



## Navigation Regulations 2023

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 September 2023

David Hurley  
Governor-General

By His Excellency's Command

Catherine King  
Minister for Infrastructure, Transport, Regional Development and Local Government

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## Part 1—Preliminary

### 1 Name

This instrument is the *Navigation Regulations 2023*.

### 2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2023.	1 October 2023

Note: This table relates only to the provisions of this instrument as originally made.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

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Navigation Act 2012*.

### 4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

### 5 Definitions

Note 1: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australian Border Force vessel;
- (b) Marine Order;
- (c) recognised organisation;
- (d) Salvage Convention.

Note 2: Recognised organisations are prescribed in the Marine Orders—see subsection 342(1) of the Act.

In this instrument:

***ABF vessel management plan*** means an Australian Border Force vessel management plan within the meaning of section 11 of the Act.

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*Act* means the *Navigation Act 2012*.

*Australian Border Force* has the meaning given by the *Australian Border Force Act 2015*.

*Comptroller-General of Customs* means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

*damage or loss* includes salvage or other expenses arising from the fault of a vessel, which are recoverable at law by way of damages.

*freight* includes passage money and hire.

*significant change* includes, but is not limited to:

- (a) for a vessel:
  - (i) a variation to a certificate issued for the vessel under the Act; and
  - (ii) a change to the vessel by a repair, alteration or modification that substantially alters the dimensions of the vessel or the passenger accommodation spaces, or substantially increases the vessel's service life; and
- (b) for the operation of a vessel—a change to the kind of operations, described in an ABF vessel management plan for the vessel, that the vessel will conduct (including a change to the activities the vessel will undertake).

## **Part 2—ABF vessel management plans**

### **Division 1—Review and acceptance of ABF vessel management plans**

#### **Subdivision A—Introduction**

##### **6 Purpose of this Division**

For the purposes of section 11 of the Act, this Division sets out matters in relation to the preparation, review and acceptance of an ABF vessel management plan relating to compliance with a provision of Chapter 2, 3 or 6 of the Act by:

- (a) an Australian Border Force vessel; or
- (b) a person, or a class of persons, in relation to an Australian Border Force vessel.

#### **Subdivision B—Review and acceptance of ABF vessel management plan**

##### **7 Review of ABF vessel management plan by recognised organisation**

- (1) The Comptroller-General of Customs may submit an ABF vessel management plan to a recognised organisation for review by the recognised organisation.

*Mandatory contents of plan*

- (2) The plan must include the following:
  - (a) information that identifies each Australian Border Force vessel covered by the plan, including:
    - (i) the name of the vessel; and
    - (ii) the kind of operations the vessel will conduct (including the activities the vessel will undertake); and
    - (iii) the unique identifying number for the vessel (such as the International Maritime Organization (IMO) number);
  - (b) if the plan relates to non-compliance with a provision of the Act by a particular person—information that identifies the person, including the name of the person;
  - (c) if the plan relates to non-compliance with a provision of the Act by a class of persons—information that identifies the class of persons, including a description of the class and any exclusions;
  - (d) for each vessel covered by the plan:
    - (i) each provision of the Act that the vessel will not comply with; and
    - (ii) an explanation of why the vessel will not be able to comply with the provision;
  - (e) for each person covered by the plan:
    - (i) each provision of the Act that the person will not comply with; and
    - (ii) an explanation of why the person will not be able to comply with the provision;
  - (f) for each provision of the Act that the vessel or person will not comply with:

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- (i) the requirements that the vessel or person will instead comply with; and
- (ii) an assessment of any risk that may arise from the non-compliance with the provision of the Act, and how that risk will be averted or mitigated by compliance with the alternative requirements;
- (g) the process (agreed by the Comptroller-General of Customs and the recognised organisation) by which the plan will be reviewed by the Comptroller-General of Customs and the recognised organisation, including:
  - (i) the frequency of reviews; and
  - (ii) the nature of reviews; and
  - (iii) how the reviews will be reported and acted upon;
- (h) a description of the arrangements for persons performing work for the Australian Border Force to make reports within the Australian Border Force, and information identifying any other document setting out further details of the arrangements for such reporting, relating to:
  - (i) the operation of the plan; and
  - (ii) compliance with relevant requirements under the Act;
- (i) a description of the arrangements for reports to be made on behalf of the Comptroller-General of Customs to the recognised organisation, and information identifying any other document setting out further details of the arrangements for such reporting, relating to:
  - (i) the operation of the plan; and
  - (ii) compliance with relevant requirements under the Act;
- (j) the process by which compliance with relevant requirements under the Act will be reviewed by the recognised organisation, including the frequency of the reviews and the manner in which the reviews will be reported.

*Power to review plan*

- (3) The recognised organisation may review the plan if it is satisfied that the plan complies with subsection (2).
- (4) In reviewing the plan, the recognised organisation may take into account any additional information or document provided by the Comptroller-General of Customs for the purposes of the review.

*Outcome of review*

- (5) The recognised organisation may, if it is so satisfied, declare it is satisfied that for each provision of the Act that the vessel or person will not comply with:
  - (a) the risk of the non-compliance is adequately assessed; and
  - (b) the requirements specified in the plan under subparagraph (2)(f)(i) are adequately described and appropriately mitigate the identified risks.

## 8 Application for acceptance of ABF vessel management plan

- (1) The Comptroller-General of Customs may apply to AMSA for acceptance of an ABF vessel management plan if a recognised organisation has made a declaration under subsection 7(5) in relation to the plan.



- (2) The application for acceptance of the plan must include:
  - (a) the plan; and
  - (b) the declaration made by the recognised organisation under subsection 7(5) in relation to the plan; and
  - (c) the following details of each contact person nominated by the Comptroller-General of Customs for the plan:
    - (i) name;
    - (ii) position;
    - (iii) role and responsibilities in relation to the plan;
    - (iv) address;
    - (v) contact details.
- (3) The Comptroller-General of Customs may, in the application, propose the following:
  - (a) a day for the acceptance to commence;
  - (b) a day for the acceptance to end, which must not be later than 5 years after the day proposed for the commencement.

## **9 Acceptance of ABF vessel management plan by AMSA**

- (1) If AMSA is satisfied that an application for acceptance of an ABF vessel management plan complies with subsection 8(2), AMSA must, within 28 days after the day it receives the application:
  - (a) accept the plan; and
  - (b) give the Comptroller-General of Customs written notice of the acceptance.

*Notice may specify when acceptance commences and ends*

- (2) AMSA may, in the notice, specify either or both of the following:
  - (a) the day the acceptance commences;
  - (b) the day the acceptance ends, which must not be later than 5 years after the day the acceptance commences.
- (3) The days specified by AMSA under subsection (2) may be, but are not required to be, the same as the days proposed in the application for the acceptance under subsection 8(3).

*When acceptance commences*

- (4) The acceptance of the plan commences:
  - (a) if the notice of the acceptance specifies the day the acceptance commences—at the beginning of that day; or
  - (b) otherwise—when AMSA gives notice of the acceptance.

*When acceptance ends*

- (5) Subject to subsection (6), the acceptance of the plan ends at the earliest of the following times:
  - (a) if the notice of the acceptance specifies the day the acceptance ends—the beginning of that day;

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- (b) if the Comptroller-General of Customs gives a notice under subsection 10(1) in relation to the plan—when the acceptance ends according to subsection 10(2);
  - (c) if the acceptance is revoked under subsection 11(4)—when the acceptance is revoked;
  - (d) at the end of the period of 5 years beginning on the day the acceptance commences.
- (6) If AMSA, under subsection 11(2), partially revokes the acceptance of the plan:
- (a) the acceptance, to the extent that it is revoked, ends when that revocation occurs; and
  - (b) the acceptance, to the extent that it is not revoked under subsection 11(2), ends at the earliest of the times mentioned in subsection (5) of this section for that acceptance.

### 10 End of acceptance by Comptroller-General of Customs

- (1) If the Comptroller-General of Customs decides that the acceptance of an ABF vessel management plan should end for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel, the Comptroller-General of Customs must give AMSA written notice of the decision.
- (2) The acceptance of the plan ends:
- (a) if the notice specifies a day for the acceptance of the plan to end—at the beginning of that day; or
  - (b) otherwise—when AMSA receives the notice.

### 11 Revocation of acceptance if new ABF vessel management plan is accepted

- (1) This section applies if:
- (a) AMSA accepts an ABF vessel management plan (the *new plan*) that covers an Australian Border Force vessel or a person; and
  - (b) immediately before the acceptance of the new plan commences, the acceptance of another ABF vessel management plan (the *previous plan*) that covers that vessel or person is in force.

#### *Partial revocation of acceptance of previous plan*

- (2) AMSA may revoke the acceptance of the previous plan to the extent that the acceptance relates to the previous plan's coverage of that vessel or person.

Note: Revocation under this subsection does not affect the acceptance of the previous plan to the extent that the acceptance relates to the previous plan's coverage of other vessels or persons.

- (3) If AMSA decides to revoke the acceptance of the previous plan under subsection (2), AMSA must give the Comptroller-General of Customs written notice of the revocation, which specifies the vessel or person to which the revocation relates.

*Full revocation of acceptance of previous plan*

- (4) If AMSA does not exercise its power under subsection (2), the acceptance of the previous plan is taken to be wholly revoked when the acceptance of the new plan commences.

## **Subdivision C—Amendment to ABF vessel management plan**

### **12 Amendment to accepted ABF vessel management plan**

- (1) The Comptroller-General of Customs may submit to a recognised organisation, for review by the recognised organisation, an amendment to an ABF vessel management plan that has been accepted under section 9.
- (2) The recognised organisation may:
  - (a) review the amendment; and
  - (b) determine whether it is satisfied that the amendment does not relate to a significant change to the Australian Border Force vessel, or the operation of the Australian Border Force vessel, covered by the plan.
- (3) The recognised organisation must notify the Comptroller-General of Customs in writing if it is satisfied that the amendment does not relate to a significant change to the Australian Border Force vessel or the operation of the Australian Border Force vessel.

### **13 Application for acceptance of amendment to ABF vessel management plan**

- (1) The Comptroller-General of Customs may apply to AMSA for acceptance of an amendment to an ABF vessel management plan if a recognised organisation notifies the Comptroller-General of Customs, under subsection 12(3), that the recognised organisation is satisfied that the amendment does not relate to a significant change to the Australian Border Force vessel, or the operation of the Australian Border Force vessel, covered by the plan.
- (2) The application for acceptance must:
  - (a) be in writing; and
  - (b) set out the amendment; and
  - (c) be accompanied by a copy of the part of the plan affected by the amendment, clearly identifying the amendment; and
  - (d) be accompanied by the notice given by the recognised organisation under subsection 12(3).

### **14 Acceptance of amendment to ABF vessel management plan by AMSA**

- (1) AMSA must, on application made under section 13, accept an amendment to an ABF vessel management plan if AMSA is satisfied that:
  - (a) the application complies with subsection 13(2); and
  - (b) the amendment does not relate to a significant change to the Australian Border Force vessel, or the operation of the Australian Border Force vessel, covered by the plan.

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- (2) AMSA must, within 28 days after the day it receives the application, give written notice of its decision on the application to:
- (a) the Comptroller-General of Customs; and
  - (b) the recognised organisation which gave the notice included in the application as required by subsection 13(2).
- (3) If AMSA does not give written notice of its decision within the 28-day period, the amendment is taken to be accepted at the end of that period.

*Consequences of acceptance and non-acceptance of amendment*

- (4) If AMSA accepts the amendment, AMSA is taken to have accepted the plan as amended by the amendment.
- (5) Despite subsection (4), the acceptance of the amendment does not affect the application of subsections 9(4) and (5) in relation to when an acceptance of the plan commences and ends.

Note: This means the acceptance of the amendment does not extend the acceptance period for the plan as a whole for a further period of up to 5 years from the acceptance of the amendment.

- (6) If AMSA does not accept the amendment, the acceptance of the plan continues as if the amendment had not been made.

## **Division 2—Non-compliance with ABF vessel management plan**

### **15 Purpose of this Division**

This Division is made for the purposes of paragraph 339(2)(n) of the Act.

### **16 Reporting of non-compliance with requirements of ABF vessel management plan**

If a recognised organisation becomes aware that an Australian Border Force vessel or a person has not complied with a requirement of the ABF vessel management plan related to the vessel or person, the recognised organisation must, as soon as practicable:

- (a) notify AMSA of the non-compliance; and
- (b) provide any relevant documentation about the non-compliance to AMSA.

## **Part 3—Safety of navigation**

### **17 Application of this Part**

This Part is made for the purposes of subsection 176(3) of the Act.

### **18 Liability for personal injuries**

- (1) If a person on board a vessel suffers a personal injury or dies because of the fault of the vessel and of another vessel, the liability of the owners of the vessels is joint and several.
- (2) This section does not:
  - (a) deprive a person of a right of defence on which, independently of this section, the person might have relied in an action brought against the person by:
    - (i) the person injured; or
    - (ii) a person entitled to sue in respect of the death; or
  - (b) affect the right of a person to limit the person's liability in a case to which this section relates in the manner provided by law.

### **19 Rule as to division of liability**

- (1) If, because of 2 or more vessels, damage or loss is caused to:
  - (a) those vessels or one or more other vessels; or
  - (b) the cargo or freight of those vessels or one or more other vessels; or
  - (c) property on board those vessels or one or more other vessels;the liability to make good the damage or loss must be in proportion to the degree in which each vessel was in fault.
- (2) However, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability is apportioned equally.
- (3) This section does not make a ship liable for damage or loss if it was not at fault.
- (4) This section does not:
  - (a) affect the liability of a person under a contract, including a contract of carriage; or
  - (b) impose a liability on a person from which the person is exempted by a contract or by a provision of law; or
  - (c) affect the right of a person to limit the person's liability in the manner provided by law.

### **20 Right of contribution**

- (1) If:
  - (a) a person suffers personal injury or dies on board a vessel because of the fault of the vessel and another vessel; and

(b) a proportion of the damages is recovered against the owner of one of the vessels; and

(c) the proportion of the damages recovered exceeds the proportion in which the vessel was at fault;

the owner may recover by way of contribution the amount of the excess from the owner of the other vessel to the extent to which that vessel was at fault.

- (2) This section does not allow an amount to be recovered by a person entitled to sue for damages which the person could not otherwise recover.
- (3) In addition to any other remedy provided by law, a person entitled to a contribution in accordance with subsection (1), for the purpose of recovering the contribution, has the same rights and powers as a person entitled to sue for damages.

## **Part 4—Salvage**

### **21 Certain provisions of Salvage Convention to have force of law**

For the purposes of paragraph 241(1)(a) of the Act, the following have the force of law in Australia:

- (a) Articles 6 to 8, 12 to 19, 21 to 23, 26 and 30 of the Salvage Convention;
- (b) the common understanding, as set out in Schedule 1 to this instrument, concerning Articles 13 and 14 of the Salvage Convention.



## **Part 5—Application, transitional and savings provisions**

### **22 Transitional provision—ABF vessel management plan accepted before commencement**

- (1) This section applies if:
  - (a) an ABF vessel management plan (*pre-commencement plan*) is accepted under subsection 8(1) of the *Navigation Regulation 2013* (the *old Regulation*) before its repeal; and
  - (b) immediately before the commencement of this instrument, both of the following apply:
    - (i) the acceptance (the *pre-commencement acceptance*) is the last acceptance given for the pre-commencement plan under that subsection;
    - (ii) the pre-commencement acceptance has not expired under paragraph 8(3)(a) or section 9 of the old Regulation.
- (2) Despite the repeal of the old Regulation:
  - (a) the pre-commencement acceptance continues in force on and after the commencement of this instrument; and
  - (b) the pre-commencement plan may be dealt with under this instrument, on and after that commencement, as if it were an ABF vessel management plan accepted under section 9 of this instrument; and
  - (c) the pre-commencement acceptance is taken, for the purposes of this instrument, to have commenced on 1 October 2023; and
  - (d) the pre-commencement acceptance is taken, for the purposes of this instrument, to end:
    - (i) if a date of expiry was specified in the acceptance—on that date; or
    - (ii) otherwise—on 1 October 2028 unless the acceptance ends earlier in accordance with this instrument.

## **Schedule 1—Salvage Convention, the Common Understanding Concerning Articles 13 and 14**

Note: See section 21.

### **COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE, 1989**

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.

## **Schedule 2—Repeals**

### *Navigation Regulation 2013*

#### **1 The whole of the instrument**

Repeal the instrument.