



# **Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012**

**No. 122, 2012**

**An Act to make amendments that relate to the enactment of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and that align that Act with work health and safety laws, and for related purposes**

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



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# **Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012**

**No. 122, 2012**

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**An Act to make amendments that relate to the enactment of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and that align that Act with work health and safety laws, and for related purposes**

*[Assented to 12 September 2012]*

The Parliament of Australia enacts:

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*Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act*  
2012 No. 122, 2012 1

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## 1 Short title

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

## 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.

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| 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 this Act receives the Royal Assent.   | 12 September 2012 |
| 2. Schedule 1   | Immediately after the commencement of section 3 of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> .  | 1 July 2013       |
| 3. Schedule 2   | <p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the first day there are in force in each State laws of the State that the Minister is satisfied correspond substantially to Part 2 of the <i>Work Health and Safety Act 2011</i>.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on that first day, they commence on the day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day the provision(s) commenced. The notice is not a legislative instrument.</p> |                   |

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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—Consequential amendments

### *Australian Maritime Safety Authority Act 1990*

#### **1 Subsection 3(1)**

Insert:

*domestic commercial vessel* has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

Note: For *Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth*, see paragraph 4(b) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

#### **2 Paragraph 13(1)(e)**

Omit “4”, substitute “5”.

#### **3 After subsection 13(4)**

Insert:

(4A) The Minister must use his or her best endeavours to ensure that at least one of the members referred to in paragraph (1)(e) is a person who the Minister is satisfied has knowledge of, or experience relevant to, the construction or operation of domestic commercial vessels.

#### **4 Subsection 22(6)**

Omit “4”, substitute “5”.



## **Schedule 2—Breaches of general safety duties**

### ***Marine Safety (Domestic Commercial Vessel) National Law Act 2012***

#### **1 After section 5 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

##### **5A Value of penalties**

Section 4AB of the *Crimes Act 1914* of the Commonwealth does not apply to a penalty expressed in this Law wholly or partly by reference to a number of dollars.

#### **2 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*conduct* a business or undertaking: see section 6A.

#### **3 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*officer* means:

- (a) an officer within the meaning of section 9 of the *Corporations Act 2001* other than a partner in a partnership; or
- (b) a person (except a Minister of the Commonwealth, a State or a Territory) who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Commonwealth, a State or a Territory; or
- (c) a person (except an elected member of a local government authority) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of:

- (i) a body corporate that is established for a public purpose by or under a law of the Commonwealth, a State or a Territory and that is not prescribed by the regulations as a body to which this subparagraph does not apply; or
- (ii) a body corporate that is, or is taken to be, incorporated under the *Corporations Act 2001* of the Commonwealth, that is controlled by the Commonwealth, a State or a Territory and that is not prescribed by the regulations as a body to which this subparagraph does not apply; or
- (iii) a body corporate prescribed by the regulations as a body to which this subparagraph applies.

#### **4 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*volunteer association* means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers in the group, employs any person to carry out work for the group.

#### **5 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*worker*: see section 8A.

#### **6 After section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

##### **6A Definition of *conduct* a business or undertaking**

- (1) For the purposes of this Law, a person *conducts* a business or undertaking:
  - (a) whether the person conducts the business or undertaking alone or with others; and
  - (b) whether or not the business or undertaking is conducted for profit or gain.

- (2) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (3) An elected member of a local government authority does not in that capacity conduct a business or undertaking.
- (4) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Law or any provision of this Law.
- (5) A volunteer association does not conduct a business or undertaking for the purposes of this Law.

## **7 At the end of Part 1 of the Marine Safety (Domestic Commercial Vessel) National Law**

Add:

### **8A Definition of *worker***

- (1) A person is a ***worker*** for the purposes of this Law if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:
  - (a) an employee; or
  - (b) a contractor or subcontractor; or
  - (c) an employee of a contractor or subcontractor; or
  - (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
  - (e) an outworker; or
  - (f) an apprentice or trainee; or
  - (g) a student gaining work experience; or
  - (h) a volunteer; or
  - (i) a person of a class prescribed by the regulations.
- (2) The person conducting the business or undertaking is also a ***worker*** for the purposes of this Law if the person is an individual who carries out work in that business or undertaking.
- (3) Each of the following persons is also a ***worker*** for the purposes of this Law:

- (a) a member (however described) of a police force of the Commonwealth, a State or a Territory;
  - (b) a member of the Australian Defence Force;
  - (c) a person who holds or is acting in an office established by a law of the Commonwealth, a State or a Territory;
  - (d) a person who constitutes, or is acting as the person constituting, a public authority;
  - (e) a person who is, or is acting as, a member or deputy member of a public authority;
  - (f) a person who is, or is acting as, a member or a deputy member of a body that:
    - (i) is established by or under a law of the Commonwealth, a State or a Territory establishing a public authority; and
    - (ii) is established for a purpose associated with the performance of the functions of the public authority;
  - (g) a person of a class specified in an instrument under subsection (4).
- (4) The National Regulator may by legislative instrument specify a class of persons for the purposes of subsection (3)(g) only if persons of that class engage in activities or perform acts:
- (a) at the request or direction of the Commonwealth, a State, a Territory or a public authority; or
  - (b) for the benefit of the Commonwealth, a State, a Territory or a public authority; or
  - (c) under a law of the Commonwealth, a State or a Territory.

## **8 Section 13 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **13 Offences relating to contraventions of section 12**

- (1) A person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and

- (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
  - (3) A person commits an offence if:
    - (a) the person does an act or omits to do an act; and
    - (b) the act or omission contravenes section 12(1); and
    - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
  - (c) if the offence is committed by a body corporate—\$1,500,000.
- (4) Strict liability applies to paragraph (3)(c).

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

- (5) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1).

Penalty:

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- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

## **9 Section 15 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **15 Offences relating to contraventions of section 14**

- (1) A person commits an offence if:
  - (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 14; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
  - (3) A person commits an offence if:
    - (a) the person does an act or omits to do an act; and

- (b) the act or omission contravenes section 14; and
- (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
  - (c) if the offence is committed by a body corporate—\$1,500,000.
- (4) Strict liability applies to paragraph (3)(c).

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

- (5) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

## **10 Section 18 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **18 Offences relating to contraventions of section 16 or 17**

- (1) A person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and

- (b) the act or omission contravenes section 16(1) or 17(1) or (2);  
and
- (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
- (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2);  
and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
  - (c) if the offence is committed by a body corporate—\$1,500,000.
- (4) Strict liability applies to paragraph (3)(c).

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



- (5) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2).

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

## **11 Section 20 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **20 Offences relating to contraventions of section 19**

- (1) A person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 19(1), (2) or (3); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both.

(2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.

(3) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes section 19(1), (2) or (3); and
- (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000.

(4) Strict liability applies to paragraph (3)(c).

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

(5) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes section 19(1), (2) or (3).

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000.

## **12 Section 161 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

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**161 Offences relating to contraventions of conditions by accredited persons**

- (1) An accredited person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

**Penalty:**

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
- (3) An accredited person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

**Penalty:**

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or

- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
  - (c) if the offence is committed by a body corporate—\$1,500,000.
- (4) Strict liability applies to paragraph (3)(c).
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) An accredited person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

### **13 Application of amendments made by this Schedule**

The amendments of Part 3 of the Marine Safety (Domestic Commercial Vessel) National Law made by this Schedule apply in relation to acts and omissions occurring on or after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 24 May 2012  
Senate on 20 June 2012]*

(96/12)

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*Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act  
2012 No. 122, 2012 17*