoring and berthing;

“mooring area licence” has the meaning given by section 57;

20 **“mooring control area”** means an area of navigable waters declared under section 55 to be a mooring control area;

“mooring prohibition area” means an area of navigable waters declared under section 56(2) to be a mooring prohibition area;

25 **“movement”**, in relation to —

- (a) goods, includes loading and unloading;
- (b) passengers, includes boarding and going ashore;

“navigable waters” has the meaning given by section 6;

“Navigation Act” means the *Navigation Act 1912* of the Commonwealth;

“navigation control notice” has the meaning given by section 59;

5 **“navigational aid”** means an apparatus, device, mark or structure that —

- (a) is or is intended to be an aid to marine navigation; or
- (b) emits or transmits a light, sound, radio, electronic or other signal that is or is intended to be an aid to marine navigation;

10

“officer” means an officer of the Department;

“operate”, in relation to a port or maritime facility, means to —

- (a) provide, manage and operate infrastructure or arrange for infrastructure to be provided, managed and operated; and
- (b) provide maritime services or arrange for maritime services to be provided,

15

at or for the port or maritime facility;

“operator”, in relation to a port or a maritime facility, means —

20

- (a) the appointed operator; or
- (b) if there is no appointed operator, the Minister;

“owner”, in relation to a vessel, includes —

- (a) if the vessel is owned by a body corporate or unincorporate, a person nominated under section 7(3) as the owner of the vessel;
- (b) a person who is purchasing the vessel under a contract that is a credit sale contract for the purposes of the *Credit Act 1984*;

25

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- 5 (c) a person who is the purchaser or hirer of the vessel under a contract that for the purposes of the *Consumer Credit (Western Australia) Code* is a credit contract, or is to be regarded as a credit contract, to which that Code applies;
- (d) a person who has the use of the vessel under a hiring, hire purchase, lease, loan, charter or other agreement; and
- 10 (e) a person in whose name the vessel is registered, whether under this Act or under any corresponding law of the Commonwealth or another State or a Territory,
- but does not include an unpaid vendor under a hire purchase agreement or the lessor under a lease or a person of a class excluded by the regulations from the operation of this definition;
- 15
- “port”** means a port named in Schedule 1;
- “port authority”** means a port authority established under the *Port Authorities Act 1999*;
- 20 **“port authority port”** means a port named in Schedule 1 to the *Port Authorities Act 1999*;
- “public authority”** means —
- (a) a Minister;
- 25 (b) an agency as defined in the *Public Sector Management Act 1994*; or
- (c) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body or office, post or position that is established or continued for a public purpose under a written law, including a local government or regional local
- 30 government;

“**public jetty**” means a jetty the property of the State or vested in any person on behalf of the State;

“**registered**” means registered under the regulations;

5 “**Tribunal**” means the Maritime Appeal Tribunal established by Part 6;

“**under compulsory pilotage**”, in relation to a vessel, means under the control of a pilot as required under section 74;

10 “**use**”, in relation to a vessel, includes to operate, manage or be in control of the vessel, and a vessel is regarded as being used even when it is under tow;

“**vessel**” has the meaning given by section 7.

4. Crown is bound by this Act

15 (1) This Act binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) This Act does not render the Crown (as distinct from any of its agencies, instrumentalities or employees) liable to be prosecuted for an offence created by this Act.

5. Waters, areas and vessels to which this Act applies

20 (1) This Act applies to —

- (a) navigable waters;
- (b) land that may at some time be covered by tidal waters even if it is not so covered for the time being;
- (c) departmental areas;
- 25 (d) land in a port or maritime facility;
- (e) a vessel that is within navigable waters;

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- (f) a vessel on an intra-State voyage whether or not the vessel is within navigable waters;
 - (g) a vessel connected with the State whether or not the vessel is within navigable waters; and
 - 5 (h) a vessel not subject to the Navigation Act if the vessel is on an inter-State voyage or an overseas voyage and the voyage begins at, ends at, or involves a call at, a place in the State, whether or not the vessel is within navigable waters.
- 10 (2) In subsection (1) —
- “inter-State voyage”** has the same meaning as it has in the Navigation Act;
 - “intra-State voyage”** means a voyage other than an inter-State voyage or overseas voyage;
 - 15 **“overseas voyage”** has the same meaning as it has in the Navigation Act.
- (3) A vessel is connected with the State for the purposes of subsection (1)(g) if —
- 20 (a) it is owned or used by a person —
 - (i) whose place of residence or principal place of residence is in the State;
 - (ii) whose place of business or principal place of business is in the State; or
 - 25 (iii) whose principal place of business for managing the operations of the vessel is in the State;
 - (b) it is, or is required to be, registered under this or another Act; or
 - (c) it is a vessel declared by the regulations to be connected with the State.

6. Navigable waters

A reference in this Act to navigable waters is a reference to the following —

- (a) the territorial sea adjacent to the State;
- 5 (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State;
- (c) waters within the limits of the State on which a vessel can be navigated.

10 **7. Vessels and owners**

(1) A reference in this Act to a vessel is a reference to any thing used, or capable of being used, in navigation by water, and includes a reference to —

- (a) an air-cushion vehicle, seaplane or other similar craft; or
- 15 (b) a barge, lighter or other floating structure used for commercial purposes other than a structure of a class or kind prescribed for the purposes of this paragraph.

(2) A thing can be a vessel for the purposes of this Act —

- (a) no matter how it is moved or propelled; and
- 20 (b) even if it is normally stationary.

(3) A body corporate or unincorporate that owns a vessel of a class prescribed for the purposes of this subsection must, by written notice served on the Director General, nominate a person as the owner of the vessel for the purposes of paragraph (a) of the

25 definition of “owner” in section 3.

(4) A nomination made under subsection (3) may be revoked and replaced by another nomination under that subsection.

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- 5 (5) A body corporate or unincorporate that owns a vessel to which subsection (3) does not apply may, by written notice served on the Director General —
- (a) nominate a person as the owner of the vessel for the purposes of paragraph (a) of the definition of “owner” in section 3; or
 - (b) revoke a nomination made under this subsection.

Part 2 — Ports, maritime facilities and structures, and mooring control

Division 1 — Ports, maritime facilities and their operation

8. Ports

- 5 (1) Each port named in Schedule 1 is declared to be a port for the purposes of this Act bounded by the limits described in Schedule 1 in relation to that port.
- (2) The Minister may, by notice published in the *Gazette*, amend Schedule 1 by —
- 10 (a) adding the name of a port and its description;
- (b) deleting the name of a port and its description;
- (c) amending the name of a port;
- (d) altering the description of a port to include or exclude an area of land, water or seabed; or
- 15 (e) correcting any error in the description of a port.
- (3) A port authority port is not a port for the purposes of this Act and a notice under subsection (2) cannot relate to a port authority port or any part of a port authority port.

9. Maritime facilities

- 20 (1) The Minister may by notice published in the *Gazette*, declare —
- (a) a maritime structure or group of maritime structures; or
- (b) an area of enclosed or protected waters used by vessels together with associated facilities on land,
- to be a maritime facility for the purposes of this Act.
- 25 (2) A notice under subsection (1) cannot relate to —
- (a) a port or a port authority port; or

- (b) a maritime structure, group of maritime structures, or waters within a port or a port authority port.
- (3) The Minister may by notice published in the *Gazette*—
 - (a) revoke a notice under subsection (1);
 - 5 (b) alter the description of a maritime facility to include or exclude —
 - (i) a maritime structure; or
 - (ii) an area of water and associated facilities on land;
 - or
 - 10 (c) correct any error in the description of a maritime facility.

10. Development of ports and maritime facilities

A notice under section 8(2)(a) or 9(1) can relate to a proposed port or maritime facility that has yet to be established and, in that case, references in this Division and Division 2 to —

- (a) a port or maritime facility, include references to the proposed port or maritime facility;
- (b) the operation of a port or maritime facility, include references to the development of the proposed port or maritime facility.

11. Operation of ports and maritime facilities

- (1) If a port or a maritime facility has an appointed operator that operator is to operate the port or maritime facility under and subject to the appointment agreement.
- 25 (2) If a port or a maritime facility does not have an appointed operator the Minister is responsible for the operation of the port or maritime facility.

Division 2 — Appointment of operators

12. Director General may invite applications

- 5 (1) The Director General may by advertisement or negotiation, or both, invite applications from persons for appointment to operate a port or maritime facility.
- (2) The Director General must get the Minister's approval before inviting applications under subsection (1) by negotiation.
- 10 (3) The Minister is not to give approval under subsection (2) unless the Minister considers that proceeding by way of negotiation is more in the public interest than proceeding by way of advertisement.

13. Application

- (1) An application for appointment to operate a port or maritime facility is to be in an approved form.
- 15 (2) If the Director General so requires, the applicant must also provide other information to enable the application to be properly assessed.
- (3) If the Director General so requires, the applicant must pay an application fee determined by the Director General to cover administrative costs associated with assessing the application and making an appointment.
- 20

14. Appointment of operator

- 25 (1) Subject to subsection (2), the Director General may, by agreement in writing with an applicant (the “**appointment agreement**”) appoint the applicant to operate a port or maritime facility.

- (2) The Director General is not to appoint the applicant to operate the port or maritime facility unless satisfied that the applicant has, and is likely to continue to have, the financial and technical ability to operate the port or maritime facility satisfactorily.

5 **15. Terms and conditions of appointment**

- (1) The appointment of an operator is subject to such terms and conditions as are set out in the appointment agreement.

- 10 (2) The terms and conditions set out in the appointment agreement can be amended from time to time by agreement between the Director General and the operator.

- (3) Without limiting subsection (1) or (2) the appointment agreement may include provisions relating to —

- 15 (a) any matter provided for by Schedule 2;
- (b) the payment of amounts by the appointed operator to the Director General, or by the Director General to the operator, in respect of the appointment or of the operation of the port or maritime facility; and
- 20 (c) in the case of a maritime facility, the times at which, or circumstances in which, obligations of the appointed operator in respect of the operation of the maritime facility have effect.

16. Duration of appointment

- (1) The appointment of an operator has effect for the period set out in the appointment agreement.

- 25 (2) The period set out in the appointment agreement is not to exceed 50 years unless a longer period is provided for by a State agreement relating to the port or maritime facility.

- (3) In subsection (2) —
 “State agreement” means an agreement —
 (a) to which the State is a party; and
 (b) which is ratified by an Act or the execution of which
 is authorized or approved by an Act.
- (4) The Director General may, by notice in writing to an operator,
extend the appointment of the operator for a period or periods
not exceeding (in the aggregate) 10 years.

17. Publication of appointments

- (1) The Director General must ensure that notice of the appointment
of an operator is published in the *Gazette* as soon as is
practicable after the appointment is made.
- (2) The notice is to include —
 (a) the name of the port or maritime facility;
 (b) the name of the appointed operator; and
 (c) the period of the appointment.
- (3) The Director General is to keep a copy of every appointment
agreement, as in force from time to time.

18. Other laws not affected

The appointment of an operator does not affect the operator’s
obligations to comply with any other written law in relation to
the matters covered by the appointment agreement.

19. Operator may ask for regulations to be made

An appointed operator may, by written notice to the Minister,
ask for regulations to be made under the Act in relation to the
port or maritime facility.

20. Operational audit

- 5 (1) It is a condition of the appointment of an operator that the operator is to, not less than once in every period of 24 months (or such longer period as the Director General allows), provide the Director General with an operational audit conducted by an independent expert acceptable to the Director General.
- (2) An operational audit is an audit of the effectiveness of measures taken by the appointed operator to comply with the terms and conditions of its appointment.

10 **21. Failure to comply with appointment agreement**

- 15 (1) If, in the opinion of the Minister, an appointed operator contravenes the terms or conditions of its appointment, the Minister may cause a notice to be served on the operator requiring the operator to rectify the contravention within a specified period.
- (2) If, in the opinion of the Minister, an appointed operator has failed to comply with a notice under subsection (1) the Minister may, subject to section 22, do one or more of the following —
- 20 (a) serve a letter of reprimand on the operator;
- (b) order the operator to pay a monetary penalty fixed by the Minister but not exceeding \$100 000;
- (c) cause the contravention to be rectified to the satisfaction of the Minister.
- 25 (3) Persons authorized by the Minister may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).
- (4) The Minister may recover —
- (a) a penalty imposed under subsection (2)(b); or

- (b) the costs and expenses of any action taken under subsection (2)(c),

in a court of competent jurisdiction as a debt due by the appointed operator to the State.

5 **22. Right of operator to make submissions**

The Minister is not to take any action under section 21(2)(b) or (c) unless the Minister has notified the appointed operator of the proposed action and given the operator a reasonable opportunity of making submissions on the matter.

10 **23. Exception where public health endangered**

If in the opinion of the Minister the health or safety of members of the public is or may be at risk, the Minister may cause a contravention to be rectified under section 21(2)(c) without —

- 15 (a) serving notice on the appointed operator under section 21(1); or
- (b) complying with section 22.

24. Termination of appointment

- (1) The Governor may terminate an operator's appointment if satisfied that the operator —

- 20 (a) is in default as defined in subsection (2);
- (b) has within a period of 5 years been convicted of 3 or more offences for which the prescribed punishment is a fine of \$20 000 or more or imprisonment for 20 months or more,

25 and that termination of the appointment is appropriate in the circumstances.

- (2) For the purposes of subsection (1)(a) an appointed operator is in default if the Governor is satisfied that —
- (a) the operator has contravened a term or condition of its appointment or has otherwise committed an act of default under its appointment;
 - (b) the contravention is material in terms of the appointment as a whole;
 - (c) the Minister has served the operator with written notice of the contravention and of the fact that in the Minister's opinion paragraph (b) applies to it; and
 - (d) the operator has not, within the time specified in the notice, either remedied the contravention or shown cause why the appointment should not be terminated.
- (3) An appointed operator may terminate its appointment as operator by written notice given to the Director General in accordance with the appointment agreement.
- (4) If an operator's appointment is terminated under this section the Director General must ensure that notice of the termination is published in the *Gazette*.

25. Transitional arrangements

- (1) Regulations may provide, in the event of an operator's appointment being terminated, for —
- (a) the vesting of assets and rights of the former operator in a person (including the Minister as a body corporate under another written law) for the purpose of enabling the port or maritime facility to be operated after the termination;
 - (b) the conferral of powers and duties for that purpose;
 - (c) the discharge or assignment of liabilities;
 - (d) the disposal of property; and

(e) all matters that are necessary or convenient for dealing with the consequences of the termination and the vesting referred to in paragraph (a).

5 (2) A reference in subsection (1) to the termination of an appointment includes a reference to an appointment expiring and not being renewed.

26. Advice to Minister about performance of operator

The Director General is to —

- 10 (a) monitor and report to the Minister on the performance of an appointed operator;
- (b) inform the Minister about any failure by an appointed operator to meet requirements of this Act or its appointment agreement; and
- 15 (c) provide advice to the Minister for the purposes of section 21.

27. How planning and building requirements apply to operators

(1) In this section —

20 **“Building Code”** means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code;

25 **“performance requirements”** means the provisions of the Building Code that set out the technical requirements in accordance with which buildings must be built;

“port operator” means —

- (a) an appointed operator of a port; or
- (b) a lessee or tenant of an appointed operator of a port;

“responsible Minister” means —

- (a) in relation to a town planning matter, the Minister administering the *Town Planning and Development Act 1928*;
- 5 (b) in relation to a building matter, the Minister administering the *Local Government (Miscellaneous Provisions) Act 1960*;

“works” means works for the purposes of a port and includes —

- 10 (a) designing, constructing, extending, maintaining, removing or demolishing —
 - (i) maritime structures and other buildings, structures and enclosures; and
 - (ii) railways, roads, bridges, dams and
 - 15 embankments; and
- (b) reclaiming land from the sea or a river.

(2) For the purposes of works and infrastructure —

- (a) section 32 of the *Town Planning and Development Act 1928*; and
- 20 (b) section 373(3) of the *Local Government (Miscellaneous Provisions) Act 1960*,

apply to a port operator as if it were an agency of the Crown in right of the State.

(3) Works and infrastructure are to be regarded as being public works for the purposes of section 32 of the *Town Planning and Development Act 1928* as applied by subsection (2)(a).

(4) Subsection (2)(b) does not prevent the application of the performance requirements of the Building Code to a building or building work to which they would otherwise apply.

- (5) A port operator is to consult with the relevant local government before and during the carrying out of building work to ensure that the performance requirements of the Building Code are applied in accordance with subsection (3).
- 5 (6) If there is a dispute between a port operator and a local government with respect to a town planning or building matter relating to works or infrastructure, the parties to the dispute are to refer it to the Minister.
- 10 (7) The Minister may, after consulting the responsible Minister, make a decision on the dispute and that decision is final and binding on the parties.

Division 3 — Licensing of maritime services

28. Definition

In this Division —
15 **“licence”** means a licence under this Division.

29. Regulations may provide for licensing

- (1) Regulations made in relation to a port or maritime facility may prohibit a prescribed service from being provided at or in relation to the port or maritime facility except under a licence issued by the operator of the port or maritime facility.
20
- (2) Neither the operator, nor a person acting on the operator’s behalf, needs a licence to provide a prescribed service.

30. Services that can be licensed

For the purposes of section 29 the following are prescribed services at or in relation to a port or a maritime facility —
25

- (a) pilotage services;
- (b) towage services;

- (c) stevedoring services; and
- (d) maritime services of any other kind prescribed for the purposes of this section in relation to the port or maritime facility.

5 **31. Licences: issue, direction, conditions etc.**

(1) Regulations may provide for the following —

- (a) the calling of applications or tenders for licences;
- (b) the method of applying or tendering for licences;
- 10 (c) the issue, duration, renewal, suspension or cancellation of licences;
- (d) fees for the issue or renewal of licences.

(2) A licence may be issued on such conditions as the operator thinks fit.

32. Licence may continue beyond operator's appointment

15 (1) A licence issued by an appointed operator continues to have effect, under and subject to the regulations, even if the operator's appointment expires or is terminated.

(2) An appointed operator must get the Director General's approval before it issues a licence for a term that will extend beyond the
20 expiry of its appointment.

33. Exclusive licences

(1) An appointed operator must get the Minister's approval before it issues a licence giving a person an exclusive right to provide prescribed services of a particular kind.

25 (2) The Minister is not to give approval under subsection (1) unless the Minister considers that the public benefits of exclusivity exceed the public costs.

Division 4 — Harbour masters and maritime facility managers

34. “Port” includes certain other areas

A reference in this Division to a port includes a reference to —

- 5
- (a) any area that is outside, but contiguous with, a port and is declared by the regulations to be an adjacent area in relation to the port; and
 - (b) any area that is declared under section 69(2) in relation to the port.

35. Appointment of harbour masters

- 10
- (1) The operator of a port is to appoint a competent and suitably qualified person to be the harbour master of the port.
 - (2) The operator of a port may appoint a competent and suitably qualified person to act in the office of harbour master of the port if the harbour master is, or is expected to be, absent from the port, or on leave, or unable for any other reason to perform the functions of the office.
 - 15
 - (3) If —
 - (a) the harbour master is unable to perform his or her functions; and
 - 20
 - (b) there is no acting harbour master or the acting harbour master is also unable to perform those functions,those functions may be performed by a person determined by the operator of the port.
 - (4) The harbour master may, in writing, delegate any of his or her functions, other than this power of delegation, to any person.
 - 25

36. Principal functions of harbour masters

The principal functions of a harbour master are —

- (a) to control the movement of vessels in the port;
- (b) to control the mooring of vessels in the port;
- 5 (c) to ensure that the port is kept free of obstructions or possible obstructions to vessels using the port;
- (d) to ensure that the safety of people and property in the port is not put at risk by vessels or dangerous things; and
- 10 (e) to ensure that the operations of the port in relation to vessels are conducted safely and efficiently.

37. Directions as to vessels

(1) For the purpose of performing his or her principal functions, a harbour master may direct the owner, master or person in charge of a vessel to do all or any of the following —

- 15 (a) to ensure that the vessel does not enter the port;
- (b) to navigate the vessel in a specified manner while it is in the port;
- (c) to moor the vessel in the port at a specified place and in a specified manner;
- 20 (d) to move the vessel out of the port or to another place in it;
- (e) to do anything to or in relation to the means by which the vessel is moored in the port.

(2) Subsection (1) does not authorize a harbour master to prevent a vessel from entering the port, or direct that a vessel be moved out of the port, unless the harbour master is satisfied that there is no place in the port where the vessel can lie without —

- (a) obstructing other vessels;

- (b) hindering the efficiency of the operations of the port;
 - (c) endangering the safety of people or property; or
 - (d) polluting the waters of the port.
- 5 (3) Subsection (2) does not affect the powers of a harbour master to withhold services under regulations authorized by Schedule 3 item 11.1.
- 10 (4) When the safety of people or valuable property is in danger from a vessel in a port and no other direction is reasonable in the circumstances, the harbour master may direct the owner, master or person in charge of the vessel to sink it immediately.

38. Directions as to dangerous things

- (1) In this section —
“owner” means —
- 15 (a) in relation to a vessel or part of a vessel — the owner immediately before the time of the abandonment or loss of the vessel or part of a vessel;
 - (b) in relation to anything in the water which was in or on a vessel — the owner of the vessel.
- 20 (2) For the purpose of performing his or her principal functions, a harbour master may direct the owner of a dangerous thing in the port —
- (a) to move the thing out of the port or to another place in it;
 - (b) to destroy the thing; or
 - 25 (c) to sink the thing.
- (3) Subsection (2) does not authorize a harbour master to direct that a dangerous thing be moved out of the port unless the harbour

master is satisfied that there is no place in the port where the thing can lie without —

- (a) obstructing vessels;
- (b) hindering the efficiency of the operations of the port;
- 5 (c) endangering the safety of people or property; or
- (d) polluting the waters of the port.

39. Removal of ownerless vessels or dangerous things

10 For the purpose of performing his or her principal functions, a harbour master may remove from the waters of the port, destroy or sink any vessel or dangerous thing if the identity or whereabouts, or both, of the owner cannot, after reasonable enquiries, be ascertained.

40. Failure to obey directions

15 (1) A person who without reasonable excuse (proof of which lies on that person) does not comply with a direction given under section 37 or 38 commits an offence.

Penalty: \$25 000.

20 (2) If a person does not comply with a direction given under section 37(1)(c), (d) or (e) or section 38(2) within a reasonable time after being given it, the harbour master may cause the direction to be complied with by using such means as the harbour master thinks fit.

25 (3) When causing a vessel to be moved under subsection (2), a harbour master may cause the vessel to be made fast to another vessel that is moored in the port.

(4) Subsection (3) does not prevent the owner or master of a vessel to which another vessel is made fast under that subsection from recovering from the owner or master of the other vessel damages for loss or damage occasioned by that making fast.

41. Recovery of costs

(1) The operator of a port may recover —

- (a) the costs of exercising the powers in section 39 from the owner of the vessel or dangerous thing; or
- 5 (b) the costs of exercising the powers in section 40(2) or (3) from the owner, master, or person in charge, of the vessel or the owner of the dangerous thing,

in a court of competent jurisdiction as a debt due to the operator.

10 (2) The operator of a port may recover the costs of exercising the powers conferred by section 39 by selling the vessel or dangerous thing.

(3) The proceeds of a sale are to be applied —

- (a) first, to the expenses of the sale;
- 15 (b) second, to the costs of exercising the powers in section 39,

and the balance, if any, is to be paid to the owner of the vessel or dangerous thing but, if the identity or whereabouts, or both, of the owner cannot be ascertained, that balance is to be paid to the Treasurer.

20 (4) The powers in subsections (1) and (2) may be exercised together.

42. Immunity from liability

25 (1) Neither the State, the operator of a port, the harbour master nor any person acting under the direction of the harbour master is liable for any loss or damage occasioned by —

- (a) complying with a direction given, or purportedly given, in good faith under section 37 or 38; or

(b) the exercise, or purported exercise, in good faith of the powers conferred by section 39, 40(2) or (3) or 41(2).

5 (2) Subsection (1)(a) applies whether the loss or damage is suffered by the person complying with the direction or by another person affected by that compliance.

43. Offence of hindering

A person who hinders a harbour master, or a person acting under the direction of a harbour master, in the exercise of the powers in section 39, 40(2) or (3) or 41(2) commits an offence.

10 Penalty: \$10 000.

44. Maritime facility managers

(1) The operator of a maritime facility is to appoint a manager for the maritime facility.

15 (2) The harbour master provisions apply in relation to maritime facility managers as if references in those provisions to a harbour master were references to a maritime facility manager and references in those provisions to a port were references to a maritime facility.

(3) In subsection (2) —

20 **“the harbour master provisions”** means —

(a) section 35(3) and (4);

(b) provisions of sections 36 to 43 specified —

(i) in the appointment agreement, if the maritime facility has an appointed operator; or

25 (ii) by the Director General, if the Minister is the operator.

(4) If under an appointment agreement relevant obligations of the appointed operator only have effect at certain times or in certain

circumstances, provisions of sections 36 to 43 only apply under subsection (2) at those times or in those circumstances.

Division 5 — Maritime structures

45. Interpretation

- 5 (1) In this Division —
- “department”** means a department as defined in the *Public Sector Management Act 1994*;
- “licence”** means a licence issued by the Director General under the regulations.
- 10 (2) For the purposes of this Division anything that a department has done or failed to do is to be regarded as an act or omission of the chief executive officer of the department.

46. Application

15 This Division does not apply to or in relation to the erection, placement or maintenance of maritime structures by a port authority in its port.

47. Maritime structures to be approved or licensed

- 20 (1) A public authority other than the Minister or the Department must not erect, place or maintain a maritime structure, or cause a maritime structure to be erected, placed or maintained, except in accordance with written approval given by the Director General.
- 25 (2) A person other than a public authority must not erect, place or maintain a maritime structure, or cause a maritime structure to be erected, placed or maintained, except in accordance with a licence.

Penalty: \$5 000.

(3) Subsection (2) does not apply if —

- (a) the erection, placing or maintaining of the maritime structure is the subject of an approval under subsection (1) or is carried out on behalf of the Minister or the Department; or
- (b) the maritime structure is of a class exempted by the regulations from the operation of subsection (2).

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48. Annual levy for maritime structures

(1) The Director General may determine an annual levy to be payable for the right to maintain a licensed maritime structure.

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(2) The levy is additional to any fee for the issue or renewal of a licence.

49. Unauthorized or unsafe maritime structures

(1) In this section —

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“owner”, in relation to a maritime structure, means —

- (a) if the maritime structure is the subject of a licence, the licensee;
- (b) if the maritime structure has ceased to be the subject of a licence, the former licensee; or
- (c) in any other case, a person who —
 - (i) erected or placed the maritime structure;
 - (ii) owns or has owned the maritime structure; or
 - (iii) has or has had control over the maritime structure,

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and who is declared by the Minister, by notice published in the *Gazette*, to be the owner of the maritime structure.

- (2) If a maritime structure —
- (a) is erected, placed or maintained in contravention of section 47; or
 - (b) becomes unsafe or presents a danger to navigation,
- 5 the Director General may by written notice served on the owner of the maritime structure direct the owner to make the maritime structure safe or remove the maritime structure.
- (3) If an owner does not make safe or remove a maritime structure in accordance with a notice under subsection (2), the Director
- 10 General may cause the maritime structure to be made safe or removed in accordance with the notice and recover the cost of that removal in a court of competent jurisdiction as a debt due by the owner to the State.
- (4) If an owner of a maritime structure that is or is required to be
- 15 the subject of a licence contravenes a notice under subsection (2), the owner commits an offence.
- Penalty: \$5 000.
- (5) The court convicting an owner of an offence under subsection (4) may, if the Director General —
- 20 (a) has caused the relevant maritime structure to be made safe or removed under subsection (3); but
- (b) has not recovered the cost of that making safe or removal,
- 25 order the owner to pay to the Director General the cost of making safe or removing the maritime structure.

50. Appeals against licensing decisions of Director General

- (1) If the Director General —
- (a) refuses to issue a licence or subjects a licence to a condition;

- (b) serves an owner with a notice under section 49; or
- (c) amends or revokes a licence,

the Director General must serve on the applicant for the licence, the licensee or the owner, as the case requires, a written statement of the reasons for so doing.

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- (2) If an applicant for a licence, a licensee or an owner, as the case requires, is aggrieved by a decision of the Director General referred to in subsection (1), the applicant, licensee or owner may lodge an appeal under Part 6.

10 **51. Minister and Department may provide navigational aids**

- (1) The Minister or the Department may —
 - (a) provide navigational aids;
 - (b) agree to take over the control of a navigational aid;
 - (c) maintain, move, remove, discontinue or replace any navigational aid provided by or under the control of the Minister or the Department, as the case may be; or
 - (d) vary the character of, or the mode of display or operation of, any navigational aid provided by or under the control of the Minister or the Department, as the case may be.
- (2) If the Minister or the Department enters into an agreement under subsection (1)(b), provision may be made in the agreement for the payment from time to time of the expense incurred in the exercise of the powers conferred by subsection (1)(c) or (d).
- (3) A person to whom this subsection applies is not liable for any loss or damage resulting from —
 - (a) anything done or omitted to be done in good faith in relation to a navigational aid for a port; or

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- (b) any defect in, or in the placing or operation of, a navigational aid for a port.
- (4) Subsection (3) applies to —
 - (a) the State;
 - 5 (b) the Minister;
 - (c) the Director General and other officers; and
 - (d) if the control of the navigational aid has been taken over by the Minister or the Department under an agreement under subsection (1)(b), a person who is or was the
10 owner, lessee or bailee of the navigational aid.

52. Interference with navigational aids

- (1) A person must not, without lawful excuse (proof of which lies on the person) do any of the following things in relation to a navigational aid —
 - 15 (a) damage it;
 - (b) endanger it by making a vessel fast to it or otherwise using a vessel in its vicinity;
 - (c) obstruct or interfere with its display or operation;
 - (d) obstruct or interfere with any emission or transmission
20 from it.

Penalty: \$25 000.

- (2) If a public authority owns or has control over a navigational aid, a person who is convicted of an offence under subsection (1)(a) is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to the public authority all expenses
25 reasonably incurred by the public authority in making good the damage and the public authority may recover those expenses in a court of competent jurisdiction as a debt due by that person to the public authority.

- (3) Subsection (2) does not affect the operation of section 53 in relation to damage to which that section applies.

53. Responsibility for damage to maritime structures

- 5 (1) This section applies if a maritime structure owned by, or under the control of, a public authority is damaged by —
- (a) a vessel or its equipment or cargo;
 - (b) any floating object;
 - (c) any material; or
 - 10 (d) any person employed in, on or in relation to, anything referred to in paragraph (a), (b) or (c).
- (2) If this section applies, the owner of the vessel, floating object or material is answerable in damages to the public authority for the whole of the damage whether or not the damage is caused through a person's wilful or negligent act or omission.
- 15 (3) If the damage is caused through the wilful or negligent act or omission of the master of the vessel or of the person having charge of the floating object or the material, that master or person (as well as the owner) is answerable in damages to the public authority for the whole of the damage.
- 20 (4) Neither the public authority nor any other person is entitled under this section to recover more than once for the same cause of action.
- (5) In an action under this section the damages recoverable are to be determined on the basis of —
- 25 (a) the actual cost incurred in repairing or replacing the damaged maritime structure without taking into account any betterment or depreciation; and
 - (b) any economic loss suffered by the public authority as a result of the damage.

Division 6 — Mooring control

54. Division does not apply to port authority waters

This Division does not apply to waters in a port authority port.

55. Mooring control areas

- 5 (1) The Minister may, by notice (a “**mooring control notice**”) —
- (a) declare an area of navigable waters to be a mooring control area; or
 - (b) amend or revoke another mooring control notice.
- 10 (2) A mooring control notice is to be published in the *Gazette* and may also be published in a newspaper or newspapers.
- (3) In exercising the powers conferred by subsection (1) the Minister is to have regard to the need to —
- 15 (a) ensure the safe mooring and navigation of vessels and other things in areas of navigable waters;
 - (b) allocate mooring sites equitably in areas of navigable waters;
 - (c) restrict the mooring of vessels and other things in areas of navigable waters of high conservation value; and
 - 20 (d) enable the costs of providing and maintaining maritime structures and other infrastructure to be recouped.
- (4) A person must not establish or maintain a mooring within a mooring control area unless the mooring is —
- (a) on a registered mooring site; and
 - (b) installed in accordance with the regulations.
- 25 Penalty: \$5 000.
- (5) A person must not moor a vessel or other thing within a mooring control area contrary to the regulations.
Penalty: \$5 000.

- (6) The Minister may by notice published in the *Gazette* —
- (a) determine or provide for the fees payable for —
 - (i) applications for registration of mooring sites;
 - (ii) granting, amendment, renewal or transfer of registration of mooring sites;
 - (iii) inspections of moorings on registered mooring sites;
 - (iv) searches of the register of mooring sites; and
 - (v) such other services in connection with moorings and mooring sites as are prescribed;
 - or
 - (b) amend or revoke a determination made under this subsection.
- (7) In exercising the powers conferred by subsection (6) the Minister may take into account the costs of providing and maintaining maritime structures and other infrastructure as well as administrative costs.
- (8) If a person is aggrieved by a decision under the regulations about the granting, amendment, renewal, transfer, suspension or cancellation of registration of a mooring site, or about the variation or removal of a mooring, the person may lodge an appeal under Part 6.

56. Mooring prohibition areas

- (1) In this section —
- “moor” does not include anchor or berth.
- (2) The Minister may by notice (a “mooring prohibition notice”) —
- (a) declare an area of navigable waters to be a mooring prohibition area; or
 - (b) amend or revoke another mooring prohibition notice.

- (3) A mooring prohibition notice is to be published in the *Gazette* and may also be published in a newspaper or newspapers.
- (4) In exercising the powers conferred by subsection (2) the Minister is to have regard to the need to —
- 5 (a) protect areas of environmentally fragile navigable waters; and
- (b) ensure the good order and safety of navigation in areas of navigable waters.
- (5) A person must not —
- 10 (a) moor a vessel within a mooring prohibition area except in accordance with the written permission of the Director General under the regulations; or
- (b) anchor a vessel or other thing in a mooring prohibition area contrary to the regulations.
- 15 Penalty: \$5 000.

57. Mooring area licences

- (1) A person may apply to the Director General for a licence (a “**mooring area licence**”) under the regulations conferring on that person the right to control the mooring of vessels or other things in an area of navigable waters.
- 20
- (2) In making a decision about the issue, amendment, renewal or transfer of a mooring area licence the Director General is to have regard to the need to —
- 25 (a) ensure the safe mooring and navigation of vessels and other things in areas of navigable waters;
- (b) enable the use of navigable waters for mooring to be managed in an efficient, effective and equitable manner; and

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- (c) restrict the mooring of vessels and other things in areas of navigable waters of high conservation value.
- (3) A mooring area licence cannot be issued in respect of navigable waters in a mooring control area or a mooring prohibition area.
- 5 (4) If a mooring area licence is in force in respect of an area of navigable waters, no person other than the holder of the licence is to moor a vessel or other thing in that area.
Penalty: \$5 000.
- 10 (5) It is a defence in proceedings for an offence under subsection (4) to show that the vessel or other thing was moored —
- (a) with the permission of the holder of the mooring area licence; and
- 15 (b) in accordance with any terms and conditions on which that permission was given.
- (6) The Minister may by notice published in the *Gazette* —
- (a) determine or provide for the fees payable for —
- 20 (i) applications for mooring area licences; and
- (ii) issue, amendment, renewal or transfer of mooring area licences;
- or
- (b) amend or revoke a determination made under this subsection.
- 25 (7) If a person is aggrieved by a decision under the regulations about the issue, amendment, renewal, transfer, suspension or cancellation of a mooring area licence, the person may lodge an appeal under Part 6.

Division 7 — Departmental areas

58. Erection of notices and signs

- 5 (1) The Director General may cause public notices to be erected, placed or marked, at places within or on the boundaries of a departmental area.
- (2) A “**public notice**” is a notice or sign that the Director General considers necessary or desirable for the purpose of indicating publicly —
- 10 (a) that the area concerned is a departmental area;
- (b) the general extent of the departmental area;
- (c) any prohibition or restriction that applies to conduct in the departmental area or in a portion of it;
- (d) the liability of any person who fails to comply with a prohibition or restriction referred to in paragraph (c); or
- 15 (e) any other matters relating to the departmental area or a portion of it.
- (3) It is not a defence in proceedings for an offence under this Act to prove that a public notice is not erected, placed or marked under this section at any place unless an element of the offence is dependent on the existence of the public notice.
- 20 (4) A person who destroys, damages, defaces, obliterates, moves or otherwise interferes with a public notice or sign erected, placed or marked under this section commits an offence.
- Penalty: \$5 000.

Part 3 — Safe navigation

Division 1 — Navigation control notices

59. Publication of notices

- 5 (1) In order to ensure the safety of vessels and people and the protection of the environment the Director General may, by notice (a “**navigation control notice**”) —
- 10 (a) exercise one or more of the powers conferred by section 60(1) in relation to all navigable waters or in relation to an area of navigable waters designated in the notice; or
- (b) amend another navigation control notice.
- (2) A navigation control notice relating to all navigable waters is to be published in the *Gazette* and may also be published in a newspaper or newspapers.
- 15 (3) A navigation control notice relating to an area of navigable waters is to be published —
- (a) in the *Gazette*; or
- (b) in a newspaper or newspapers circulating in the region that includes or is adjacent to those waters,
- 20 or in both of those ways.
- (4) Despite subsections (2) and (3), in the case of an emergency situation giving rise to a real and present danger, the Director General may publish a navigation control notice by television broadcast, radio broadcast or transmission or such other means
- 25 as the Director General considers appropriate to bring it to the attention of the public.

- (5) A navigation control notice published under subsection (4) expires —
- (a) at the end of such period (not exceeding 72 hours) as is specified in the notice; or
 - 5 (b) when replaced by a navigation control notice published under subsection (2) or (3),
- whichever occurs first.

60. Director General's powers

- 10 (1) The Director General may do any of the following by navigation control notice —
- (a) regulate or prohibit the mooring of vessels;
 - (b) regulate or prohibit parasailing, water skiing or any activity prescribed for the purposes of this paragraph;
 - 15 (c) regulate aquatic events and enable the coordination of aquatic events by specified persons;
 - (d) close any navigable waters —
 - (i) in an emergency;
 - (ii) for safety reasons; or
 - 20 (iii) to prevent damage to the environment as a result of the continued presence of vessels in, or passage of vessels through, those navigable waters;
 - (e) set speed limits for vessels;
 - (f) prohibit the use of vessels of any class if that use is likely —
 - 25 (i) to be dangerous to people; or
 - (ii) to cause unnecessary distress to residents in the vicinity;

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- 5 (g) establish areas within which, in the interests of safe navigation or the protection of the environment, the use of pilotage services is necessary except as otherwise provided by the regulations;
- (h) establish buffer zones around specified vessels or structures and prohibit vessels from entering those zones;
- 10 (i) designate areas for the purposes of the application of regulations under section 66;
- (j) exercise such other powers as may be necessary from time to time to ensure navigational safety.
- (2) The Director General's powers under subsection (1)(g) do not extend to waters in a port authority port.
- (3) In subsection (1) —
- 15 “**specified**” means specified in a navigation control notice.

61. Notices must be obeyed

A person who contravenes a navigation control notice commits an offence.

Penalty: \$10 000.

20 **Division 2 — Registration of vessels**

62. Director General may register vessels

The Director General may —

- (a) register vessels; and
- (b) revoke the registration of vessels,
- 25 in accordance with the regulations.

63. Offence of having or using unregistered vessels

- (1) A person who —
- (a) has an unregistered vessel in navigable waters; or
 - (b) uses an unregistered vessel,

5 commits an offence.

Penalty: \$10 000.

- (2) In this section —

“unregistered vessel” means a vessel that is required under the regulations to be registered but is not so registered.

10 **64. Offence of using registered vessels contrary to conditions**

A person who uses a registered vessel in contravention of the conditions of its registration commits an offence.

Penalty: \$10 000.

65. Offences relating to hiring of unregistered vessels

15 A person must not —

- (a) offer for hire; or
- (b) hire out,

a vessel unless the vessel is registered for the purpose of being hired.

20 Penalty: \$10 000.

Division 3 — Certificates of competency

66. Certificates of competency

The regulations may require a master, pilot or other person engaged in a prescribed class of maritime employment, or a

prescribed class of conduct in relation to the navigation of a vessel, to have —

- (a) an appropriate certificate of competency under the regulations; or
- 5 (b) an appropriate external qualification recognized under the regulations.

67. Appeals against decisions relating to certificates

A person may lodge an appeal under Part 6 if any of the following things happens under the regulations —

- 10 (a) the person's application for the issue, renewal or re-validation of a certificate of competency is refused;
- (b) a condition to which the person objects is imposed on his or her certificate of competency;
- (c) the person's certificate of competency is suspended or
15 cancelled; or
- (d) recognition of the person's external qualification is —
 - (i) refused;
 - (ii) given subject to a condition to which the person
objects; or
 - 20 (iii) suspended or withdrawn.

68. Misrepresentations in relation to applications for certificates

- (1) A person must not, in or for the purposes of an application under the regulations for —
 - 25 (a) the issue, renewal or re-validation of a certificate of competency; or

(b) the recognition of an external qualification, make any representation that the person knows to be false or misleading in any material particular.

Penalty: \$25 000.

- 5 (2) A certificate of competency issued, renewed or re-validated as a result of a false or misleading representation is void.
- (3) Recognition of an external qualification given as a result of a false or misleading representation is void.

Division 4 — Pilots and pilotage

10 **69. Terms used in this Division**

(1) In this Division —

“**approved**”, in relation to a pilot, means approved under section 71;

15 “**certificated**” means holding a valid certificate of competency as a pilot for the relevant pilotage area;

“**controlled area**” means an area established by a navigation control notice under section 60(1)(g);

“**pilotage area**” means a port or a controlled area.

(2) A reference in this Division to a port —

20 (a) includes a reference to any area that is outside the port and is declared by the regulations to be associated with the port and to be an area in which pilotage services are to be used; but

25 (b) does not include a port that is declared by the regulations to be a port in which pilotage services do not have to be used.

70. Application

This Division applies to vessels —

- (a) moving in a pilotage area in the course of entering or leaving the pilotage area; or
- 5 (b) moving between places in a pilotage area.

71. Approval of pilots

- (1) The operator of a port may approve a certificated person as a pilot for the port and is to ensure that there is at all times at least one approved pilot for the port.
- 10 (2) If a controlled area is or includes a maritime facility for which there is an appointed operator, that operator may approve a certificated person as a pilot for the controlled area and is to ensure that there is at all times at least one approved pilot for the controlled area.
- 15 (3) The Minister may approve a certificated person as a pilot for a controlled area and is to ensure that there is at all times at least one approved pilot for the controlled area.
- (4) An approval under subsection (1), (2) or (3) has effect for the period set out in the approval unless it is revoked by the operator or Minister, as the case may be, or ceases to have effect under subsection (6), before that period ends.
- 20 (5) An approval under subsection (1), (2) or (3), or any revocation of such an approval, is to be in writing.
- (6) The approval of a person under subsection (1), (2) or (3) ceases to have effect if the person ceases to be certificated.
- 25

72. Offence of acting as pilot when not approved

A person who acts as a pilot in a pilotage area commits an offence unless the person is approved as a pilot for the pilotage area.

Penalty: \$25 000.

5 **73. Provision of pilotage services**

- (1) The operator of a port is responsible for ensuring that pilotage services are available to the extent required in the port.
- (2) In the case of a controlled area referred to in section 71(2), the operator of the maritime facility is responsible for ensuring that pilotage services are available to the extent required in the controlled area.
- 10 (3) The Minister is responsible for ensuring that pilotage services are available to the extent required in a controlled area other than one referred to in section 71(2).

15 **74. When pilotage is required**

- (1) Except as otherwise provided by the regulations, a vessel moving in a pilotage area must use pilotage services.
- (2) A person who moves a vessel in a pilotage area without it being under the control of a person approved as a pilot for the pilotage area commits an offence unless under the regulations —
- 20 (a) the vessel does not have to have an approved pilot; or
- (b) that person is permitted to do so.

Penalty: \$25 000.

- (3) If a vessel is being moved in a pilotage area without it being under the control of a person approved as a pilot for the pilotage area, the State is not liable for —
- 25 (a) any loss or damage caused by the vessel; or

- (b) the loss of, or damage to, the vessel or anything in or on the vessel,

while the vessel is being so moved, whether or not it is being so moved by reason of an exemption under the regulations.

- 5 (4) If the pilotage area is a port, the protection from liability given by subsection (3) extends to the operator of the port.

- (5) If the pilotage area is a controlled area referred to in section 71(2), the protection from liability given by subsection (3) extends to the operator of the maritime facility.

10 **75. Pilot under authority of master**

An approved pilot who as pilot has the conduct and navigation of a vessel in a pilotage area is subject to the authority of the master of the vessel, and the master is not relieved from responsibility for the conduct and navigation of the vessel by reason only of those circumstances.

15

76. Liability of owner or master of a vessel

The owner or master of a vessel moving under compulsory pilotage in a pilotage area is liable for any loss or damage caused by the vessel, or by a fault of the navigation of the vessel, in the same manner as the owner or master would be liable if pilotage were not compulsory.

20

77. Immunity from liability for pilot's negligence

- (1) The State is not liable for any loss or damage resulting from an act or omission by a person approved as a pilot in the conduct or navigation of a vessel of which the person is the pilot.

25

- (2) If the pilot was approved by the operator of a port or maritime facility, the protection given by subsection (1) extends to the operator.

- (3) An approved pilot is not personally liable for any loss or damage resulting from an act or omission by him or her in the conduct or navigation of a vessel of which he or she is the pilot.
- (4) The employer of a person who is an approved pilot is not liable for any loss or damage resulting from an act or omission by the person in the conduct or navigation of a vessel of which the person is the pilot.

Division 5 — Safe operation of vessels

78. Crewing requirements and crew qualifications

- (1) If a person acts as the master of a vessel in contravention of the regulations under section 66, any person who is —
- (a) the owner of the vessel; or
 - (b) the employer of the master,
- commits an offence.
- Penalty: \$10 000.
- (2) If a crew member of a vessel engages in employment or conduct in contravention of the regulations under section 66, any person who is —
- (a) the owner, or master of the vessel; or
 - (b) the employer of the crew member,
- commits an offence.
- Penalty: \$10 000.
- (3) If during the voyage of a vessel the prescribed crewing requirements applying to the vessel are contravened, each of the owner and the master of the vessel commits an offence.
- Penalty: \$10 000.

79. Exemptions from compliance with certain regulations

- (1) Subject to this section, the Director General may, if special and unusual circumstances require, exempt a person permanently or temporarily from compliance with regulations relating to —
- 5 (a) the prerequisites for the issue, renewal or re-validation of certificates of competency of specified classes;
- (b) the examination requirements for the issue, renewal or re-validation of a certificate of competency;
- (c) prescribed crewing requirements; or
- 10 (d) vessel safety standards.
- (2) The Director General must, before issuing an exemption under subsection (1), be satisfied that the issue of the exemption will not adversely affect the safety of a vessel, its crew or any member of the public.

15 **80. Additional crewing requirements**

- (1) The Director General may, by written notice served on the owner of a vessel, direct the owner to provide more crew than are necessary under the prescribed crewing requirements if the Director General considers that —
- 20 (a) the safety of a vessel, its crew, its passengers or any member of the public; and
- (b) the construction of the vessel, its intended purpose or its area of operation,
- so require.
- 25 (2) A notice under subsection (1) must give reasons for the direction it contains.

(3) An owner on whom notice is served under subsection (1) must comply with the direction it contains within such period as is specified in the notice.

Penalty: \$10 000.

5 (4) The period specified in the notice cannot be less than 14 days unless the Director General considers that earlier compliance with the direction is necessary to avoid endangering the vessel's crew or passengers or any member of the public.

10 (5) An owner on whom notice is served under subsection (1) may lodge an appeal under Part 6.

81. Deck lines, load lines and overloading

15 (1) Both the owner and the master of a vessel that is required by the regulations to be marked with deck lines or load lines or both must ensure that the vessel is so marked in a manner that is clearly visible.

Penalty: \$10 000.

(2) A person must not without reasonable excuse —

20 (a) alter, conceal, deface or obliterate a deck line or load line; or

(b) cause or allow another person to alter, conceal, deface or obliterate a deck line or load line.

Penalty: \$10 000.

(3) A person must not —

25 (a) alter, conceal, deface or obliterate a deck line or load line; or

- (b) cause or allow to be altered, concealed, defaced or obliterated a deck line or load line,

with intent to create a false impression or belief as to the load that the vessel concerned is capable of carrying.

5 Penalty: \$25 000.

- (4) The owner and the master of a vessel must ensure that the vessel is loaded in accordance with —

- (a) the regulations; and
- (b) its certificate of registration or load line certificate.

10 Penalty: \$10 000.

82. Responsibility for safe operation of vessels

- (1) The owner and the master of a vessel are responsible for the safe operation of the vessel and, in particular, are to ensure that —

- 15 (a) the vessel is crewed by appropriately qualified and trained personnel;
- (b) the vessel is navigated safely, in compliance with the regulations and in accordance with good seamanship practices; and
- 20 (c) good seamanship practices are observed in relation to the carrying out of maritime activities on the vessel and the operation of machinery on the vessel.

- 25 (2) If a person (the “**responsible person**”) breaches subsection (1), a person who sustains loss or damage as a result of the breach may sue the responsible person in a court of competent jurisdiction to recover damages in respect of the loss or damage.

83. Duties of masters in controlling certain vessels

(1) This section applies to a vessel if it is a condition of its registration that it cannot be used unless its master holds a certificate of competency.

5 (2) While a vessel to which this section applies is under way, the master of the vessel must deploy the crew members in a way that ensures the safe navigation of the vessel.

Penalty: \$5 000.

10 (3) Without limiting subsection (2), while a vessel to which this section applies is approaching, berthing at or leaving a jetty, the master of the vessel must —

(a) assume personal command of the bridge or wheelhouse and responsibility for the navigation of the vessel; and

15 (b) ensure that, unless the engine of the vessel is being operated from the bridge or wheelhouse, a certificated marine engineer or certificated marine engine driver assumes personal charge of the engine room controls of the vessel.

Penalty: \$5 000.

20 **84. Unlawfully assuming control of a vessel**

Subject to this Act, a person must not, without the consent of the owner or master of a vessel, navigate or otherwise assume control of the vessel or of its equipment or moorings.

Penalty: \$25 000.

25 **85. Maintenance of log books**

(1) In this section —

“log book” means a log book that is required by the regulations to be maintained.

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(2) The owner and master of a vessel in respect of which a log book is required must —

- 5
- (a) retain the log book for a period of not less than 12 months from the date of the last entry in the log book; and
 - (b) produce the log book to an authorized officer at the request of that authorized officer.

Penalty: \$10 000.

10 (3) An authorized officer may take a copy of a log book or a part of a log book.

(4) A person must not —

- 15
- (a) make an entry in a log book knowing that entry to be false;
 - (b) sign an entry in a log book knowing that entry to be false; or
 - (c) deliberately destroy or render illegible a log book or any entry in a log book.

Penalty: \$10 000.

86. Dangerous, reckless or careless navigation

20 (1) A person who navigates a vessel in a dangerous or reckless manner commits an offence.

Penalty: \$10 000.

(2) A person who navigates a vessel without due care and attention commits an offence.

25 Penalty: \$5 000.

87. Navigation under influence of alcohol, etc.

(1) A person who navigates or attempts to navigate a vessel while under the influence of —

- (a) alcohol or drugs; or
- (b) alcohol and drugs,

to such an extent as to be incapable of having proper control of the vessel commits an offence.

Penalty: \$5 000.

(2) In any proceedings for an offence under subsection (1) —

(a) a person who had a blood alcohol content of or exceeding 0.15 at the time of the alleged offence is to be regarded as having been under the influence of alcohol to such an extent as to be incapable of having proper control of a vessel at that time;

(b) if it is alleged or appears on the evidence that the defendant was under the influence of drugs alone, it is a defence for the defendant to prove —

- (i) that those drugs were either taken by the defendant under a prescription of a medical practitioner or registered dentist, or administered to him or her by a medical practitioner or registered dentist, for therapeutic purposes; and
- (ii) that the defendant was not aware, and could not reasonably have been expected to be aware, that those drugs were likely to render him or her incapable of having proper control of a vessel.

(3) A person who navigates or attempts to navigate a vessel of a prescribed class while having a blood alcohol content of or exceeding 0.05 commits an offence.

Penalty: \$2 500.

- (4) A person who navigates or attempts to navigate a vessel while having a blood alcohol content of or exceeding 0.08 commits an offence.

Penalty: \$1 500 (unless subsection (3) applies).

5

Division 6 — Dealing with unsafe vessels

88. Meaning of “unsafe”

A vessel is an unsafe vessel for the purposes of this Division if —

10

- (a) the defective condition of any part of the vessel creates a risk of injury or loss of life;

- (b) the vessel is not equipped or marked in accordance with the regulations or its equipment is not in good working order;

15

- (c) the hatches or the bow or side doors of the vessel are not properly secured;

- (d) the vessel is not crewed in accordance with the regulations; or

- (e) the vessel is unsafe for any prescribed or other reason.

89. Use of unsafe vessels

20

- (1) The owner and the master of a vessel must ensure that the vessel is not used if the vessel is an unsafe vessel.

Penalty: \$10 000.

- (2) It is a defence in proceedings for an offence under subsection (1) to show —

25

- (a) that the person charged used all reasonable means to ensure that the vessel was not an unsafe vessel; or

(b) that the sending or taking of the vessel to sea was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

5 (3) The fact that an unsafe vessel has been detained under section 90, 93 or 131(1)(c), is not a bar to proceedings for an offence under subsection (1).

90. Provisional detention of unsafe vessels

10 (1) When an authorized officer has reasonable grounds to believe that a vessel is an unsafe vessel, he or she may provisionally detain the vessel so that —

- (a) it can be surveyed or inspected; or
- (b) an assessment can be made of whether or not it is crewed in compliance with the regulations.

15 (2) When a vessel has been provisionally detained under subsection (1) —

- (a) an authorized officer —
 - (i) must, without delay, serve on the master of the vessel a written statement of the grounds for its detention; and
 - 20 (ii) may appoint an officer or, with the consent of the Director General, any other competent person to survey the vessel and report on it to the authorized officer;
- (b) the owner, or master of the vessel may, at any time
25 before the person appointed under paragraph (a)(ii) to survey the vessel makes that survey, require that the person so appointed be accompanied by such qualified person as that owner or master may select;
- (c) an authorized officer may at any time refer that
30 detention for investigation by a Court of Marine Inquiry.

91. Release by agreement

If a requirement is made under section 90(2)(b), the authorized officer —

- 5
- (a) must, if the person making the survey and the accompanying person agree, cause the vessel to be detained or released in accordance with that agreement; or
 - (b) may, if those persons differ, act as if that requirement had not been made.

10 **92. Order for release or permanent detention**

(1) Subject to subsection (3), an authorized officer may, on receiving a report made under section 90(2)(a)(ii) —

- 15
- (a) order the vessel to be released; or
 - (b) if the authorized officer considers the vessel to be an unsafe vessel, order the vessel to be finally detained —
 - (i) absolutely; or
 - (ii) until such conditions as the authorized officer thinks necessary to make the vessel safe have been complied with.

20 (2) An authorized officer may from time to time vary or add to an order made under subsection (1).

(3) An authorized officer must, on making an order under subsection (1)(b), serve a copy of the report and the text of the order on the master of the vessel.

25 (4) The owner or master of the vessel may, within 7 days after service takes place under subsection (3), lodge an appeal under Part 6.

- (5) An authorized officer may at any time, if he or she is satisfied that a vessel detained under section 90 or this section is not an unsafe vessel, order the vessel to be released conditionally or unconditionally.

5 **93. Enforcing detention of unsafe vessels**

- (1) When a vessel is authorized or ordered to be detained under this Act, an officer may detain the vessel.

- (2) If a vessel which has been detained, or in respect of which a notice of or order for detention has been served, begins a
10 voyage before that vessel has been released under this Act —

- (a) the master of that vessel; and
(b) the owner of the vessel, and any person who causes or orders that vessel to begin a voyage, if that owner is aware of the beginning of the voyage,

15 each commits an offence.
Penalty: \$25 000.

94. Power to order vessel to return to shore

- (1) If an authorized officer is satisfied in respect of a vessel that —
20 (a) the vessel is unseaworthy because it is an unsafe vessel;
(b) a requirement under this Act for there to be a valid certificate or other authorization in force in relation to the vessel is not being complied with;
(c) the prescribed crewing requirements are not being complied with; or
25 (d) the vessel is in an unsafe position or locality,

the authorized officer may order the person in charge of, or apparently in charge of, the vessel to take the vessel to the

nearest port or port authority port or to such other place as the authorized officer may direct.

- (2) A person to whom an order is given under subsection (1) must comply with that order without delay.

5 Penalty: \$10 000.

- (3) If a person does not comply with an order given to the person under subsection (1), the authorized officer who gave the order may take such action as he or she considers necessary to remove the vessel to the port, port authority port or other place directed by that authorized officer.

10

- (4) The Director General may recover the costs and expenses of any removal under subsection (3) in a court of competent jurisdiction as a debt due by the owner of the vessel to the State.

- (5) An authorized officer who gives an order under subsection (1) in respect of a vessel may also order that the vessel not be used again until —

15

- (a) such measures as are specified in the latter order have been taken to render the vessel seaworthy;
- (b) a certificate or other authorization required in relation to the vessel under this Act has been obtained; or
- (c) the prescribed crewing requirements have been complied with,

20

as the case requires.

- (6) A master or other person must not use or attempt to use a vessel in contravention of an order given under subsection (5).

25

Penalty: \$10 000.

- (7) Nothing in subsection (5) or (6) prevents a vessel from being used for the purpose of taking it to a port, port authority port or other place in compliance with an order given under subsection (1).

30

Division 7 — Navigational hazards

95. Removal of things causing hazards or obstructions

- 5 (1) Whenever a dangerous thing is in navigable waters and, in the opinion of an authorized officer, constitutes or is likely to constitute a hazard or obstruction to vessels using those navigable waters or a threat to the environment, the authorized officer may by written notice —
- 10 (a) served on the owner of the dangerous thing; or
(b) if the identity or whereabouts or both of that owner cannot be ascertained after the making of reasonable inquiries, published once in a newspaper circulating throughout the State,
- 15 declare the dangerous thing to be a navigational hazard and require the dangerous thing to be removed within such period as is specified in that notice from all navigable waters or to a place specified in that notice.
- (2) If a requirement made under subsection (1) is not complied with, the authorized officer may remove the dangerous thing —
- 20 (a) from all navigable waters; or
(b) to the place specified in the relevant notice.
- (3) The cost of a removal under subsection (2) is a debt due by the owner of the dangerous thing to the State and the Director General may recover that cost —
- 25 (a) in a court of competent jurisdiction; or
(b) by selling the dangerous thing.
- (4) The proceeds of a sale referred to in subsection (3)(b) are to be applied —
- (a) first, to the expenses of the sale; and

(b) second, to the costs of removing the dangerous thing, and the balance, if any, is to be paid to the owner of the dangerous thing but, if the identity or whereabouts, or both, of the owner cannot be ascertained after making reasonable inquiries, that balance is to be paid to the Treasurer.

96. Disposal of dangerous things, etc. in navigable waters

- (1) A person must not sink, set adrift, abandon or deposit any dangerous thing in navigable waters.
Penalty: \$25 000.
- (2) The Director General may by written notice served on the owner, insurer or salvor of a dangerous thing in navigable waters require that owner, insurer or salvor to remove the dangerous thing from navigable waters within such period as is specified in the notice or any period of extension referred to in subsection (3).
- (3) If an owner, insurer or salvor satisfies the Director General that —
- (a) it is impracticable to comply with a requirement made under subsection (2) within the period specified in the relevant notice; and
- (b) the dangerous thing concerned does not pose an immediate danger to navigation or the environment,
- the Director General may extend that period by such additional period as the Director General specifies.
- (4) An owner, insurer or salvor must comply with a requirement made under subsection (2) within the period specified in the relevant notice or any period of extension referred to in subsection (3).
Penalty: \$25 000.

- 5 (5) The court convicting a person of an offence under subsection (4) must, in addition to imposing a penalty under that subsection, impose on the person a penalty equal to 1% of the cost of removing the dangerous thing from navigable waters for each day during the period —
- 10 (a) beginning on the expiry of —
- (i) the period specified in the relevant notice; or
- (ii) any relevant period of extension referred to in subsection (3);
- 10 and
- (b) ending when that notice is complied with.
- 15 (6) Despite anything in this section, the Director General may remove a dangerous thing from navigable waters and recover the cost of that removal in a court of competent jurisdiction as a debt due by the owner, insurer or salvor of the dangerous thing to the State.

Division 8 — Distress, emergencies and collisions

97. Obligation to render assistance

- 20 (1) The master of a vessel on a voyage who receives information from any source that an aircraft or vessel is in distress must, unless that master is unable to do so or considers, in the special circumstances of the case, that it is unreasonable or unnecessary to do so —
- 25 (a) cause his or her vessel to proceed with all practicable speed to the assistance of the persons in distress; and
- (b) if possible, inform those persons that he or she is doing so.

Penalty: \$25 000 or imprisonment for 10 months.

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(2) The master of a vessel who receives information from any source that an aircraft or vessel is in distress at sea must make or cause to be made in the vessel log book —

(a) a record of that information; and

5 (b) if the master does not proceed to the assistance of the persons in distress, a record of the reasons for not so proceeding.

Penalty: \$5 000.

10 (3) The master of a vessel in distress may, after consulting as far as possible the masters of the vessels which answer his or her call for assistance, request the aid of such one or more of those vessels as he or she considers best able to render assistance.

15 (4) Subject to subsection (5), the master of a vessel the aid of which is requested under subsection (3) must comply with that request by proceeding with all practicable speed to the assistance of the persons in distress.

Penalty: \$25 000 or imprisonment for 10 months.

(5) If the master is informed —

(a) that aid is no longer necessary; or

20 (b) that a vessel (other than his or her vessel) is providing aid,

the master so informed is released from any duty imposed by subsection (1) or (4) in respect of the persons in distress.

25 (6) Compliance by the master of a vessel with this section does not affect the right of the master, or any other person, to salvage.

98. Emergency powers of Director General

(1) The Director General may, if there is an emergency that —

(a) involves a vessel; and

- (b) is likely to have a severe impact on public safety or on the environment or may result in serious damage to property,

5 take such action, and issue such instructions to the owner or the master of the vessel, as the Director General considers necessary for the purpose of avoiding or minimizing loss of life, injury, environmental harm or serious damage to property.

- 10 (2) A person to whom instructions are issued under subsection (1) must, in the absence of lawful excuse, comply with those instructions.

Penalty: \$100 000 or imprisonment for 20 months.

99. Duties of masters in case of collisions

- 15 (1) If a vessel (“**the vessel**”) is involved in a collision with another vessel (“**the other vessel**”) the master of the vessel must comply with the required collision procedures so far as that master can do so without danger to the vessel and its crew and passengers, if any, and has no other reasonable excuse for failing to do so.

Penalty: \$10 000.

- 20 (2) For the purposes of subsection (1) the “**required collision procedures**” for the master of the vessel are —

- 25 (a) to stay by the other vessel until he or she has ascertained that the other vessel has no need of further assistance and render to the other vessel, its master, crew and passengers, if any, such assistance as may be practicable and necessary in order to save them from any danger caused by the collision; and

- (b) to give the following details about the vessel to the master of the other vessel —

- 30 (i) its name;

- (ii) its registration number;
- (iii) particulars of its ownership.

100. Reporting of marine incidents

- 5 (1) If a vessel is involved in a marine incident of a prescribed kind
the master of the vessel must —
- (a) immediately give his or her name and address and the
registration number of the vessel —
 - 10 (i) to any person injured as a result of that marine
incident; and
 - (ii) to the owner or master of any other vessel
involved in that marine incident;
 - (b) if he or she has access to a radio transmitter, telephone
or other means of prompt communication, report details
15 of the marine incident without delay, including any
injuries or deaths resulting from it, and the position of
the vessel or vessels, to the Director General; and
 - (c) in any event, give the Director General, within 72 hours
of the occurrence of that marine incident, a report in an
approved form setting out full particulars of —
 - 20 (i) any other vessel involved;
 - (ii) the name of the master of any other vessel
involved;
 - (iii) the name and qualification of each crew member
involved;
 - 25 (iv) the name of any passenger involved;
 - (v) the circumstances surrounding that marine
incident; and
 - (vi) the extent of any damage to each vessel
involved.

30 Penalty: \$5 000.

- 5 (2) If a marine incident of a prescribed kind occurs in a supervised area, the appointed operator or port authority must, within 72 hours of the occurrence of that marine incident, give the Director General a report in an approved form setting out all information it may have as to the details and particulars required by subsection (1).
Penalty: \$5 000.
- (3) In subsection (2) —
“supervised area” means —
- 10 (a) a port, together with any area that is included when that port is referred to in Division 4;
(b) a maritime facility; or
(c) a port authority port, together with any area that is included when that port is referred to in Part 7
15 Division 2 of the *Port Authorities Act 1999*.
- (4) On receiving a report made under subsection (1)(c) or (2), the Director General may suspend the registration of any vessel involved in the marine incident until satisfied of the seaworthiness of that vessel.
- 20 (5) In the case of a marine incident that involves a collision between vessels, the requirements of this section are additional to those of section 99(1).

101. False distress signals

- 25 (1) A person must not —
(a) use, send or display; or
(b) cause or allow another person to use, send or display,
any of the signals of distress, except —
(c) when a vessel is in distress; or

- (d) for testing or training purposes authorized in writing by the Director General.

Penalty: \$25 000.

- 5 (2) If a person (the “**offender**”) commits an offence under subsection (1), a person (including the State) who sustains loss or damage as a result of the false signal of distress having been treated as a genuine signal of distress may sue the offender in a court of competent jurisdiction to recover damages in respect of the loss or damage.

10 **Division 9 — Safety plans**

102. Marine safety plans

- (1) In this section —
- 15 “**marine safety plan**” means a plan prepared by an appointed operator and approved by the Director General setting out the arrangements for marine safety at the operator’s port or maritime facility.
- (2) An appointed operator is to have, maintain and implement a marine safety plan for its port or maritime facility.
- (3) The Director General is to monitor the maintenance of an appointed operator’s marine safety plan and may —
- 20 (a) give directions to the operator as to the maintenance of the plan; and
- (b) direct the operator to review the plan from time to time and submit modifications of it to the Director General
- 25 for approval.
- (4) The operator is to give effect to any direction under subsection (3).

- (5) If the Minister is the operator of a port or maritime facility, the Director General is to have, maintain and implement a marine safety plan for the port or maritime facility.

Part 4 — International conventions

103. Meaning of terms

(1) In this Part, unless the contrary intention appears —

“convention” means —

- 5 (a) an existing convention; or
(b) a convention that is the subject of a declaration under section 104;

“convention regulations” has the meaning given by section 105(2);

10 **“existing convention”** means the Container Convention, the Limitation Convention, the Prevention of Collisions Convention or the Safety Convention.

15 (2) A reference in this Part to the Container Convention, the Limitation Convention, the Prevention of Collisions Convention or the Safety Convention is a reference to the convention that was defined under that name in the *Western Australian Marine Act 1982*.

104. Declaration of conventions

20 The Governor may, by order published in the *Gazette*, declare an international convention which relates to the sea or to maritime matters and to which Australia is a party to be a convention to which this Part applies.

105. Regulations may give effect to conventions

25 (1) Regulations may be made for and about giving effect to a convention in relation to the State and waters to which this Act applies.

- (2) Regulations under subsection (1) are referred to in this Part as “**convention regulations**”.

106. General provisions as to regulations

- (1) Convention regulations may —
- 5 (a) specify the extent to which or the circumstances in which a convention has effect;
- (b) provide that specified provisions of a convention have the force of law as part of the law of the State to a specified extent or in specified circumstances;
- 10 (c) provide for a convention to have effect, either generally or in specified circumstances, as if it were modified in a specified way;
- (d) limit the effect that a law of the State has in relation to matters to which a convention applies;
- 15 (e) provide for provisions of a convention to be read subject to a law of the State to a specified extent.
- (2) In subsection (1) —
- “**specified**” means specified in convention regulations.
- (3) Convention regulations may make provision for or with respect
- 20 to any matter by applying, adopting or incorporating, with or without modification —
- (a) any enactment, as in force at a particular time or as in force from time to time; or
- (b) any matter contained in any other instrument or writing
- 25 as in force or existing at the time when the convention regulations take effect.
- (4) If the terms of a convention 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

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convention, the power to make convention regulations is to be construed as an authority to the Governor to make by regulation such provision (if any) with respect to the matter in question as the Governor in the exercise of that discretion thinks proper.

5 **107. Regulations giving effect to Container Convention**

Convention regulations made for and about giving effect to the Container Convention may authorize the Minister to make orders with respect to matters that could be dealt with by the convention regulations.

10 **108. Regulations giving effect to Limitation Convention**

(1) Convention regulations made for or about giving effect to the Limitation Convention may —

- 15 (a) make provision for and about the ascertainment of the tonnage of vessels to which the Limitation Convention applies including the estimation of such tonnage in circumstances where it is not possible or reasonably practicable to measure their tonnage;
- 20 (b) exempting the owner of a vessel to which the Limitation Convention applies from liability for loss or damage to things on board the vessel that occurs in prescribed circumstances and without the actual fault or privity of the owner; and
- 25 (c) preventing the owner of a vessel from limiting the owner's liability in respect of a claim of a prescribed kind that arises from an occurrence of a kind specified in subparagraph (1)(a) or (b) of Article 1 of the Limitation Convention.

(2) Subsection (1)(a) shall not be taken as limiting the power of the Judges of the Supreme Court to make rules with respect to a

matter that is not provided for in regulations made under subsection (1)(a).

109. Application to determine liability if Limitation Convention applies

5 (1) In this section —

“applied provisions of the Limitation Convention” means the provisions of the Limitation Convention that, as provided by convention regulations, have the force of law as part of the law of the State.

10 (2) Where a claim is, or claims are, made against or apprehended by a person in respect of any liability of that person that the person may limit in accordance with the applied provisions of the Limitation Convention, the person may apply to the Supreme Court (whether or not in the course of other proceedings) to
15 determine the limit of that liability in accordance with those provisions, and the Court may so determine the limit of that liability and may make such order or orders as it thinks fit with respect to the constitution, administration and distribution in
20 accordance with those provisions, of a limitation fund for the payment of claims in respect of which the person is so entitled to limit liability.

(3) The Supreme Court to which an application has been made under subsection (2) may, if the court thinks fit, at any stage in the proceedings, upon application or of its own motion, by
25 order, transfer the proceedings to the Supreme Court of another State or a Territory of the Commonwealth.

(4) Where proceedings are transferred from the Supreme Court under subsection (3), all documents filed as part of the Supreme Court record, and moneys lodged in the Supreme Court, are to
30 be transmitted by the Master to the Registrar or other proper officer of the Court to which the proceedings are transferred.

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- 5 (5) Where proceedings are transferred to the Supreme Court by a Court of another State or a Territory of the Commonwealth under a law of that State or Territory analogous to this section, the Supreme Court is to proceed as if the proceedings had been originally instituted in the Supreme Court and as if the same proceedings had been taken in that Court as had been taken in the Court from which the proceedings are transferred.
- 10 (6) For the purposes of this Part, amounts of money expressed in the franc mentioned in Article 3 of the Limitation Convention are to be converted into Australian currency in the manner provided by the *Navigation (Limitation of Shipowners' Liability) Regulations* of the Commonwealth or by regulations substituted for or amending those regulations.

15 **110. Offences against regulations giving effect to Prevention of Collisions Convention**

A person who commits an offence against convention regulations made for or about giving effect to the Prevention of Collisions Convention is liable to a fine not exceeding \$10 000 or to imprisonment for not more than 10 months.

Part 5 — Marine Inquiries and Courts of Marine Inquiry

Division 1 — Marine Inquiries

111. Marine Inquiries into marine incidents

- 5 (1) If a vessel is involved in a marine incident that results in injury to a person or damage to a vessel or maritime structure, the Director General may cause an officer to conduct a preliminary inquiry into the incident and report to the Minister on that inquiry.
- 10 (2) In the case of a marine incident that results in —
- (a) the death of, or serious injury to, a person;
 - (b) the sinking of, or serious damage to, a vessel; or
 - (c) the destruction of, or serious damage to, a maritime structure,
- 15 the Minister may refer a report received under subsection (1) for investigation by a Court of Marine Inquiry.
- (3) When a report is referred to a Court of Marine Inquiry under subsection (2), the Court of Marine Inquiry is to investigate the marine incident and report to the Minister on that investigation.

20 **112. Powers of inquiring officers**

- (1) For the purposes of conducting an inquiry and making a report under section 111(1) an officer may —
- (a) exercise the powers of an authorized officer under section 131;
 - 25 (b) enter and inspect (with such assistance as he or she may require) any premises the entry or inspection of which appears necessary to the officer;

- 5
- (c) issue a summons requiring a person to attend before the officer for examination;
- (d) require a person to answer questions;
- (e) require and enforce the production of all log books, papers, accounts, agreements and other documents relating to the inquiry or report;
- (f) take copies of documents or parts of them; and
- 10 (g) administer oaths or, instead of requiring or administering an oath, require a person examined by the officer to make and subscribe a declaration of the truth of the statements made by the person in the examination.
- (2) An officer cannot enter premises under subsection (1)(b) unless authorized to do so —
- 15 (a) by the owner or occupier of the premises; or
- (b) under a warrant issued by a justice.

113. Inquiries into incompetence or misconduct

- 20 (1) If the Minister has reasonable grounds to believe that a marine incident shows a member of the crew of a vessel to have been guilty of negligence, incompetence or misconduct, the Minister may refer that incident for investigation by a Court of Marine Inquiry.
- (2) When a marine incident is referred to a Court of Marine Inquiry under subsection (1), the Court of Marine Inquiry is to investigate the incident and report to the Minister on that
- 25 investigation.

Division 2 — Courts of Marine Inquiry

114. Establishment of Courts of Marine Inquiry

- 5 (1) A tribunal to be known as a Court of Marine Inquiry is to be established under this Division whenever it is necessary to do so for the purposes of section 90(2)(c) or Division 1.
- (2) A Court of Marine Inquiry is to have an official seal of which judicial notice is to be taken.

115. Composition of Court of Marine Inquiry

- 10 (1) A Court of Marine Inquiry is to consist of —
- (a) a presiding magistrate nominated under subsection (2)(a); and
 - (b) 2 assessors selected under subsection (2)(b).
- (2) When a matter is referred to a Court of Marine Inquiry under section 90(2)(c) or Division 1 —
- 15 (a) the Director General is to notify the Chief Stipendiary Magistrate who is to nominate a magistrate to preside over the Court; and
- (b) 2 assessors are to be selected by the Director General.
- 20 (3) The 2 assessors are to be selected as having expertise relevant to the matter that the Court of Marine Inquiry is to investigate, and their function is to assist and advise the presiding magistrate, but not to take part in making findings or preparing a report.
- (4) Nothing in subsection (2) prevents the referral of 2 or more matters to the same Court of Marine Inquiry if the matters are related.
- 25

116. Investigations by Courts of Marine Inquiry

- (1) It is the function of a Court of Marine Inquiry to investigate any detention referred to it under section 90(2)(c) or any report or marine incident referred to it under Division 1.
- 5 (2) For the purposes of an investigation, the Court has, so far as relates to compelling the attendance of witnesses and contempt of court, all the powers of the Supreme Court.
- (3) An investigation is to be conducted in open court and the presiding magistrate is to deliver the findings and any order of the Court in open court.
- 10

117. Powers and duties in respect of vessels and authorizations

- (1) If a detention of a vessel is referred to a Court of Marine Inquiry under section 90(2)(c) —
- 15 (a) the Court may appoint a competent person or persons to survey the vessel and report to the Court;
- (b) the presiding magistrate, an assessor and a person or persons appointed under paragraph (a) may survey the ship and, for the purposes of this section, have all the powers of an officer under section 112;
- 20 (c) the Court has the same power as an authorized officer has to order the vessel to be released or finally detained; and
- (d) the owner and master of the vessel, any person appointed by the owner or master and any person
- 25 appointed by the Director General may attend at any survey or inspection made under this section.
- (2) If a report or marine incident is referred to a Court of Marine Inquiry under Division 1 the Court may, after investigating the matter, suspend, cancel or revoke an authorization in
- 30 accordance with the regulations.

118. Report on investigation

On the completion of an investigation by a Court of Marine Inquiry the presiding magistrate is to send to the Minister —

- 5
- (a) a report of the findings of the Court and any order made by it or action taken by it; and
 - (b) notes of any evidence given to the Court.

119. Rehearing

10 Where an investigation has been conducted by a Court of Marine Inquiry, the Governor may order the matter to be reheard, either generally or as to a part of the matter, and the Governor is to so order if, in the opinion of the Governor, there is any reasonable ground for suspecting that a miscarriage of justice has occurred.

120. Officers of Courts of Marine Inquiry

15 The officers of the Local Court at a place at which a Court of Marine Inquiry is sitting are to act as officers of the Court of Marine Inquiry.

121. Rules about Courts of Marine Inquiry

- 20
- (1) The Governor may make rules —
- (a) about the appointment, selection and remuneration of assessors;
 - (b) regulating the practice, procedure, sittings, reports and records of Courts of Marine Inquiry; and
 - (c) prescribing or providing for fees, and providing for the application of fees, in respect of matters referred to a
- 25 Court of Marine Inquiry.

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- (2) To the extent that this Act or the rules of practice and procedure do not apply to a particular matter or circumstance arising before a Court of Marine Inquiry, the presiding magistrate may issue such directions as he or she considers appropriate.

Part 6 — Maritime Appeal Tribunal

122. Establishment of Maritime Appeal Tribunal

- (1) A tribunal to be known as the Maritime Appeal Tribunal is established.
- 5 (2) If this Act provides that an appeal may be lodged under this Part the Tribunal has jurisdiction to hear and determine that appeal.
- (3) The Tribunal is to have an official seal of which judicial notice is to be taken.

123. Composition of Tribunal

- 10 (1) The Tribunal is to consist of —
 - (a) a presiding magistrate nominated under subsection (2);
and
 - (b) 2 ordinary members selected for a particular appeal
under subsection (3).
- 15 (2) The Chief Stipendiary Magistrate is to nominate a magistrate to
preside over the Tribunal.
- (3) When an appeal to the Tribunal is lodged the presiding
magistrate is to notify the Minister and, on receiving that
20 notification, the Minister is to appoint a panel consisting of not
less than 4 qualified people who have expertise relevant to the
appeal.
- (4) For the purposes of subsection (3) a person is “**qualified**” if he
or she —
 - 25 (a) is a naval architect and member of the Royal Institute of
Naval Architects;
 - (b) holds a certificate of competency as a master;
 - (c) holds a certificate of competency as a marine engineer;

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- (d) is a chartered professional engineer; or
- (e) is a member of the Royal Australian Institute of Planners.

5 (5) An officer is not eligible to be appointed to the panel under subsection (3).

(6) On being notified by the Minister of the composition of the panel, the presiding magistrate is to select from the panel the 2 ordinary members of the Tribunal for the appeal.

124. Procedure relating to appeals

10 (1) A person who wishes to lodge an appeal under this Part may serve on the Director General written notice of the appeal setting out the grounds of the appeal.

15 (2) An appeal under this Part must be lodged with the Director General within 30 days after the appellant has been served with a written statement of the reasons for the decision against which the appeal is made, or such longer period as the Tribunal in special circumstances allows.

20 (3) On receiving notice of an appeal within the relevant period referred to in subsection (2), the Director General is to —

- (a) arrange with the presiding magistrate of the Tribunal for the hearing of the appeal;
- (b) notify the appellant and the person who made the decision appealed against of the time, date and place of that hearing; and
- 25 (c) provide such other assistance to the Tribunal as is necessary for the just and efficient performance of the functions of the Tribunal.

- (4) On the hearing of an appeal, the Tribunal —
- (a) may, subject to this subsection, determine the procedure applicable to that hearing;
 - 5 (b) is to act according to equity and good conscience and the substantial merits of the case without regard to technicalities;
 - (c) subject to the requirements of justice, is not bound by rules of evidence;
 - 10 (d) may inform itself of any matter in such manner as it thinks fit; and
 - (e) cannot make an award of either compensation or costs.
- (5) A party to an appeal may, with the leave of the Tribunal, be represented at the hearing of the appeal by a practitioner as defined in the *Legal Practitioners Act 1893*.

15 **125. Determination of appeal**

- (1) The Tribunal may determine an appeal by allowing it or dismissing it, wholly or in part, or substituting its own decision for the decision appealed against, and every person affected by that determination must give effect to it.
- 20 (2) Subject to subsection (3) a decision of the Tribunal may be made by any 2 of its members.
- (3) Decisions on matters of law are to be made by the presiding magistrate.
- 25 (4) On the determination of an appeal by the Tribunal, the Director General is to notify the parties to the appeal of that determination without delay.
- (5) The determination of an appeal by the Tribunal —
- (a) is final and without appeal; and

- (b) binds the parties to the appeal.

126. Rules about the Tribunal

The Governor may make rules —

- (a) about the appointment, selection and remuneration of ordinary members of the Tribunal; and
- (b) prescribing or providing for fees, and providing for the application of fees, in respect of appeals to the Tribunal.

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Part 7 — Maritime dues and charges

127. Maritime dues

- 5 (1) Dues, referred to as “**maritime dues**”, are payable to the Department in respect of prescribed registered vessels at rates provided for by regulations.
- (2) Maritime dues are payable on the registration, or renewal of registration, of a vessel to which they apply, and are additional to registration fees and to any charges under section 128.
- 10 (3) The net proceeds of maritime dues are to be applied towards the administration, coordination and funding of activities of the Department in relation to matters to which this Act applies including —
- (a) monitoring, protecting and restoring the marine environment;

15 (b) responding to and investigating marine incidents;

 - (c) dealing with wrecks and salvage;
 - (d) dealing with marine safety matters; and
 - (e) providing navigational aids and marine information systems.
- 20 (4) Regulations under subsection (1) may provide for and confer powers as to —
- (a) the classes of registered vessels in respect of which maritime dues are payable;
 - (b) exemption from liability for maritime dues;

25 (c) the ascertainment and calculation of maritime dues;

 - (d) the payment, collection and recovery of maritime dues; and
 - (e) other matters relating to maritime dues.

128. Departmental charges for maritime services and infrastructure

- (1) There are payable to the Department such operating charges as are provided for by regulations being —
- 5 (a) wharfage, berthage, tonnage or access charges;
- (b) charges for maritime services provided by the Minister or the Department;
- (c) charges for the use of infrastructure provided by, or under the control of, the Minister or the Department; or
- 10 (d) charges for the use of land and buildings in departmental areas.
- (2) Regulations under subsection (1) may provide for and confer powers as to —
- (a) exemption from liability for charges;
- 15 (b) the ascertainment and calculation of charges and the entering of a vessel in order to ascertain or calculate the charges payable in respect of the vessel or goods on the vessel;
- (c) the payment, collection and recovery of charges; and
- 20 (d) other matters relating to charges.
- (3) In providing for charges, regulations under subsection (1) may allow for —
- (a) the making of a profit; and
- (b) depreciation of assets.

129. Charges by operators for maritime services and infrastructure

Subject to its appointment agreement, the appointed operator of a port or maritime facility may levy and collect such operating charges as the operator determines being —

5

- (a) wharfage, berthage, tonnage or access charges;
- (b) charges for maritime services it provides; or
- (c) charges for the use of infrastructure provided by or under its control.

Part 8 — Enforcement

Division 1 — Authorized officers

130. Appointment of authorized officers

- 5 (1) The Director General may appoint officers or other persons to be authorized officers —
- (a) generally for the purposes of this Act; or
 - (b) for the purposes of provisions of this Act specified in the appointment.
- 10 (2) The Director General must cause to be issued to each authorized officer appointed under subsection (1) an identity card in a form approved by the Minister.
- (3) An authorized officer to whom an identity card has been issued must produce the identity card to a person —
- 15 (a) in respect of whom that authorized officer has exercised, is exercising or is about to exercise his or her powers under this Act; and
 - (b) who requests that production.
- (4) In any proceedings, whether civil or criminal, the production by an authorized officer of his or her current identity card is
- 20 conclusive evidence of his or her appointment under subsection (1).

131. General powers of authorized officers

- (1) For the purposes of this Act, an authorized officer may —
- 25 (a) order a vessel to be stopped;
 - (b) go on board a vessel (with such assistance as he or she may require) for the purpose of inspecting it; and

- (c) detain a vessel for so long as is necessary for the purpose of inspecting it.
- (2) For the purposes of this Act, an authorized officer may —
- 5 (a) inspect a vessel, or any part of it, and any boats, equipment, boilers, machinery, articles or materials on board or belonging to the vessel;
- (b) require the unloading or removal of any cargo, ballast or tackle on board or belonging to a vessel;
- 10 (c) require the production of and inspect any log book, licence, permit, certificate or other document issued or required to be kept or issued in connection with the ownership, use or navigation of a vessel; and
- (d) take a copy of a document or a part of a document.
- (3) The powers conferred by this section are additional to the other powers conferred on authorized officers under this Act.
- 15 (4) In the case of an authorized officer appointed under section 130(1)(b) a power conferred by this section can only be exercised if, and to the extent that, it is relevant to the provisions of this Act specified in the appointment.
- 20 **132. Authorized officer may request names and addresses**
- (1) An authorized officer may request any person whom the authorized officer believes on reasonable grounds to have committed an offence under this Act —
- 25 (a) to give the person's name, age and address; and
- (b) to produce for inspection any evidence of identity, age or address that is in the person's possession at the time.
- (2) A person to whom a request is made under subsection (1) —
- (a) must comply with the request; and

(b) must not give a false name, address or date of birth.

Penalty: \$2 000.

Division 2 — Offences: procedure and evidence

133. Definition

5 In this Division —

“**enforcement officer**” means an authorized officer or a member of the Police Force.

134. Jurisdiction as to offences

10 For the purpose of giving jurisdiction under this Act, an offence is to be regarded as having been committed, and a cause of complaint is to be regarded as having arisen, either —

(a) in the place in which it actually was committed or arose;
or

15 (b) in any place in which the offender or person complained against is.

135. Institution of proceedings

(1) Proceedings for an offence under this Act are to be commenced by an authorized officer.

20 (2) Despite any other written law proceedings for an offence under this Act may be commenced at any time within 3 years from the time when the offence is alleged to have been committed.

136. Speed measuring equipment

(1) The Minister may by notice published in the *Gazette* —

25 (a) approve of types of apparatus for ascertaining the speed at which a vessel is moving; and

(b) amend or revoke any such approval.

- (2) In any proceedings for an offence under this Act or any other written law, evidence may be given of —
- (a) the use of certain speed measuring equipment by an enforcement officer in relation to a vessel; and
 - 5 (b) the speed at which the vessel was moving as ascertained by the use of that speed measuring equipment,
- and that evidence is *prima facie* evidence of the speed at which the vessel was moving at the time of the use of that speed measuring equipment in relation to the vessel.
- 10 (3) In any proceedings of the kind referred to in subsection (2) evidence by an enforcement officer that apparatus used by him or her was speed measuring equipment is *prima facie* evidence of that fact.
- (4) This section does not preclude or restrict the introduction of any
15 competent evidence, whether in addition to, or independent of, evidence under this section bearing on the question of whether a person was or was not guilty of an offence under this Act or any other written law.
- (5) In this section —
- 20 **“speed measuring equipment”** means apparatus of a type approved by the Minister under subsection (1)(a).

137. Requirement to submit sample of breath or blood for analysis

- (1) An enforcement officer may require a person —
- 25 (a) who is navigating, or in control of a vessel; or
 - (b) who the enforcement officer has reasonable grounds to believe was navigating, or in control of a vessel,
- to provide a sample of his or her breath for a preliminary test in accordance with the directions of the enforcement officer, and for

the purposes of this subsection may require that person to wait at the place at which the first-mentioned requirement was made.

(2) An enforcement officer may —

- 5
- (a) call upon a person who is navigating, or in control of, a vessel to stop the vessel;
 - (b) direct a person who is navigating, or in control of, a vessel to wait at a place indicated by the enforcement officer,

in order that a requirement may be made under subsection (1).

10 (3) If an enforcement officer —

- (a) has reasonable grounds to believe that the presence of a vessel has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and
- 15 (b) does not know, or has doubt about, who was the person navigating, or in control of, a vessel at the time of that presence or use,

20 the enforcement officer may require any person who he or she has reasonable grounds to believe may have been the person navigating, or in control of, the vessel at that time to provide a sample of his or her breath for a preliminary test in accordance with the directions of the enforcement officer, and for the purposes of this subsection may require that person to wait at the place at which the first-mentioned requirement was made.

25 (4) If —

- (a) a person having provided a sample of his or her breath for a preliminary test, it appears to an enforcement officer that the preliminary test indicates that the blood alcohol content of the person equals or exceeds 0.08 or,

if the vessel concerned is of a class prescribed under section 87(3), 0.05;

(b) a person having been so required under subsection (3) —

5 (i) refuses or fails to provide, or appears to an enforcement officer to be incapable of providing, a sample of his or her breath for a preliminary test; or

10 (ii) refuses or fails to provide, or appears to an enforcement officer to be incapable of providing, a sample of his or her breath in sufficient quantity to enable a preliminary test to be carried out;

15 (c) an enforcement officer has reasonable grounds to believe that a person has committed an offence under section 87(1); or

(d) an enforcement officer —

20 (i) has reasonable grounds to believe that the presence of a vessel has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and

 (ii) does not know, or has doubt about, who was the person navigating, or in control of, the vessel at the time of that presence or use,

25 but has reasonable grounds to believe that a person may have been the person navigating, or in control of, the vessel at that time and that, if the person was so navigating or in control, he or she has committed an offence under section 87(1),

30 a member of the Police Force may require that person to provide a sample of his or her breath for analysis or to allow a medical practitioner to take a sample of his or her blood for analysis or to allow a sample of blood to be so taken and to provide a sample of

his or her urine for analysis, under section 66(4), (5), (6a), (7) and (8a) of the *Road Traffic Act 1974*, and for the purposes of this subsection may require that person to accompany a member of the Police Force to a police station or some other place, and may require that person to wait at the police station or that place.

- (5) A person who is required to supply a sample of his or her breath for a preliminary test or for analysis must comply with that requirement by providing the sample of his or her breath into approved apparatus in accordance with the directions of an enforcement officer or the person operating the apparatus.

138. Application of provisions of *Road Traffic Act 1974*

- (1) Sections 65, 66(4) to (17), 67, 67A, 68, 69, 69A, 70, 71 and 72 of the *Road Traffic Act 1974* and any regulations made under section 72 of that Act apply, with all necessary modifications, to and in relation to an alleged offence under section 87(1) of this Act.

- (2) Without limiting subsection (1), the sections of, and regulations made under, the *Road Traffic Act 1974* referred to in that subsection apply to and in relation to an alleged offence under section 87(1) as if, in those sections or regulations, —

- (a) a reference to section 63 of that Act were a reference to section 87;
- (b) a reference to section 66(2) of that Act were a reference to section 137(4);
- (c) a reference to driving or attempted driving of a motor vehicle or vessel were a reference to navigation or attempted navigation of a vessel;
- (d) a reference to a member of the Police Force included a reference, when appropriate, to an officer;
- (e) a reference to section 66(1) or (1a) of that Act were a reference to section 137(1) or (3);

- (f) a reference to section 66(2)(c) or (d) of that Act were a reference to section 137(4)(c) or (d);
- (g) the reference in section 66(7) of that Act to the preceding provisions of that section included a reference to section 137(5);
- (h) references to a court ordering that a person be disqualified from holding or obtaining a driver's licence were omitted;
- (i) a reference to a requirement of a member of the Police Force made pursuant to section 66 of that Act included a reference to a requirement made, whether by an officer or a member of the Police Force, under this section;
- (j) a reference to a requirement mentioned in section 66(1aa) of that Act were a reference to a requirement mentioned in section 137(2); and
- (k) a reference to section 66 of that Act included a reference to section 137.

139. Proof and evidence of certain matters in proceedings for offences

- (1) In any proceedings for an offence under this Act, an averment in the complaint that —
 - (a) a person was or was not at a specified time or during a specified period the owner of a specified vessel;
 - (b) a person was or was not at a specified time or during a specified period the master of a specified vessel; or
 - (c) a vessel was or was not at a specified time or during a specified period the subject of an exemption, permit or registration,is proof that the person was or was not the owner or master or that the vessel was or was not the subject of the exemption, permit or registration, as the case requires, unless the contrary is proved.

- 5 (2) In any proceedings for an offence under this Act in respect of the prescribed crewing requirements applying to a vessel, an averment in the complaint that a person is or was, or is not or was not, the holder of a certificate of competency of a particular class is proof that the person is or was, or is not or was not, the holder of that certificate of competency, unless the contrary is proved.
- 10 (3) In any proceedings for an offence under this Act, a certificate in the prescribed form —
- (a) issued by the Director General; and
 - (b) giving details of the registration of a specified vessel,
- is evidence of those details.
- (4) In this section —
- 15 “**specified**” means specified in the relevant averment or certificate.

Division 3 — Infringement notices

140. References to “penalties officer”

- 20 (1) A reference in section 142, 143 or 144 to a “**penalties officer**” is a reference to an officer appointed under subsection (2) to be a penalties officer for the purposes of the section in which the reference occurs.
- 25 (2) The Director General may in writing appoint persons, or classes of persons, to be penalties officers for the purposes of section 142, 143 or 144 or for the purposes of 2 or all of those sections, but an authorized officer is not eligible to be a penalties officer.

141. Serving of notice

An authorized officer who has reason to believe that a person has committed a prescribed offence under this Act may serve an infringement notice on the alleged offender.

5 **142. Content of notice**

(1) An infringement notice is to be in the prescribed form and is to —

- 10 (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a penalties officer within a period of 28 days after the service of the notice; and
- 15 (c) inform the alleged offender as to who are penalties officers for the purposes of receiving payment of modified penalties.

(2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

20

(3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

25 **143. Extension of time**

A penalties officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

144. Withdrawal of notice

- 5 (1) Within 28 days after the service of an infringement notice, a penalties officer may, whether or not the modified penalty has been paid, withdraw the infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

145. Benefit of paying modified penalty

- 10 (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- 15 (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

20 **146. Application of penalties collected**

An amount paid as a modified penalty for an offence is, subject to section 144(2), to be dealt with as if it were a fine imposed by a court as a penalty for that offence.

147. Owner onus in relation to vessels

- 25 (1) In this section —
“**penalties officer**” means a penalties officer appointed for the purposes of section 142;

“vessel offence” means an offence to which section 141 applies of which the use, navigation or mooring of a vessel is an element.

- 5 (2) If a vessel offence is alleged to have been committed and the identity of the master or person in charge of the vessel at the time of the commission of the alleged offence cannot be readily established, an infringement notice in respect of the alleged offence may be served under section 141 on the owner of the vessel.
- 10 (3) For the purposes of subsection (2), the infringement notice may be addressed to the owner of the vessel without naming, or stating the address of, the owner and may be served by —
- 15 (a) attaching it to the vessel or leaving it in or on the vessel at or about the time that the alleged offence is believed to have been committed; or
- (b) serving it on the owner within 56 days after the alleged offence is believed to have been committed.
- (4) The notice is to include a short statement of the effect of subsection (5).
- 20 (5) Unless within the period stated in the infringement notice or that period as extended —
- (a) the modified penalty is paid; or
- (b) the owner of the vessel —
- 25 (i) identifies to a penalties officer the person who was the master or person in charge of the vessel at the relevant time; or

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- (ii) satisfies a penalties officer that, at the relevant time, the vessel had been stolen or unlawfully taken or was being unlawfully used,

5 the owner is, in the absence of proof to the contrary, deemed to be the master or person in charge of the vessel at the time of the commission of the alleged offence.

Part 9 — Miscellaneous

Division 1 — General

148. Hindering the performance of functions

5 A person who hinders a person performing or endeavouring to perform a function conferred under this Act, whether on board a vessel or elsewhere, commits an offence.

Penalty: \$2 000.

149. Exemptions and equivalents

10 (1) The Director General may exempt a vessel, or class of vessels, from the application of any of the provisions of this Act to the extent that the Director General is satisfied that compliance with that provision is unreasonable or impractical in relation to that vessel or vessels of that class.

15 (2) In exercising the power conferred by subsection (1), the Director General is to have regard to the principles embodied in this Act.

20 (3) If this Act requires a fitting, material, appliance or apparatus of a particular description or type to be fitted or carried in a vessel, or any particular provision to be made, the Director General may allow a fitting, material, appliance or apparatus of another description or type to be fitted or carried, or any other provision to be made, if the Director General is satisfied, by trial or otherwise, that a fitting, material, appliance or apparatus of that other description or type, or that other provision, is at least as effective as that required under this Act.

25 (4) The Director General may grant an exemption or make an allowance under this section subject to such conditions as the Director General thinks fit.

- (5) The powers conferred by this section may also be exercised in relation to a convention as defined in section 103.

150. Evidence of documents and proof of signature

- 5 (1) All documents purporting to be issued or written under this Act by or under the direction of or with the authority of the Minister or the Director General and purporting to be signed by a person acting with the authority of the Minister or the Director General, are admissible as evidence and are to be regarded, on production by any person, as having been so written and so signed until
10 evidence to the contrary is shown.
- (2) A document required by or under this Act to be executed in the presence of or attested by a witness may be proved by the evidence of any person who is able to bear witness to the facts of execution or attestation without calling any attesting witness.
- 15 (3) In this section —
“**document**” includes an authorization, exemption, dispensation or register.

151. Admissibility of documents in evidence

- 20 (1) Where a document is by this Act declared to be admissible in evidence, it is, on production from the proper custody, admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence.
- (2) Subject to all just exceptions, a document referred to in subsection (1) is evidence of the matters stated in it.
- 25 (3) A copy of, or extract from, a document referred to in subsection (1) is also admissible in evidence if —
(a) it is proved to be an examined copy or extract; or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,

and, on payment of the prescribed fee, that officer is to furnish a copy or extract so certified to any person applying for it.

(4) This section does not affect the operation of the *Evidence Act 1906*.

152. Protection from liability

(1) An action in tort does not lie against a person for a thing that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The State is also relieved of any liability that it might otherwise have had for another person having done a thing as described in subsection (1).

(3) The protection given by subsections (1) and (2) —

(a) applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted; but

(b) only applies to the State, a public authority or an officer or employee of a public authority.

(4) An action in tort does not lie against the State for a thing done by an appointed operator.

(5) In this section, a reference to the doing of a thing includes a reference to an omission to do a thing.

(6) This section does not affect the operation of section 42, 53 or 77.

Division 2 — Service of documents

153. Meaning of terms used

In this Division —

5 **“legal process”** means any summons or other process in any
 legal proceeding under this Act;

“notice” includes an order, statement or other document but
 does not include legal process.

154. Service of notices

10 (1) A notice required or permitted by this Act to be served on a
 person may be so served —

 (a) personally; or

 (b) if the person cannot be found after diligent and
 reasonable inquiry, by —

15 (i) sending the notice by prepaid mail to the last
 known address of the person; and

 (ii) causing a copy of the notice to be published once
 in a newspaper circulating throughout the State.

20 (2) Service of a notice is taken to be effected under
 subsection (1)(b) on the expiry of the period of 30 days from the
 publication of the notice under subsection (1)(b)(ii).

155. Notices may be served on board or sent to a vessel

Where this Act requires a notice to be served personally on a
person (**“the recipient”**) it may also be served —

25 (a) on board a vessel on which the recipient is employed by
 giving it to the person being or appearing to be in
 command or in charge of the vessel; or

- (b) by sending it by facsimile or radio transmission or electronic mail to a vessel on which the recipient is employed.

156. Substituted service if there is no master

5 Where a notice or legal process is to be served under this Act on the master of a vessel and the vessel is within the limits of Australia but has no master, good service can be effected —

- (a) on the managing owner of the vessel;
- 10 (b) if there is no managing owner: on some agent of the owner residing in Australia; or
- (c) if there is no managing owner and no such agent of the owner is known or can be found: by affixing a copy of the notice or process to the vessel in a conspicuous place.

15 **157. Legal process may be served on board a vessel**

- (1) Where any legal process is to be served on a person, good service can be effected on board a vessel on which the person is employed, by giving the process to the person being or appearing to be in command or in charge of the vessel.
- 20 (2) Service can only be effected under subsection (1) if the legal process is accompanied by a statement of what it is about.
- (3) Subsection (1) does not prevent the use of any other method by which good service of legal process can be effected under any law.

Part 10 — Regulations

158. General power to make regulations

- 5 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may be made for all or any of the purposes, or about all or any of the matters, set out in Schedule 3.

10 **159. Offences against regulations**

- (1) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding a fine of \$10 000.
- 15 (2) In the case of offences relating to the overloading of vessels, the regulations under Schedule 3 item 4.5 may provide for the imposition of an additional penalty calculated by reference to the amount by which the vessel is overloaded and the tonnage of the vessel.

160. Adoption of other laws, codes etc.

- 20 (1) Regulations may adopt, either wholly or in part or with modifications —
- 25 (a) any rules, regulations, codes, instructions or other subsidiary legislation made, determined or issued under any other Act or under any Imperial Act or Commonwealth Act; or
- (b) any of the standards, rules, codes or specifications of the bodies known as the International Maritime Organization, the Standards Association of Australia,

the British Standards Institution or The Association of Australian Port and Marine Authorities or of any other like body that is specified in those regulations.

- 5 (2) If regulations adopt any subsidiary legislation, standard, rule, code or specification under subsection (1), it is adopted as in force from time to time unless those regulations specify that a particular text is adopted.

161. References to other approvals or decisions

10 Regulations may be made so as to apply according to an approval or other administrative decision of a person or body specified in those regulations even if that approval or other decision may not have been, or may not have been primarily, given or made for the purposes of this Act.

162. Licensing

- 15 (1) Regulations may control an activity or thing in a departmental area, or a portion of a departmental area, by prohibiting it from being carried out or done except under a licence issued under the regulations.
- 20 (2) Regulations may provide for the following —
- (a) the calling of applications or tenders for licences;
 - (b) the method of applying or tendering for licences;
 - (c) fees for applications or tenders;
 - (d) how applications or tenders can be dealt with;
 - (e) the issue, amendment, renewal or transfer of licences;

25 (f) fees for the issue, amendment, renewal or transfer of licences;

 - (g) the imposition of conditions on licences;

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- (h) the duration of licences;
- (i) the suspension or cancellation of licences.

(3) This section does not limit the methods by which the regulations may control an activity or thing or affect the operation of Part 2 Division 3.

5

Part 11 — Review of Act

163. Minister to review and report on Act

- 5
- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
 - (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

Schedule 1 — Names and boundaries of ports

[s. 8]

1. Port of Barrow Island

5 All that portion of water and sea bed situate east of the high water mark of the Indian Ocean on the eastern shore of Barrow Island and contained within the arc of a circle having a radius of 7 nautical miles from the intersection of latitude 20° 46' 50" S with longitude 115° 27' 54" E.

Lands and Surveys Public Plan: Dampier and Barrow Island 1:250 000.

2. Port of Carnarvon

10 Part A

15 All that portion of water bounded by a line due west for 4 nautical miles from a starting point on the mainland in latitude 24° 10' S and longitude 113° 26' 45" E and then in a south-southwest direction to Cape Ronsard at the north end of Bernier Island; then by the western shores of Bernier and Dorre Islands to Cape St Cricq; then by a straight line to Cape Inscription at the north end of Dirk Hartog Island and by its western shore to Surf Point, then by a straight line to Steep Point on the mainland, and then by the coastline to the starting point.

Part B

20 All that portion of sea bed bounded by lines starting from the high water mark of the Indian Ocean at the western extremity of Point Quobba and extending south-westerly to the high water mark at the northern extremity of Cape Ronsard on Bernier Island; then generally southerly along the high water mark of the eastern shore of that island to the southern extremity of Cape Couture; then southerly to the high water mark at the northern extremity of Cape
25 Boullanger on Dorre Island; then southerly along the high water mark of the eastern shore of that island to the southern extremity of Cape St Cricq; then south-westerly to the high water mark at the northern extremity of Cape Inscription on Dirk Hartog Island; then generally south-easterly, generally south-westerly and generally north-westerly along the high water mark of the

north-eastern, south-eastern and south-western shores of that island to the southern extremity of Surf Point; then south-westerly to the high water mark at the northern extremity of Steep Point and then generally south-easterly, generally north-easterly, again generally south-easterly and again generally
 5 north-easterly along the high water mark of Shark Bay and generally north-westerly along the high water mark of the Indian Ocean to the starting point.

Lands and Surveys Public Plans: Carnarvon 2000 7.06, 7.07, 8.04, 8.05; Carnarvon Regional 2.1; Edel 1:250 000; Yaringa 1:250 000; Wooramel
 10 1:250 000; Shark Bay 1:250 000; Quobba 1:250 000.

3. Port of Derby

Part A

All that portion of water and sea bed bounded by lines starting at the intersection of the prolongation south-westerly of a line joining the summit of
 15 Saddle Hill and the high water mark at the eastern extremity of Valentine Island with the high water mark of the western shore of King Sound and extending generally south-easterly, generally northerly, again generally south-easterly, again generally northerly and generally north-westerly along that mark to a line
 20 joining the summit of Saddle Hill and the high water mark at the eastern extremity of Valentine Island and then south-westerly along that line and onwards to the starting point.

Part B

All that portion of land, water and sea bed delineated and coloured red on Transport drawing number DOT 972-02-01.

25 Lands and Surveys Public Plans 1:2 000 PT 02.07 and PT 02.08; Derby N.E. 1:25 000; Derby 1:250 000; Yambi 1:250 000.

Schedule 1 Names and boundaries of ports

4. Port of Onslow

Part A

All that portion of water and sea bed bounded by lines starting from the high water mark of the Indian Ocean at the southern extremity of Ashburton Island; then northerly to a position in latitude 21° 21' S Longitude 114° 56' E; then north-easterly to a position in latitude 21° 10' S, longitude 115° 06' E, then easterly to a position in latitude 21° 10' S, longitude 115° 09' E; then south-easterly to a position in longitude 21° 13' S latitude 115° 12' E; then southerly to a position in latitude 21° 21' S, longitude 115° 12' E; then south, south-easterly to the high water mark of the Indian Ocean at the eastern extremity of Coolgra Point; then north-westerly to the high water mark of the Indian Ocean at the southern extremity of Direction Island; and then south-westerly to the starting point.

Part B

- 15 (i) All that portion of land comprised within Onslow Lot 460, as surveyed and shown on Lands and Surveys Original Plan 10532.
- (ii) All that portion of land comprised within Onslow Lot 561, as surveyed and shown bordered in red on Lands and Surveys Diagram 74170.
- 20 (iii) All that portion of land bounded by lines starting from the north-eastern corner of Onslow Lot 561 and extending northerly along the prolongation northerly of the eastern boundary of that lot to the low water mark of the Indian Ocean; then generally westerly along that mark crossing the mouth of Beadon Creek to the prolongation northerly of the northern most western boundary of Lot 561; then southerly to a north-western corner of that lot and then generally easterly along northern boundaries of the last-mentioned lot to the starting point.
- 25

Lands and Surveys Public Plans: Onslow 1:2 000 38.07, 39.05, 39.06, 40.05, 40.06; Onslow Regional 1:10 000 8.2; Onslow 1:250 000.

5. Port of Port Walcott

All that portion of water and sea bed bounded by lines starting from the high water mark on the Indian Ocean at the northernmost northern extremity of Dolphin Island and extending easterly to the high water mark at the southernmost southern extremity of Legendre Island; then easterly to the high water mark at the northernmost northern extremity of Delambre Island; then south-easterly to a position 20° 28' S latitude, 117° 10' E longitude; then easterly to a position 20° 28' S latitude, 117° 17' E longitude; then south to a position 20° 30' 9" S latitude, 117° 17' E longitude; then south-easterly to a position 20° 36' 9" S latitude, 117° 31' 6" E longitude then south to the intersection of the high water mark of the Indian Ocean and the 117° 31' 6" E meridian of longitude; then generally south-westerly, generally north-westerly, generally north-easterly and again generally south-westerly, again generally northeasterly and generally westerly along that mark to the northernmost north-western extremity of Burrup Peninsula; then north-easterly crossing the western entrance to Searipple Passage to the high water mark at the westernmost south-western extremity of Dolphin Island and then generally easterly, generally north-easterly, generally south-westerly and again generally north-easterly along that mark to the starting point (including the beds of all those navigable portions of rivers and creeks abutting the area) and excluding De Witt Locations 66 (Special Lease 3116/4624), 67 (Special Lease 3116/4625), 69 (Special Lease 3116/4628), and that part of Locations 63 (Special Lease 3116/4622), 65 (Special Lease 3116/4623), 68 (Special Lease 3116/4629), 106 (Special Lease 3116/4622) and 119 (Special Lease 3116/7394) below the high water mark.

Lands and Surveys Public Plans: Karratha Regional 1:10 000 6.6, 7.6; Point Samson 1:25 000 N.E.; Nickol Bay 1:25 000 S.E., S.W.; Dampier and Barron Island 1:250 000; Roebourne 1: 250 000.

6. Port of Varanus Island

All that portion of water and sea bed within a radius of 3.3 nautical miles of the Harriet loading terminal in position latitude 20° 37' 47.38" S longitude 115° 36' 25.87" E and to the extent of the high water mark on the islands contained therein.

Schedule 1 Names and boundaries of ports

7. Port of Wyndham

Part A

5 All the water and sea bed of Cambridge Gulf seaward of high water mark situate southerly from a line starting from the high water mark at the southern extremity of Cape Dussejour and extending easterly to Trigonometrical Station SO34 on Lacrosse Island and then south-easterly to the high water mark at the northern extremity of Cape Domett.

Part B

10 All those portions of land comprised within Reserve 24041 (Wyndham Lots 378, 406, 600, 654, 719, 896, 1232, 1233, 1235, 1272, 1302, 1315, 1730, and 1737) on Lands and Surveys Plan No. 16431, Original Roll Plan Wyndham 41/2, Original Plan 7828, Diagram 72093, Original Plan 8779, Diagrams 71241, 70411, 72093 and 73335.

15 Lands and Surveys Public Plans: Wyndham 1:2 000 20.11, 20.12, 21.11, 21.12; Wyndham S.W. 1:25 000; Mt Erskine N.W. 1:25 000; Cambridge Gulf 1:250 000; Medusa Banks 1:250 000.

8. Port of Yampi Sound

20 All that portion of water and sea bed bounded by lines starting at the intersection of latitude 16° 13' 13" S; with longitude 123° 32' 32" E and extending north 10 nautical miles; then east 15 nautical miles; then south to the high water mark of the Indian Ocean; then generally north-westerly, generally westerly and generally southerly along that mark to latitude 16° 13' 13" S and then west to the starting point including the beds and all the navigable waters of abutting bays and creeks flowing into the area.

25 Lands and Surveys Public Plan: Yampi 1:250 000.

Schedule 2 — Terms and conditions of appointment

[s. 15]

1. Terms and conditions

An appointment agreement may include provisions —

- 5 (a) about the operation of the port generally;
- (b) as to the maintenance and preservation of property —
- (i) the management of which is vested in; or
- (ii) which is leased to,
- the operator for the purposes of this Act;
- 10 (c) requiring the operator to observe specified industry and other codes and standards with such modifications or exemptions as may be determined;
- (d) requiring the operator to observe specified procedures with regard to planning for and facilitating future growth and development of the port or maritime facility;
- 15 (e) requiring the operator to observe specified procedures with regard to the licensing of services and activities in the port or maritime facility including such matters as —
- (i) the calling of applications or tenders for licences;
- 20 (ii) the method of applying or tendering for licences;
- (iii) the issue, duration, renewal, suspension or cancellation of licences; and
- (iv) the imposition of conditions on licences;
- (f) requiring the operator to adhere to pricing arrangements for specified services and facilities as may be determined;
- 25 (g) requiring the operator to maintain specified accounting records and to prepare accounts according to specified principles;
- 30 (h) requiring the operator to adhere to access arrangements for channels as may be determined;

Schedule 2 Terms and conditions of appointment

- (i) requiring the operator to adhere to access arrangements for maritime services as may be determined;
- (j) requiring the operator to provide specified information in such manner and form as may be determined;
- 5 (k) specifying procedures for performance auditing and reporting in relation to those matters included within the appointment agreement;
- (l) specifying the responsibilities of the operator in relation to its marine safety plan under section 102 and, in particular, in
10 relation to the provision and maintenance of navigational aids in accordance with that plan;
- (m) specifying the responsibilities of the operator as part of the State's oil spill management plan;
- (n) specifying quality and performance standards to be met by
15 the operator;
- (o) specifying obligations of the operator with respect to public authorities;
- (p) specifying standards to be met in relation to the appointment of harbour masters and managers and the approval of pilots;
- 20 (q) requiring the operator to get the consent of the Director General before changes are made in its corporate structure or ownership;
- (r) enabling the operator, with the consent of the Director
25 General, to assign any of its rights or obligations under the appointment agreement to another person.

2. Definitions

In this Schedule —

“determined” means determined by the Director General;

“specified” means specified in the appointment agreement.

**Schedule 3 — Purposes for which, or matters about which,
regulations may be made**

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1. Vessels

- 5 1.1 The classification of vessels.
- 1.2 Specifying vessels or classes of vessels that are —
- (a) required to be registered; or
 - (b) exempt from registration.
- 1.3 Certificates of registration.
- 10 1.4 The conditions to which the operation of any prescribed class of
vessels may be made subject.
- 1.5 The circumstances in which provision of —
- (a) proof of ownership; or
 - (b) load line certificates, safety certificates or survey certificates,
- 15 or of other documents relating to vessels is required.
- 1.6 Requiring vessels to meet specified safety standards.
- 1.7 Providing for permits, including dealer permits, in respect of
unregistered vessels.
- 1.8 The hiring and hiring out of vessels.
- 20 1.9 Misconduct and unauthorized conduct on or in the vicinity of vessels
and the powers of masters, ships' officers and authorized officers to
deal with misconduct and unauthorized conduct.

Schedule 3 Purposes for which, or matters about which, regulations may be made

2. Certificates of competency and safe crewing

- 2.1 The classification of certificates of competency.
- 2.2 Specifying the classes of persons by whom certificates of competency are required and the classes of certificates of competency required by those persons.
- 2.3 The prerequisites (including qualifications, experience and fitness) for obtaining certificates of competency of specified classes.
- 2.4 The syllabuses for, and the manner of conduct of, examinations to be passed as a prerequisite for obtaining certificates of competency.
- 2.5 Approval of courses, and recognition of examinations, conducted by any person, including the State, inside or outside Western Australia.
- 2.6 The conditions to which certificates of competency may be made subject.
- 2.7 The recognition, conditional recognition and suspension or withdrawal of recognition, of external qualifications.
- 2.8 The minimum crewing requirements for any vessels or class of vessels.

3. Vessel safety standards

- 3.1 The minimum standards for the design, construction and equipment of vessels or classes of vessels, and the maintenance and periodic survey of vessels and their equipment, and, in particular, for —
- (a) structural strength, watertight subdivision, structural fire protection and design loading;
 - (b) the carriage of passengers, passenger accommodation, guard rails and bulwarks;
 - (c) the use of specific construction material;
 - (d) the location, means of access, structure, arrangement, ventilation, heating, cooling, lighting, sanitation, free movement areas, sleeping rooms, mess facilities and galleys of crew accommodation;

- (e) the calculation and assignment of freeboards, the position and marking of load lines, deck lines and draught marks and the issue of load line certificates;
 - (f) the stability criteria for vessels;
 - 5 (g) the boilers, machinery and electrical equipment to be provided in vessels;
 - (h) liquefied petroleum gas, refrigeration and other dangerous installations in vessels;
 - 10 (i) the life saving appliances required to be carried on vessels or classes of vessels and the location of those appliances;
 - (j) the fire fighting equipment, including alarm and communication systems, required to be fitted to vessels or classes of vessels and the location of that equipment;
 - 15 (k) the type, number of items and standard of, and spares for, radio equipment on vessels or classes of vessels; and
 - (l) equipment required for the safety of navigation or for the safety of crew or passengers, including compasses, emergency beacons and radar to be carried on vessels or classes of vessels.
- 20 3.2 The methods for determining compliance with standards referred to in item 3.1, including inclining experiments and the non-destructive testing of hulls.
- 3.3 The accreditation of persons for the purpose of certifying compliance with standards referred to in item 3.1.
- 25 3.4 The detention and survey of vessels under Part 3 Division 6 and liability for and recovery of amounts arising out of the detention and survey.
- 4. Operational safety**
- 30 4.1 The maintenance in respect of vessels, or particular classes of vessel, of vessel log books and radio log books and the form of those log books.

Schedule 3 Purposes for which, or matters about which, regulations may be made

- 4.2 The development, implementation and practice of emergency procedures on vessels.
- 4.3 Requiring the masters of vessels to comply with specified international conventions.
- 5 4.4 The movement, mooring, loading and unloading of vessels and the taking on and landing of passengers.
- 4.5 The prevention of overloading and overcrowding of vessels.
- 4.6 The powers, duties and obligations of a harbour master in respect of the matters referred to in item 4.5 and the rights and liabilities of persons affected by the exercise of such a power or connected with a vessel in respect of which such a power is exercised.
- 10 4.7 The taking in, management and discharge or delivery of ballast.
- 4.8 The speed of vessels.
- 4.9 Tide signals and other signals to be used in ports and other areas.
- 15 **5. Maritime structures and other infrastructure generally**
- 5.1 Standards of construction for maritime structures.
- 5.2 The protection of infrastructure and the reporting of damage to infrastructure.
- 5.3 The control of access to infrastructure.
- 20 5.4 The prevention of obstruction of or interference with infrastructure.
- 5.5 The prevention of obstruction of or interference with the operation of infrastructure.
- 5.6 Liability for loss or damage occurring because of obstruction of or interference with the operation of a navigational aid.
- 25 **6. Jetties**
- 6.1 The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping at, on or from jetties of

explosives and dangerous goods as respectively defined by the *Explosives and Dangerous Goods Act 1961* and of such other substances as the Minister may specify as being dangerous goods for the purposes of the regulations.

- 5 6.2 The appointment of persons to preserve order on jetties.
- 6.3 Traffic on jetties and the means of transport to be used on them.
- 6.4 The powers of an officer to —
- (a) move; or
- (b) remove from a jetty,
- 10 vehicles or other things that are obstructing, or may obstruct, traffic on the jetty.
- 6.5 The use, cleaning, repair, maintenance and effective preservation of jetties.
- 6.6 The control of the operation of machinery on jetties.
- 15 6.7 The conduct of persons operating machinery on jetties.
- 6.8 The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping at, on or from public jetties of goods other than those substances referred to in item 6.1.
- 6.9 To require the master of a vessel to give notice of arrival at a public jetty within a specified time before arrival.
- 20 6.10 To require the master of a vessel moored at a public jetty to produce the certificate of registry or other national papers of that vessel to an officer on demand.
- 6.11 To require the master of a vessel moored at a public jetty to give documentation or information in such form as may be required by an officer of all goods to be loaded or unloaded on to or from the vessel at the jetty.
- 25 6.12 To require the master of a vessel to obtain permission to load or unload goods at a public jetty before doing so.

Schedule 3 Purposes for which, or matters about which, regulations may be made

- 6.13 To require the shippers of goods to furnish information as to the goods intended to be shipped from a public jetty.
- 6.14 To give binding effect to —
- 5 (a) descriptions of and statements about goods (including as to value) in bills of lading, manifests or receipts; and
- (b) the terms and conditions of bills of lading, manifests or receipts,
- in respect of goods shipped from, or landed at, a public jetty.
- 6.15 The powers of an officer to deal with or sell or otherwise dispose of goods that have remained on a public jetty for longer than a prescribed period or are affecting or may affect any property of the State or any other goods on the jetty, and —
- 10 (a) the liability of persons for any charges imposed or expenses incurred by an officer in the exercise of powers under regulations made under this item; and
- 15 (b) the manner in which the proceeds of goods sold by an officer under powers under regulations made under this item may be applied.
- 6.16 Limitation of the liability of the State for damage to or loss of goods on public jetties either generally or in circumstances specified in the regulations.
- 20 6.17 Exemption of the State from liability for damage to or loss of goods on public jetties in circumstances specified in the regulations.
- 6.18 Limitation of the time for making a claim against the State for damage to or loss of goods on public jetties.
- 25
- 7. Mooring control**
- 7.1 The registration of mooring sites in mooring control areas.
- 7.2 The construction, installation, maintenance, inspection and removal of, and other matters relating to, moorings in mooring control areas.

7.3 The mooring and navigation of vessels and other things in mooring control areas.

7.4 The anchoring of vessels in mooring prohibition areas.

5 7.5 The terms and conditions (including payment of fees) on which the holder of a mooring area licence may permit other persons to moor vessels and other things in the area.

8. Pilotage

8.1 Pilotage matters generally and, in particular —

- 10 (a) procedures for and matters relating to the approval of persons as pilots;
- (b) vessels that do not have to have an approved pilot; and
- (c) procedures for and matters relating to pilotage exemption certificates.

9. Control of departmental areas

15 9.1 Regulating or prohibiting —

- (a) the entry or remaining within the boundaries of departmental areas or any specified part of departmental areas by any person or class of persons or thing or class of things;
- 20 (b) the doing or omitting to do any thing or class of things within the boundaries of departmental areas or any specified part of such areas,

either at all times and on all occasions or at any specified time or times or on any specified occasion or occasions.

9.2 Traffic on departmental areas.

25 9.3 The powers of an officer to —

- (a) move; or
- (b) remove from a departmental area,

vehicles or other things that are obstructing, or may obstruct, traffic on the departmental area.

Schedule 3 Purposes for which, or matters about which, regulations may be made

- 9.4 Parking of vehicles on departmental areas.
- 9.5 The control of the operation of machinery on departmental areas.
- 9.6 The conduct of persons operating machinery on departmental areas.
- 5 9.7 The preservation of order on or in relation to departmental areas and infrastructure on them including provision for or in respect of preventing the entry of persons to a departmental area and provision for the removal of persons loitering, squatting or otherwise conducting themselves in a manner likely to prejudice the efficient and convenient use of an area or infrastructure.
- 10 9.8 All matters relating to the protection of life, property and the environment within departmental areas.
- 9.9 Regulating the use of departmental areas and in particular —
- 15 (a) prohibiting the removal of soil, sand, gravel, stone, rock or other material from or otherwise interfering with such areas without the written permission of the Director General;
- (b) prohibiting the deposit of any matter, rubbish or litter on departmental areas;
- (c) prohibiting conduct that may endanger departmental areas or infrastructure on them; or
- 20 (d) prohibiting the erection of any structure, post, pile, stake, fence, mooring or any other thing placed on or fixed to land or seabed within departmental areas without the written permission of the Director General.
- 9.10 The abandonment or neglect of vessels or other material —
- 25 (a) on a departmental area; or
- (b) outside a departmental area so as to affect or potentially affect, a departmental area.
- 9.11 Authorizing and regulating the removal by or on behalf of the Minister of any structure or other thing erected contrary to a regulation made under this Act and providing for the recovery of the cost and expenses of removal.
- 30

- 9.12 The powers of an officer to deal with or sell or otherwise dispose of goods that have remained on a departmental area for longer than a prescribed period or are affecting or may affect any property of the State or any other goods on the departmental area, and —
- 5 (a) the liability of persons for any charges imposed or expenses incurred by an officer in the exercise of powers under regulations made under this item; and
- (b) the manner in which the proceeds of goods sold by an officer under powers under regulations made under this item may be applied.
- 10 9.13 The convenience of shipping or of the public within departmental areas.
- 10. Licences, registration and other authorizations**
- 15 10.1 Issue, granting, amendment, renewal, re-validation or transfer of authorizations.
- 10.2 Applications for things referred to in item 10.1 and how they can be dealt with.
- 10.3 Fees for things referred to in item 10.1, or applications for them or matters related to them.
- 20 10.4 Imposition of conditions on authorizations.
- 10.5 Duration of authorizations.
- 10.6 Suspension, cancellation or revocation of authorizations.
- 10.7 The display or affixation of identification numbers assigned in respect of authorizations.
- 25 **11. Payment of fees and charges**
- 11.1 Measures to encourage prompt payment of fees, charges, dues and levies (including the imposition of penalties or interest, the refusal, suspension, cancellation or revocation of authorizations, the withholding of services, the requirement of payment in advance, and
- 30 the granting of concessions, reductions or discounts).

Schedule 3 Purposes for which, or matters about which, regulations may be made

12. Ports and maritime facilities operated by appointed operators

12.1 Matters relating to a port or maritime facility operated by an appointed operator that are of a kind in respect of which regulations can be made relating to a departmental area.

5 **13. General**

13.1 Forms for use under this Act.

13.2 The recovery of expenses incurred by an officer in exercising powers under the regulations.

10 13.3 Generally for the effective administration and performance of functions conferred by this Act.

13.4 The control of navigation and maritime activities generally.



Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

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certificate of competency	3
channel	3
condition	3
controlled area	69(1)
convention	103(1)
convention regulations	103(1)
Court of Marine Inquiry	3
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departmental area	3
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