



Maritime Legislation Amendment Act 2006

No. 24, 2006

**An Act to amend maritime legislation, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 24, 2006

An Act to amend maritime legislation, and for related purposes

[Assented to 6 April 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Legislation Amendment Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 6 April 2006 |
| 2. Schedule 1 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 3. Schedule 2, item 1 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 4. Schedule 2, item 2 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 5. Schedule 2, items 3 to 7 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 6. Schedule 2, item 8 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 7. Schedule 2, items 9 to 15 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 8. Schedule 2, item 16 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 9. Schedule 2, items 17 and 18 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 10. Schedule 2, items 19 to 23 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 11. Schedule 2, items 24 to 28 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |

| Commencement information | | |
|----------------------------------|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 12. Schedule 2, items 29 to 31 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 13. Schedule 2, item 32 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 14. Schedule 2, items 33 to 38 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 15. Schedule 2, items 39 to 42 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 16. Schedule 2, items 43 to 46 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 17. Schedule 2, items 47 to 54 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 18. Schedule 2, items 55 to 59 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 19. Schedule 2, item 60 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 20. Schedule 2, items 61 and 62 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 21. Schedule 2, items 63 and 64 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 22. Schedule 2, items 65 to 74 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 23. Schedule 2, items 75 and 76 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 24. Schedule 2, items 77 to 80 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 25. Schedule 2, items 81 to 99 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 26. Schedule 2, items 100 to 102 | The day after this Act receives the Royal Assent. | 7 April 2006 |

| Commencement information | | |
|----------------------------------|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 27. Schedule 2, items 103 to 105 | The 28th day after the day on which this Act receives the Royal Assent. | 4 May 2006 |
| 28. Schedule 2, items 106 to 108 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 29. Schedule 3 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 30. Schedule 4, items 1 to 5 | The day after this Act receives the Royal Assent. | 7 April 2006 |
| 31. Schedule 4, item 6 | On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent. | 6 October 2006 |
| 32. Schedule 4, items 7 to 9 | The day after this Act receives the Royal Assent. | 7 April 2006 |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Lighthouses Act 1911

Lighthouses Act 1911

1 Subsections 10(1) and (2)

Repeal the subsections, substitute:

- (1) The Authority may, by notice in writing served on the owner of any marine navigational aid or of any lamp or light, if in its opinion it is desirable for the safety of navigation to do so, require the owner of the marine navigational aid, lamp or light:
 - (a) by a date specified in the notice—to remove it entirely or to move it to another position; or
 - (b) by a date specified in the notice—to modify it or to alter its character to such an extent and in such a manner as the Authority specifies in the notice; or
 - (c) in the case of a lamp, with effect from a date specified in the notice—to refrain from lighting the lamp either entirely or for such a period as the Authority specifies in the notice; or
 - (d) in the case of a light, with effect from a date specified in the notice—to cease exhibiting the light either entirely or for such a period as the Authority specifies in the notice.
- (2) Unless exceptional circumstances relating to the safety of persons or ships require otherwise, the date specified in a notice referred to in subsection (1) must be at least one day after the service of the notice on the owner of the marine navigational aid, lamp or light concerned.

Note: If the person who is required under subsection (1) to take action by or from a date specified in the notice does not take that action by or from that specified date, the obligation to take that action continues after that specified date, with daily offences being committed until the obligation is complied with (see section 4K of the *Crimes Act 1914*).

2 Subsection 10(5)

Repeal the subsection, substitute:

- (5) A person commits an offence if the person does not comply with a notice under this section.

Penalty: 40 penalty units.

(5AA) Subsection 4K(2) of the *Crimes Act 1914* ceases to apply in relation to an offence against subsection (5) of this section on the sixth day after the day on which the obligation to take the action first arose.

Note: Because of this subsection, 200 penalty units is the maximum penalty that can be imposed for offences against subsection (5).

3 At the end of the section 10

Add:

(7) A notice under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

4 Saving provision—notices in force under subsection 10(1)

Any notice served by the Authority under subsection 10(1) of the *Lighthouses Act 1911* as in force immediately before the date of commencement of the amendments of that Act by this Act has effect, on and after that date, as if it were a notice served under subsection 10(1) of that Act as amended by this Act.

5 Subsections 19(1), (1A) and (1B)

Repeal the subsections, substitute:

Intentionally destroying, fouling or damaging marine navigational aids etc.

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in the destruction or fouling of, or damage to:
 - (i) any marine navigational aid; or
 - (ii) any light exhibited on a marine navigational aid; or
 - (iii) any ship, vessel, stores, equipment, or other property used by, or on behalf of, the Authority in connection with the establishment, maintenance or servicing of a marine navigational aid; and
 - (c) the person intends that the conduct will have that result; and
 - (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 10 years.

Recklessly destroying, fouling or damaging marine navigational aids etc.

(1A) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in the destruction or fouling of, or damage to:
 - (i) any marine navigational aid; or
 - (ii) any light exhibited on a marine navigational aid; or
 - (iii) any ship, vessel, stores, equipment, or other property used by, or on behalf of, the Authority in connection with the establishment, maintenance or servicing of a marine navigational aid; and
- (c) the person is reckless as to whether the conduct will have that result; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 7 years.

Negligently destroying, fouling or damaging marine navigational aids etc.

(1B) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct involves the destruction or fouling of, or damage to:
 - (i) any marine navigational aid; or
 - (ii) any light exhibited on a marine navigational aid; or
 - (iii) any ship, vessel, stores, equipment, or other property used by, or on behalf of, the Authority in connection with the establishment, maintenance or servicing of a marine navigational aid; and
- (c) the person is negligent as to whether the conduct will have that result; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: 200 penalty units.

(1C) Absolute liability applies to paragraphs (1)(d), (1A)(d) and (1B)(d).

Intentionally obstructing the view of marine navigational aids

(1D) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in the obstruction of the view of any marine navigational aid; and
- (c) the person intends that the conduct will have that result; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 10 years.

Recklessly obstructing the view of marine navigational aids

(1E) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in the obstruction of the view of any marine navigational aid; and
- (c) the person is reckless as to whether the conduct will have that result; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 7 years.

Negligently obstructing the view of marine navigational aids

(1F) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in the obstruction of the view of any marine navigational aid; and
- (c) the person is negligent as to whether the conduct will have that result; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: 200 penalty units.

(1G) Absolute liability applies to paragraphs (1D)(d), (1E)(d) and (1F)(d).

Intentionally interfering with marine navigational aids

- (1H) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) that conduct results in an interference with the operation of, or the use by a person of, a marine navigational aid; and
 - (c) the person intends that the conduct will have that result; and
 - (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 10 years.

Recklessly interfering with marine navigational aids

- (1J) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) that conduct results in an interference with the operation of, or the use by a person of, a marine navigational aid; and
 - (c) the person is reckless as to whether the conduct will have that result; and
 - (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 7 years.

Negligently interfering with marine navigational aids

- (1K) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) that conduct results in an interference with the operation of, or the use by a person of, a marine navigational aid; and
 - (c) the person is negligent as to whether the conduct will have that result; and
 - (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: 200 penalty units.

- (1L) Absolute liability applies to paragraphs (1H)(d), (1J)(d) and (1K)(d).

Defence to offences against subsections (1), (1A), (1B), (1D), (1E), (1F), (1H), (1J) and (1K)

(1M) Subsection (1), (1A), (1B), (1D), (1E), (1F), (1H), (1J) or (1K) does not apply if:

- (a) the conduct that resulted in the destruction, fouling, damage, obstruction or interference referred to in that subsection was necessary to save a life or a ship, or to prevent pollution; and
- (b) the defendant took all reasonable steps to avoid causing that destruction, fouling, damage, obstruction or interference.

Note: A defendant bears a legal burden in relation to the matters in this subsection (see section 13.4 of the *Criminal Code*).

Intentional removal of marine navigational aids

(1N) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct involves removing, altering, riding by, or making fast to, a marine navigational aid; and
- (c) the person intends that the conduct will result in that removal, alteration, riding by or making fast; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 10 years.

Reckless removal of marine navigational aids

(1O) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct involves removing, altering, riding by, or making fast to, a marine navigational aid; and
- (c) the person is reckless as to whether the conduct will result in that removal, alteration, riding by or making fast; and
- (d) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: Imprisonment for 7 years.

(1P) Absolute liability applies to paragraphs (1N)(d) and (1O)(d).

Trespassing on marine navigational aids

- (1Q) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct involves trespassing or going on a marine navigational aid; and
 - (c) the marine navigational aid is the property of, or under the control of, the Authority.

Penalty: 10 penalty units.

- (1R) Absolute liability applies to paragraph (1Q)(c).

Trespassing on ships, vessels, or property used by the Authority

- (1S) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct involves trespassing or going on any ship, vessel, or property; and
 - (c) the ship, vessel, or property is used by, or on behalf of, the Authority in the establishment, maintenance or servicing of marine navigational aids.

Penalty: 10 penalty units.

- (1T) Absolute liability applies to paragraph (1S)(c).

Note: The heading to section 19 is replaced by the heading “**Destroying or damaging marine navigational aids etc.**”.

6 At the end of section 19

Add:

- (4) In this section:

conduct means an act or an omission to perform an act or a state of affairs.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

7 Subsection 19B(1) (penalty)

Repeal the penalty, substitute:

Penalty: 60 penalty units.

Schedule 2—Amendment of the Navigation Act 1912

Navigation Act 1912

1 Section 3

Repeal the section, substitute:

3 Act does not apply to naval ships etc.

Except where the contrary intention appears, this Act does not apply to or in relation to a ship belonging to, or operated by:

- (a) the Australian Defence Force; or
- (b) the naval, military or air forces of a country other than Australia.

2 Subsection 6(1)

Insert:

Australian coastal sea means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.

3 Subsection 6(1)

Insert:

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

4 Subsection 6(1) (definition of *Government ship*)

Omit “that belongs to an arm of the Defence Force”, substitute “that belongs to, or that is operated by, the Australian Defence Force”.

5 Subsection 6(1)

Insert:

regulated ship has the meaning given by section 186G.

6 Subsection 6(1) (definition of *the Customs Act*)

Omit “the *Customs Act 1901-1966*”, substitute “the *Customs Act 1901*”.

7 Subsection 6(1) (definition of *the regulations*)

Omit “sections 425 and 426”, substitute “section 425”.

8 Subsection 8(1) (definition of *Australian coastal sea*)

Repeal the definition.

9 After subsection 8A(2)

Insert:

- (2A) A declaration under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

10 Subsection 8AA(4)

Repeal the subsection, substitute:

- (4) A declaration under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

11 Subsection 8AB(1)

Repeal the subsection, substitute:

- (1) The owner of a fishing fleet support vessel may apply to the Authority for a declaration under subsection (1A) in relation to the vessel.
- (1A) Despite subsection (2), the Authority may, in writing, declare that this Act applies to the fishing fleet support vessel even when the vessel is proceeding on a voyage that is not an overseas voyage.
- (1B) A declaration under subsection (1A) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

12 Subsection 8AB(2)

Omit “subsection (1)”, substitute “subsection (1A)”.

13 Transitional provision

A declaration of the Minister in force under subsection 8AB(1) of the *Navigation Act 1912* immediately before the day on which items 11 and 12 commence continues in force, on and after that day, as if it were a declaration made by the Authority under subsection 8AB(1A) of the *Navigation Act 1912* as amended by this Act.

14 After section 8AB

Insert:

8AC Expiration or revocation of declarations

- (1) A declaration made under section 8A, 8AA or 8AB ceases to have effect, unless sooner revoked, at the end of the period, if any, specified in the declaration.
- (2) The Authority must revoke a declaration made under section 8A, 8AA or 8AB if requested to do so by the owner of the vessel or ship to which the declaration relates.
- (3) The Authority may revoke a declaration made under section 8A, 8AA or 8AB if the Authority is satisfied:
 - (a) that the vessel or ship to which the declaration relates no longer exists or has been lost; or
 - (b) that the name or any other details of the vessel or ship have been changed since the making of the declaration; or
 - (c) that the vessel or ship no longer operates in Australia.

15 Section 9A

Repeal the section, substitute:

9A Definitions

In this Part, unless the contrary intention appears:

ship does not include a barge, lighter or other floating vessel that is not self-propelled.

STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 adopted at London by the International Maritime Organization on 7 July 1978 as affected by any amendments made

under Article XII of the Convention that have entered into force for Australia.

Note: The text of the Convention is set out in the Australian Treaties Series 1984, No. 7. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

16 Subsection 14(8)

Omit "\$2,000", substitute "60 penalty units".

17 Subsection 14(12)

Repeal the subsection.

18 After subsection 15(1)

Insert:

(1A) Without limiting the generality of subsection (1), regulations may give effect to the STCW Convention.

(1B) Regulations giving effect to the STCW Convention are not intended to exclude the operation of a law of a State or of the Northern Territory that gives effect to that Convention.

Note: The heading to section 15 is replaced by the heading "**Regulations respecting qualifications and watchkeeping obligations of masters, officers and seamen**".

19 Section 16 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

20 Section 99

Repeal the section.

21 Subsection 171(1) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

22 Subsection 171(4) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

23 Subsection 171(5) (penalty)

Repeal the penalty, substitute:

Penalty: 5 penalty units.

24 Before section 186A

Insert:

Division 1—General provisions applicable to pilotage

25 Subsections 186A(1) and (2)

Repeal the subsections, substitute:

- (1) This Part applies only to pilots and pilotage in relation to ships:
 - (a) that are in, or in transit to or from, any waters of the Australian coastal sea that are specified in the regulations; or
 - (b) that are in any waters of Australia's exclusive economic zone that are specified in the regulations.

26 Subsection 186A(3)

Omit "Subject to subsection (1), this", substitute "This".

27 Section 186B

Insert:

pilotage provider means a person who assigns or allocates a pilot to the transit of a ship through particular waters, irrespective of the legal relationship, contractual or otherwise, between that person and the pilot.

28 Before paragraph 186D(a)

Insert:

- (aa) the operations of a pilotage provider, including, but without limiting the foregoing:
 - (i) the duties of a pilotage provider and the manner of discharging those duties; and
 - (ii) the professional relationship between a pilotage provider and a licensed pilot; and
 - (iii) the making by the Authority of safety management codes for pilotage providers; and

- (iv) the observation of such codes by a pilotage provider and by a licensed pilot under the control of a pilotage provider; and
- (v) matters relating to pilotage safety management systems including the content and implementation of such systems; and
- (vi) the keeping of records by a pilotage provider; and
- (vii) training of pilots, and monitoring of their performance, by a pilotage provider; and
- (viii) the professional liability of a pilotage provider and the limitation of that liability; and

29 Subsection 186E(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

30 Subsection 186E(2) (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

31 Subsection 186E(5) (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

32 At the end of Part IIIA

Add:

Division 2—Compulsory pilotage

186G Definitions

- (1) In this Division:

length overall, in relation to a ship, has the meaning given by subsection (2) or (3).

navigates without a pilot has the meaning given by subsections (4) and (5).

regulated ship means any kind of ship:

- (a) that is 70 metres or longer in length overall; or
 - (b) that is a loaded:
 - (i) oil tanker; or
 - (ii) chemical carrier; or
 - (iii) liquefied gas carrier.
- (2) Subject to subsection (3), the length overall of a ship is 110% of the length as shown on the ship's load-line certification.
- (3) If the length overall of a ship cannot be worked out under subsection (2), the length is taken to be the distance between:
- (a) a vertical line passing through a point that is the foremost part of the stem; and
 - (b) a vertical line passing through a point that is the aftermost part of the stern.
- (4) Subject to subsection (5), a ship **navigates without a pilot** if the ship does not have a pilot on board to assist the master in navigating it.
- (5) If:
- (a) apart from this subsection, a ship navigates without a pilot; and
 - (b) the ship is being towed by another vessel that is navigating with a pilot;
- the ship under tow is to be treated as if it were navigating with a pilot.

186H Regulations may provide for compulsory pilotage in certain circumstances

- (1) For the purposes of this Division, the regulations may make provision in relation to compulsory pilotage including provision specifying the waters that are compulsory pilotage areas for the purposes of this Division.
- (2) The waters that may be specified for the purposes of subsection (1) must be waters included within the waters referred to in subsection 186A(1).

- (3) This Division operates in addition to, and not in derogation from, any requirement for compulsory pilotage under the *Great Barrier Reef Marine Park Act 1975* within the compulsory pilotage area under that Act.
- (4) A person is not liable to be prosecuted under this Act and the *Great Barrier Reef Marine Park Act 1975* in respect of the same act or omission.

186I Offence to navigate without a pilot

- (1) If:
 - (a) a ship is a regulated ship; and
 - (b) the ship navigates in a compulsory pilotage area; and
 - (c) the ship navigates in that area without a pilot;the master and the owner of the ship each commit an offence.

Penalty: 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine up to 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

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

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

- (3) In any proceedings for an offence against subsection (1), it is a defence if the defendant proves:

- (a) that the ship was exempted under section 186K from the requirement to navigate with a pilot in the area; and
- (b) that the navigation complied with the terms of the exemption.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

186J Pilots to issue certificates

- (1) If a pilot has provided pilotage services for a regulated ship in a compulsory pilotage area, the pilot must give the master of the ship a certificate in a form approved by the Authority.
- (2) The pilot must provide the certificate to the master before disembarking from the ship after the navigation in the area.

- (3) The certificate must:
 - (a) identify the ship; and
 - (b) identify the area; and
 - (c) state that the pilot has provided pilotage services for the ship in the area; and
 - (d) provide any other information specified by the Authority in the approval of the form of the certificate.

186K Exemption from requirement to navigate with a pilot

- (1) The master or owner of a regulated ship may apply to the Authority for an exemption from the requirement to navigate with a pilot in a compulsory pilotage area.
- (2) The application must:
 - (a) be in writing; and
 - (b) contain the prescribed information; and
 - (c) be made in a form approved by the Authority.
- (3) The Authority must, after consideration of the application:
 - (a) by instrument in writing, grant or refuse to grant the exemption applied for; and
 - (b) give the applicant a copy of the instrument, and, in the case of a refusal, a statement of the reasons for that refusal.
- (4) A refusal to grant the exemption applied for may be a refusal to grant the exemption at all or a refusal to grant the exemption as to a part of the ship's proposed navigation in the compulsory pilotage area.
- (5) If the Authority grants an exemption, whether it is the exemption applied for or a lesser exemption, the exemption may be expressed to be subject to such conditions as are specified by the Authority in the instrument granting the exemption.
- (6) If:
 - (a) a regulated ship is navigating in a compulsory pilotage area; and
 - (b) the Authority has granted an exemption in respect of the proposed navigation by the ship in that area; and
 - (c) that exemption is subject to conditions; and

- (d) the ship, in navigating in that area, fails to comply with those conditions;
the master and the owner of the ship each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.
Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (8) An instrument under this section granting or refusing an exemption is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

186L Defence in proceedings for offences

- (1) In any proceedings for an offence against subsection 186I(1) or 186K(6), it is a defence if the master or owner (as the case may be) proves that the regulated ship navigated in a compulsory pilotage area because of stress of weather, saving life at sea or other unavoidable cause.
- (2) In any proceedings against the owner of a ship for an offence against subsection 186I(1) or 186K(6), it is a defence if the owner proves that the owner took all reasonable precautions and exercised due diligence to ensure that the ship would not navigate in a compulsory pilotage area in contravention of that subsection.
Note: The defendant bears a legal burden in relation to the matter in subsection (1) or (2). See section 13.4 of the *Criminal Code*.

33 Subsection 187(2)

Omit “Regulation 13 or 15”, substitute “Regulation 7 or 14”.

34 Subsection 187A(1) (paragraph (a) of the definition of *certificate of equipment*)

After “subsection 194(4)”, insert “or (5A)”.

35 Subsection 187A(1) (paragraph (a) of the definition of *certificate of survey*)

After “subsection 194(4)”, insert “or (5A)”.

36 Subsection 187A(1) (definition of *passenger certificate*)

Omit “subsection 194(4)”, substitute “subsection 194(4) or (5A)”.

37 Subsection 187A(1) (definition of *passenger ship safety certificate*)

Omit “subsection 206D(1)”, substitute “subsection 206D(1) or (3)”.

38 Subsection 187A(1) (definition of *passenger ship short voyage safety certificate*)

Omit “subsection 206D(2)”, substitute “subsection 206D(2) or (4)”.

39 After subsection 190AA(2)

Insert:

(2A) A person who fails to comply with any requirement made by a surveyor under subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 60 penalty units.

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

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

40 Subsection 190AA(4)

Repeal the subsection, substitute:

(4) If:

- (a) the Authority requires a ship to be taken into dock or otherwise dealt with under subsection (3); and
- (b) the person to whom the requirement was given does not comply with that requirement;

the person commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

41 Subsection 190AA(5)

After “Subsection”, insert “(2A) or”.

42 Subsection 190AA(6)

Repeal the subsection.

43 Subsection 191(3)

Omit “Regulation 13 or 15”, substitute “Regulation 7 or 14”.

44 Subsection 191(4)

After “(b),” insert “(ba),”.

45 Subsection 192A(1)

After “the consul for”, insert “, or to another representative of,”.

46 Subsection 192A(2)

After “consul” (wherever occurring), insert “or other representative”.

47 After subsection 194(5)

Insert:

- (5A) A survey authority may, after the survey of a steamship carried out by or on behalf of the survey authority, issue in respect of the ship, in the prescribed form, a certificate of survey, a passenger certificate or certificates of equipment.
- (5B) A survey authority may refuse to issue a certificate in respect of a ship under subsection (5A) if it is not satisfied that the ship complies with any relevant requirement of this Act which relates to the construction, hull, equipment or machinery of ships.

48 At the end of section 206D

Add:

- (3) If, after the survey of a steamship registered in Australia that is carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
 - (a) the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on international voyages, other than short international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;the survey authority may issue a passenger ship safety certificate in respect of the ship in the prescribed form.
- (4) If, after the survey of a steamship registered in Australia that is carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:

- (a) the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on short international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;
- the survey authority may issue a passenger ship short voyage safety certificate in respect of the ship in the prescribed form.

49 Section 206F

Before “Where”, insert “(1)”.

50 At the end of section 206F

Add:

- (2) If, after a survey of a steamship carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
 - (a) the requirements of this Act that relate to the equipment (other than radio equipment or equipment that is fixed equipment for the purposes of section 206E) of cargo steamships engaged on international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;the survey authority may issue a cargo ship safety equipment certificate in respect of the ship in the prescribed form.

51 Section 206G

Before “Where”, insert “(1)”.

52 At the end of section 206G

Add:

- (2) If, after a survey of a steamship carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
 - (a) the requirements of this Act that relate to the radio equipment of cargo steamships engaged on international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;

the survey authority may issue a cargo ship safety radio certificate in respect of the ship in the prescribed form.

53 Section 206GA

Before “If”, insert “(1)”.

54 At the end of section 206GA

Add:

- (2) If, in respect of a steamship registered in Australia, a survey authority is satisfied that it could issue:
- (a) a cargo ship safety construction certificate under subsection 206E(2); and
 - (b) a cargo ship safety equipment certificate under subsection 206F(2); and
 - (c) a cargo ship safety radio certificate under subsection 206G(2);
- it may issue a cargo ship safety certificate in respect of the ship in the prescribed form.

55 Section 206V

Repeal the section, substitute:

206V Documentary evidence of seaworthiness required for non-Safety Convention ships not registered in Australia

The master or owner of a ship that is not registered in Australia and that is not a Safety Convention ship must not take the ship to sea, or permit the ship to be taken to sea, on a voyage from a port in Australia unless there is in force, in respect of the ship, a certificate or certificates, or other documentary evidence issued by or on behalf of the country in which the ship is registered, attesting to the seaworthiness of the ship.

Penalty: Imprisonment for 4 years.

56 Paragraph 206W(1)(b)

After “a certificate or certificates”, insert “, or, in the case of section 206V, other documentary evidence,”.

Note: The heading to section 206W is altered by adding at the end “**or other documentary evidence**”.

57 Subsection 206W(1)

Omit all the words after paragraph (b), substitute:

the master of the ship must, if so required by an officer of Customs, produce to the officer of Customs:

- (c) the certificate or certificates, or, in the case of section 206V, the other documentary evidence so required; and
- (d) any exemption certificate in force in respect of the ship.

58 Subsection 206W(2)

Omit all the words after “the voyage were”, substitute “such a voyage.”.

59 At the end of section 206W

Add:

- (3) If an officer of Customs has required the master of a ship to produce to the officer:

- (a) under subsection (1)—such certificate or certificates (including any exemption certificate in force in respect of the ship) and such other documentary evidence, if any, as are referred to in that subsection; or
- (b) under subsection (2)—such Safety Convention certificate or Safety Convention certificates as are referred to in that subsection;

then, until the certificate or certificates, or other documentary evidence is so produced, the officer of Customs may refuse to grant the clearance, and the ship may be detained.

60 Section 207

Repeal the section, substitute:

207 Definition of seaworthy

- (1) Subject to subsection (2), a ship is to be treated as seaworthy under this Act if, and only if:
 - (a) it is in a fit state as to the condition of hull and equipment, boilers and machinery, the stowage of ballast or cargo, the number and qualifications of crew including officers, and in every other respect, to:
 - (i) encounter the ordinary perils of the voyage then entered upon; and

- (ii) not pose a threat to the environment; and
- (b) it is not overloaded.

(2) If:

- (a) it is proposed to take a Safety Convention ship to sea on a voyage from a port in Australia; and
- (b) there is in force in respect of the ship the certificate or certificates that may be required to be produced under subsection 206W(2) in respect of the voyage;

the ship is, for the purposes of this Act, to be treated as meeting the condition in subparagraph (1)(a)(i) in relation to that voyage so far as that condition relates to the condition of the ship and its equipment unless the condition of the ship or of its equipment does not correspond substantially with the particulars of that certificate or of any of those certificates.

61 At the end of subsection 221(1C)

Add “punishable on conviction by imprisonment for a period not exceeding 4 years”.

62 Subsections 221(4) and (8)

Omit “by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both”, substitute “by imprisonment for a period not exceeding 4 years”.

63 Subsection 257(1)

Omit “stowing or carriage in ships of cargo”, substitute “loading, stowing or carriage of cargo in ships or the unloading of cargo from ships”.

Note: The heading to section 257 is replaced by the heading “**Loading, stowing, carriage and unloading of cargo**”.

64 Section 261A

Omit “belonging to the Australian Navy”, substitute “belonging to, or operated by, the Australian Defence Force”.

Note: The heading to section 261A is altered by omitting “**naval**” and substituting “**Defence**”.

65 Subsection 267K(4)

Repeal the subsection, substitute:

- (4) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.

66 Subsection 267K(5)

Repeal the subsection, substitute:

- (5) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice; and
 - (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:
- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

67 Subsection 267Y(4)

Repeal the subsection, substitute:

- (4) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.

68 Subsection 267Y(5)

Repeal the subsection, substitute:

- (5) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice; and
 - (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:
- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

69 Subsection 267ZQ(4)

Repeal the subsection, substitute:

- (4) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.

70 Subsection 267ZQ(5)

Repeal the subsection, substitute:

- (5) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice; and

- (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:
 - (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

71 Subsection 268(1)

Repeal the subsection, substitute:

- (1) This section applies to a ship if:
 - (a) it is a ship to which Part II applies; or
 - (b) it is either within Australia or on a voyage to a port in Australia.
- (1A) If the ship has sustained or caused an accident occasioning loss of life or serious injury to a person, the master of the ship must:
 - (a) as soon as practicable, having regard to the means of communication available to him or her, report the accident to such member of staff of the Authority as is prescribed; and
 - (b) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the accident.

Penalty: 500 penalty units.

- (1B) If:
 - (a) the ship has sustained an accident or has otherwise received damage, or a defect in the ship or its boilers, machinery or equipment has been discovered; and
 - (b) the accident, damage or defect has affected, or is likely to affect:
 - (i) the seaworthiness or safety of the ship; or
 - (ii) the efficient operation or the safety of the boilers, machinery or fixed equipment of the ship; or

- (iii) the efficiency or completeness of the life-saving appliances or other safety equipment of the ship;

the master of the ship must:

- (c) as soon as practicable, having regard to the means of communication available to him or her, report the accident, damage or defect to such member of staff of the Authority as is prescribed; and
- (d) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the accident, damage or defect.

Penalty: 200 penalty units.

(1C) If the ship:

- (a) has been in a position of great peril, either from the action of some other ship or from danger of wreck or collision; or
- (b) has been stranded or wrecked; or
- (c) has fouled or done any damage to a pipeline or submarine cable or to a lighthouse, lightship, beacon, buoy or other marine mark, except a lighthouse, lightship, beacon, buoy or marine mark to which section 19B of the *Lighthouses Act 1911* applies;

the master of the ship must:

- (d) as soon as practicable, having regard to the means of communication available to him or her, report the event to such member of staff of the Authority as is prescribed; and
- (e) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the event.

Penalty: 200 penalty units.

(1D) If the ship:

- (a) has left a port in Australia; and
- (b) for reasons of repair or maintenance that might affect the seaworthiness or safety of the ship, later puts back to that port or navigates to another port in Australia;

the master of the ship must:

- (c) as soon as practicable, having regard to the means of communication available to him or her, report the event to such member of staff of the Authority as is prescribed; and

- (d) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the event.

Penalty: 20 penalty units.

- (1E) A written report relating to an accident referred to in subsection (1A), an accident, damage or defect referred to in subsection (1B) or an event referred to in subsection (1C) or (1D) is in a form required by this subsection if it includes:
 - (a) such particulars of the accident, damage, defect or event and of the time, place and circumstances of its occurrence as are prescribed; and
 - (b) such particulars of the ship, its owner and its crew as are prescribed; and
 - (c) such particulars of the voyage during which the accident, damage, defect or event occurred as are prescribed.

72 Section 269 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

73 Section 269A

Repeal the section, substitute:

269A Report of dangers to navigation

- (1) The master of a ship to which Part II applies commits an offence if:
 - (a) the master meets with, or is informed of, any serious danger to navigation on or near his or her course; and
 - (b) the master does not, at the earliest practicable time:
 - (i) send out to ships in the vicinity, by all means of communication at his or her disposal, the prescribed safety signal, followed by a message (the *danger message*) conveying such information as is prescribed; and
 - (ii) make a report to shore to such a person, and in such a manner, as is prescribed.

Penalty: 200 penalty units.

- (2) The reference in subsection (1) to a serious danger to navigation includes, but is not limited to, any of the following:
 - (a) dangerous ice;
 - (b) a dangerous derelict;
 - (c) a tropical storm;
 - (d) sub-freezing air temperature associated with gale force winds causing severe ice accretion on superstructures;
 - (e) winds of force 10 on the Beaufort scale for which no storm warning has been received.
- (3) Subsection (1) does not apply where compliance with that subsection would interfere with the transmission of a signal of distress.
- (4) The transmission, under this section, of danger messages respecting ice, derelicts or other dangers to navigation is to be free of cost to the ships concerned.

74 Division 14 of Part IV

Repeal the Division, substitute:

Division 14—Report of movement of ships

269B Definitions

In this Division, unless the contrary intention appears:

Australia includes the external Territories.

Australian ship means a ship to which Part II applies.

prescribed area, in relation to any reporting matter or matters, means an area of sea around Australia, that comprises so much of:

- (a) the area for which Australia has responsibility for search and rescue; and
- (b) any area of the sea beyond the outer limits of the area referred to in paragraph (a) that is an area in respect of which Australia is required or permitted, under an international treaty, to obtain reports relating to the movement, or intended movement, of ships;

as is prescribed for the purposes of this Division in relation to that matter or those matters.

reporting matter means any matter relating to the movement, or intended movement, of ships, including any such matter that is referred to under an international treaty by which rights are conferred or duties are imposed on Australia as a contracting party.

269C Objects of Division

The objects of this Division include the making of provisions with respect to the reporting of the movement or intended movement of ships so as to enable Australia:

- (a) to exercise rights conferred, or carry out the duties imposed, on Australia under customary international law or as a contracting party under international treaties that provide for:
 - (i) coast watching; and
 - (ii) the rescue of persons in distress at sea; and
 - (iii) the prevention, minimisation or reduction of pollution of the sea by ships or by activities associated with ships; and
 - (iv) the safety of ships; and
 - (v) the safeguarding of ships against any unlawful interference with maritime transport; and
 - (vi) any other matter in respect of which a right is conferred, or a duty imposed, on Australia; and
- (b) to establish reporting requirements for Australian ships.

269D Regulations relating to reporting requirements

- (1) The regulations may make provision for, and in relation to, the reporting requirements:
 - (a) of all ships (other than Australian ships) that are in, or in the process of entering or leaving, the prescribed area in relation to a reporting matter; and
 - (b) of all Australian ships wherever located.
- (2) Without limiting the generality of subsection (1), such regulations may provide for:
 - (a) the form and content of sailing plans for ships (other than Australian ships) proposing to leave a port in Australia bound for another port in Australia or a port outside Australia; and

- (b) the form and content of sailing plans for Australian ships proposing to leave any port (including a port outside Australia) bound for another port (including another port outside Australia); and
 - (c) the form and content of reports on the movement of ships (other than Australian ships) entering, traversing or leaving the prescribed area in relation to a reporting matter, including reports on their position, course and speed and such other matters as the regulations prescribe; and
 - (d) the form and content of reports on the movement of Australian ships including reports on their position, course and speed and such other matters as the regulations prescribe; and
 - (e) the requirement to notify the cancellation of sailing plans and to furnish additional movement reports if a ship deviates, by more than a prescribed amount, from a previously indicated course; and
 - (f) the time at which and manner in which sailing plans, movement reports and cancellation of sailing plans are to be notified to the Authority; and
 - (g) the full or partial exemption of ships from all or any of the requirements of regulations in force under this section.
- (3) The regulations may prescribe different reporting requirements:
- (a) for prescribed areas in relation to different reporting matters; or
 - (b) for different classes of ship (other than Australian ships) that are within, or entering or leaving, a prescribed area in relation to a particular reporting matter; or
 - (c) for different classes of Australian ship.

75 Subsection 283F(3)

Repeal the subsection, substitute:

- (3) The master and owner of an off-shore industry mobile unit each commit an offence if:
- (a) the Authority gives a direction to the master or owner under subsection (1); and
 - (b) that direction is not complied with.

Penalty: 60 penalty units.

76 Subsection 283G(4)

Repeal the subsection, substitute:

- (4) The master and owner of an off-shore industry vessel or an off-shore industry mobile unit that is not registered in Australia each commit an offence if:
- (a) the Authority gives a direction to the master or owner of the off-shore industry vessel or off-shore industry mobile unit, under subsection (2), in respect of:
 - (i) the off-shore industry vessel or off-shore industry mobile unit; or
 - (ii) a class of off-shore industry vessels or off-shore industry mobile units that includes the off-shore industry vessel or off-shore industry mobile unit; and
 - (b) the direction is expressed to be subject to a condition; and
 - (c) that condition is contravened or not complied with.

Penalty: 60 penalty units.

77 Subsections 286(4) and (5)

Repeal the subsections, substitute:

- (4) If:
- (a) a continuing permit is in force in respect of a particular unlicensed ship; and
 - (b) at any time, the Minister forms the view that it may be no longer desirable in the public interest for that permit to remain in force:
- the Minister may, by notice in writing:
- (c) inform the permit holder that he or she is of that view; and
 - (d) invite the permit holder to show cause, within 7 days of receipt of that notice, why the permit should not be cancelled.
- (5) A notice under subsection (4) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (5A) If, after having regard to any representations made by or on behalf of the permit holder and to any other relevant matter, the Minister is satisfied that it continues to be desirable in the public interest for the continuing permit to remain in force, the Minister must inform the permit holder that he or she is so satisfied.

- (5B) If, after having regard to any representations made by or on behalf of the permit holder and to any other relevant matter, the Minister is satisfied that it is no longer desirable in the public interest for the continuing permit to remain in force, the Minister must:
- (a) cancel the permit with effect from a specified day at least 14 days after the Minister becomes so satisfied; and
 - (b) notify the permit holder of the fact of the cancellation and its date of effect and of the reasons for the cancellation.
- (5C) The Minister must, within 14 days of making a decision under subsection (1) to grant a continuing permit or a decision under subsection (5B) to cancel such a permit, notify in the *Gazette*:
- (a) in the case of a decision to grant a permit—the issue of the permit and particulars of the permit issued; or
 - (b) in the case of a decision to cancel a permit—the cancellation of the permit, particulars of the permit cancelled and the date from which the cancellation takes effect.

78 At the end of section 286

Add:

- (8) In this section:

permit holder in relation to a continuing permit granted under this section in respect of an unlicensed ship, means the master, owner, charterer or agent to whom the permit was granted.

79 After section 377C

Insert:

377CA Decisions under Part IIIA

Application may be made to the Administrative Appeals Tribunal for review of a decision under section 186K:

- (a) refusing to grant an exemption from the requirement to navigate with a pilot in a compulsory pilotage area; or
- (b) refusing to grant such an exemption as to a part of a ship's proposed navigation in a compulsory pilotage area.

80 After section 377J

Insert:

377JA Decisions under Part VI

Application may be made to the Administrative Appeals Tribunal for review of a decision to cancel a continuing permit granted under section 286.

81 Section 385

Insert:

appropriately qualified means having such training or experience as may be prescribed for the purposes of this definition.

82 Section 385 (definition of *authorised person*)

Repeal the definition, substitute:

authorised person means a person:

- (a) who is appropriately qualified; and
- (b) who is approved as an authorised person by the Authority for the purposes of sections 386C, 386E and 386F.

83 Section 385

Insert:

breath analysis machine means a machine or device:

- (a) that is for taking and analysing samples of breath; and
- (b) that is of a kind approved by the Authority in accordance with regulations made for the purposes of paragraph 386J(1)(a).

84 Subsection 386A(2)

Repeal the subsection, substitute:

(2) If:

- (a) a master or seaman is, while on board a ship:
 - (i) under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person's capacity to carry out the person's duties as master or seaman is impaired; or
 - (ii) in breach of his or her duty as such a master or seaman; or
 - (iii) operating the ship in a dangerous manner; and

- (b) the impairment, breach of duty or manner of operation causes or contributes to:
 - (i) the likelihood of loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship; or
 - (ii) the loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship; or
 - (iii) the likelihood of injury to, or of the death of, another person; or
 - (iv) injury to, or the death of, another person;the master or seaman commits an offence against this subsection.
- (3) An offence against subsection (2) is punishable, on conviction, as follows:
 - (a) if the impairment, breach of duty or manner of operation caused or contributed to the likelihood of loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship—imprisonment for 2 years;
 - (b) if the impairment, breach of duty or manner of operation caused or contributed to the actual loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship—imprisonment for 4 years;
 - (c) if the impairment, breach of duty or manner of operation caused or contributed to the likelihood of injury to, or of the death of, another person—imprisonment for 5 years;
 - (d) if the impairment, breach of duty or manner of operation caused or contributed to injury to another person—imprisonment for 7 years;
 - (e) if the impairment, breach of duty or manner of operation caused or contributed to the death of another person—imprisonment for 10 years.

85 Paragraph 386B(3)(a)

Omit “device”, substitute “machine”.

86 Subsection 386C(1)

Omit all the words after paragraph (b), substitute:

the authorised person may, by notice in writing given to the master or seaman, require the master or seaman to do all or any of the following:

- (c) undergo a physical examination by a medical practitioner;
- (d) permit the taking of a sample of blood by a medical practitioner;
- (e) provide a breath sample to, or to permit the taking of such a sample by, an approved operator of a breath analysis machine;
- (f) provide a sample of urine to, or to permit the taking of a sample of urine by, an authorised person or a medical practitioner;
- (g) provide a mouth swab to, or to permit the taking of a mouth swab by, an authorised person or a medical practitioner.

87 Paragraph 386C(2)(c)

After “the sample,”, insert “or the mouth swab,”.

88 At the end of section 386C

Add:

- (3) A notice under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

89 Subsection 386E(1)

Omit “medical examination” (wherever occurring), substitute “physical examination”.

90 Paragraph 386E(1)(b)

Repeal the paragraph, substitute:

- (b) he or she fails or refuses, when required under this Act to do so, to provide a urine sample or mouth swab to the medical practitioner conducting the examination for analysis by an approved laboratory or to permit a blood or urine sample, or a mouth swab to be taken by the practitioner for that purpose.

91 Subsection 386E(2)

Repeal the subsection, substitute:

- (1A) A person who is required under this Act to permit a medical practitioner to take a blood sample for analysis commits an offence if he or she refuses or fails to permit it to be taken.

Penalty: Imprisonment for 6 months.

- (2) A person who is required under this Act to provide a urine sample or a mouth swab to an authorised person or to a medical practitioner for analysis, or to permit an authorised person or a medical practitioner to take a urine sample or mouth swab for that purpose, commits an offence if he or she refuses or fails so to provide the sample, or to permit it to be taken.

Penalty: Imprisonment for 6 months.

Note: The heading to section 386E is replaced by the heading “**Refusal to submit to physical examination or to provide samples**”.

92 Subsections 386E(2A) and (3)

After “subsection (1)”, insert “, (1A)”.

93 Subsection 386F(1)

Omit “medical examination”, substitute “physical examination”.

94 Paragraph 386J(1)(a)

Omit “instruments”, substitute “breath analysis machines”.

95 Paragraph 386J(1)(b)

Omit “a breath analysis device”, substitute “breath analysis machines”.

96 Subsection 386J(2)

Repeal the subsection, substitute:

- (2) The regulations may make provision for the procedure to be undertaken:
- (a) by a medical practitioner in taking a sample of blood from a person; or
 - (b) by an approved operator in obtaining a sample of a person’s breath; or
 - (c) by an authorised person or by a medical practitioner in taking a sample of urine or a mouth swab from a person.

97 Subsection 397(2)

Omit “and 206U, subsections 206V(1) and (5), section”, substitute “, 206U, 206V and”.

98 Subsection 397(2)

Omit “section 255 and subsections 268(1) and 269A(1)”, substitute “sections 255 and 268 and subsection 269A(1)”.

99 Subsection 410A(1)

Omit “to which Part II applies”.

100 At the end of section 410A

Add:

(3) In this section:

chart includes a chart in electronic form.

101 Subsection 410B(2)

Repeal the subsection, substitute:

(2) Despite any law of the Commonwealth or of a State or Territory, the owner or master of a ship navigating under circumstances in which pilotage is compulsory under such a law is answerable for any loss or damage caused by the ship, or by a fault of the navigation of the ship, in the same manner as the master or owner would if pilotage were not compulsory.

(3) If a pilot:

- (a) does an act, issues an instruction, or provides information or advice in or in relation to the pilotage of a ship; and
- (b) that act is done, that instruction is issued, or that information or advice is provided, in the course of the pilot’s duty and in good faith; and
- (c) that act, instruction, information or advice affects the navigation of the ship so that loss or damage is caused to or by the ship;

neither the pilot nor any pilotage provider responsible for the provision of the pilot’s services is liable in civil proceedings for that loss or damage.

Note: The heading to section 410B is altered by omitting “**Liability of master or owner of**” and substituting “**Civil liability in relation to**”.

102 After section 410B

Insert:

411 Liability of master or owner under vessel traffic management arrangements

- (1) The master of a ship is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is subject to vessel traffic management arrangements.
- (2) Despite any law of the Commonwealth or of a State or Territory, the owner or master of a ship navigating in circumstances where vessel traffic management arrangements are required to be complied with under such a law is answerable for any loss or damage caused by the ship, or by a fault of the navigation of the ship, in the same manner as the master or owner would be if those vessel traffic management arrangements were not required to be complied with.
- (3) In this section:

vessel traffic management arrangements means any measures that affect a ship’s navigation implemented under a vessel traffic service by a person not on board the ship.

vessel traffic service means a navigational service implemented under a law of the Commonwealth or of a State or Territory and in accordance with guidelines for vessel traffic services adopted by the International Maritime Organization on 27 November 1997 to improve the safety and efficiency of vessel traffic and to protect the environment.

103 Subsection 414(2)

Repeal the subsection, substitute:

- (2) The master of a ship commits an offence if:
 - (a) the ship has been detained or notice of detention of the ship has been served on the master; and
 - (b) following that detention or the service of that notice, the ship goes to sea before it is released by a competent authority.

Penalty: 500 penalty units.

104 Subsection 415(1)

Repeal the subsection, substitute:

- (1) The master and owner of a ship each commit an offence if:
- (a) an official performing any duty under this Act is taken to sea in the ship without his or her consent; and
 - (b) neither the master nor the owner took reasonable steps to prevent the official being so taken to sea.

Penalty: 100 penalty units.

- (1A) If either the master or owner of a ship is found to have committed an offence against subsection (1), the master and owner are jointly and severally liable to pay all expenses incidental to the official's return to duty.

105 Paragraph 425(1)(h)

Repeal the paragraph, substitute:

- (h) the imposition of penalties not exceeding 50 penalty units for a contravention of:
- (i) a provision of the regulations; or
 - (ii) a provision of an order made under subsection (1AA);
or
 - (iii) a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations;

106 Subsection 427(1) (definition of *Council*)

Repeal the definition, substitute:

Council means the conference of Commonwealth, New Zealand, State, Australian Capital Territory and Northern Territory Ministers known as the Australian Transport Council.

107 Subsection 427(1)

Insert:

NSCV means the National Standard for Commercial Vessels adopted by the Council.

108 Subsection 427(3)

Repeal the subsection, substitute:

- (3) The Minister may, by order published in the *Gazette*, declare:
 - (a) that the provisions referred to in the order are provisions, or are the provisions, of the NSCV as in existence on a specified date; or
 - (b) that specified provisions of the NSCV as in existence on a specified date have been varied by the Council on a specified date and that the variations referred to in the order are the variations so made by the Council.
- (4) An order under subsection (2) or (3):
 - (a) is, for all purposes, prima facie evidence of the matters declared in the order; and
 - (b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Note: The heading to section 427 is replaced by the heading “**Ministerial orders concerning Uniform Shipping Laws Code and the NSCV**”.

Schedule 3—Amendment of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

1 After section 22

Insert:

22A Shipboard marine pollution emergency plan for noxious liquid substances

- (1) This section applies to an Australian ship:
 - (a) that has a gross tonnage of 150 or more; and
 - (b) in respect of which there is in force a chemical tanker construction certificate referred to in section 267V of the *Navigation Act 1912*.
- (2) There must be kept on board the ship a shipboard marine pollution emergency plan for noxious liquid substances written in the working language of the master of, and the officers on board, the ship.
- (3) A shipboard marine pollution emergency plan for noxious liquid substances must be in accordance with the prescribed form and set out the following particulars:
 - (a) the procedures to be followed by the master of the ship, or any other person having charge of the ship, in notifying a prescribed incident in relation to the ship;
 - (b) a list of the authorities or persons that are to be notified by persons on the ship if a prescribed incident occurs in relation to the ship;
 - (c) a detailed description of the action to be taken, immediately after a prescribed incident, by persons on board the ship to reduce or control any discharge from the ship resulting from the incident;

- (d) the procedures to be followed for coordinating with the authorities or persons who have been contacted (whether in Australia or in a country near to the place where the incident occurred);
 - (e) any action to be taken in combating the pollution caused by the incident and, in particular, the person on board the ship through whom all communications are to be made.
- (4) The procedures referred to in paragraph (3)(a) must accord with the regulations prescribing, for the purposes of subsection 22(1), the manner in which a prescribed incident is to be notified.
 - (5) Subsection (3) does not prevent other relevant particulars from being included in the shipboard marine pollution emergency plan for noxious liquid substances.
 - (6) If the ship does not have on board a shipboard marine pollution emergency plan for noxious liquid substances, the master of the ship and the owner of the ship each commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
 - (7) An offence against subsection (6) is an offence of strict liability.
Note: For strict liability, see section 6.1 of the *Criminal Code*.
 - (8) A shipboard marine pollution emergency plan for noxious liquid substances is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
 - (9) In this section:

prescribed incident, in relation to a ship, has the same meaning as in section 22.

2 Paragraph 27A(4)(b)

After “the master and”, insert “any other member of the crew of the ship and the”.

3 Subsection 29A(1)

Omit “or owner of a ship”, substitute “or any other member of the crew of a ship, or on the owner of a ship,”.

4 Subsection 29A(2)

Omit “master or owner of the ship”, substitute “master or other member of the crew of the ship, or on the owner of the ship, as the case requires”.

Schedule 4—Amendment of the Shipping Registration Act 1981

Shipping Registration Act 1981

1 After section 44

Insert:

44A Voluntary closure of Register so far as it relates to a mortgage

- (1) If:
 - (a) a ship is registered under this Act; and
 - (b) particulars of a mortgage of a ship or of a share in the ship have been entered on the Register; and
 - (c) the mortgage is not discharged;the mortgagee may, despite the fact that the mortgage is not discharged, at any time, make a written application to the Registrar to close the registration of the ship, so far as it relates to that mortgage.
- (2) The mortgagee must ensure that the application is accompanied by the mortgage instrument.
- (3) If the mortgage instrument cannot, for any reason, be lodged with the Registrar, the mortgagee must lodge with the Registrar, in substitution for the mortgage instrument, a declaration by the mortgagee setting out such particulars relating to the mortgage as are prescribed for the purposes of this subsection.
- (4) The Registrar must, on receipt of an application under subsection (1):
 - (a) amend the Register; and
 - (b) endorse the mortgage, or the declaration lodged in substitution for the mortgage;to indicate the closure of the registration of the ship, so far as it relates to the mortgage that is the subject of the application.

2 Subsection 52(1)

After “delegate to”, insert “a member of the staff of the Authority or to”.

3 Subsections 52(2) and (3)

Repeal the subsections.

4 Subsection 53(1)

After “delegate to”, insert “a member of the staff of the Authority or to”.

5 Subsections 53(2) and (3)

Repeal the subsections.

6 Section 57

Repeal the section, substitute:

57 Inspection of Register

- (1) The Register may be inspected at the Registration Office.

Note: Since 1992 all entries in the Register have been made electronically.

- (2) The Registrar may also, to the extent that the Register has been maintained in electronic form, provide for it to be inspected electronically otherwise than at the Registration Office by using the Internet or another communications network that is prescribed by the regulations.
- (3) A person may, on payment of the prescribed fee (if any), inspect the Register at any reasonable time during the hours when the Registration Office is open for business and, on payment of a prescribed fee, is entitled to be provided with a copy of, or an extract from, any entry on the Register.
- (4) If the Registrar has made provision for electronic inspection of the Register otherwise than at the Registration Office, a person may, on payment of the prescribed fee (if any), electronically inspect the Register and make a copy of any electronic entry in the Register.
- (5) The prescribed fee (if any) for inspection of the Register at the Registration Office may be different from the prescribed fee (if any) for electronic inspection of the Register otherwise than at the Registration Office.

7 Subsection 66(5)

After “Subject to this section”, insert “and to section 44A”.

8 After subsection 66(5)

Insert:

- (5A) Nothing in subsection (5) prevents the closure of the registration of a ship, so far as it relates to a mortgage, before the expiration of a period of 60 days referred to in that subsection if the mortgagee has made an application for such a closure, under section 44A, before the expiration of that period.

9 Subsection 66(6)

After “under subsection (4)”, insert “and who has not made an application under section 44A for closure of registration”.

*[Minister’s second reading speech made in—
Senate on 23 June 2005
House of Representatives on 2 March 2006]*

(124/05)
