

SOUTH AUSTRALIA

HARBORS AND NAVIGATION ACT 1993

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 7 December 1997.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Objects of this Act
4. Interpretation
5. Crown bound
6. Application of this Act

**PART 2
ADMINISTRATION**

DIVISION 1—MINISTER

7. Responsibility for administration
8. Minister to be corporation sole

DIVISION 2—CHIEF EXECUTIVE OFFICER

9. Responsibility of CEO
10. Annual report

DIVISION 3—DELEGATION

11. Delegation

DIVISION 4—AUTHORISED PERSONS

12. Appointment of authorised persons
13. Production of identity card
14. Powers of an authorised person

**PART 3
PROPERTY**

DIVISION 1—VESTING OF PROPERTY

15. Property of Crown

DIVISION 2—ACQUISITION OF LAND

16. Acquisition of land

DIVISION 3—RESUMPTION OF LAND

17. Resumption

DIVISION 4—CARE, CONTROL AND MANAGEMENT OF PROPERTY

18. Care, control and management of property
- 18A. By-laws

DIVISION 5—DEALINGS WITH PROPERTY

19. Power to grant leases and licences over land

Harbors and Navigation Act 1993

DIVISION 6—RATEABILITY OF LAND

20. Rateability of land

DIVISION 7—DAMAGE TO PROPERTY

21. Liability for damage

**PART 4
GENERAL POWERS TO PROTECT NAVIGATION AND TO
RESTRICT USE OF WATERS**

DIVISION 1—NAVIGATIONAL AIDS

22. Control of navigational aids
23. Establishment of navigational aids
24. Interference with navigational aids

DIVISION 2—CLEARANCE OF WRECKS

25. Clearance of wrecks, etc.

DIVISION 3—RESTRICTIONS ON USE OF WATERS

26. Licences for aquatic activities
27. Restricted areas

**PART 5
HARBORS**

DIVISION 1—CONTROL OF HARBORS AND HARBOR FACILITIES

28. Control and management of harbors and harbor facilities

DIVISION 2—HARBOR IMPROVEMENT WORK

29. Dredging and other similar work
30. Development of harbors and maritime facilities

DIVISION 3—FEES AND CHARGES

31. Fees and charges

DIVISION 4—CONTROL OF VESSELS IN HARBORS

32. Conduct of vessels in harbors

DIVISION 5—PILOTAGE

33. Licensing of pilots
34. Pilotage exemption certificate
35. Compulsory pilotage
36. Duties and immunities of pilots

**PART 6
CREWING**

DIVISION 1—APPLICATION OF THIS PART

37. Vessels to which this Part applies

DIVISION 2—OBLIGATION TO HAVE ADEQUATE CREW

38. Obligation to have adequate crew
39. Exemptions

Harbors and Navigation Act 1993

DIVISION 3—STATE CREWING COMMITTEE

- 40. State Crewing Committee
- 41. Nomination of members by owner
- 42. Conditions of office

DIVISION 4—PROCEDURES AND POWERS OF COMMITTEE

- 43. Procedures at meetings
- 44. Power to obtain information
- 45. Determinations in relation to crew

PART 7 CERTIFICATES OF COMPETENCY

- 46. Vessels to which this Part applies
- 47. Requirement for certificate of competency
- 48. Issue of certificates of competency or exemptions
- 49. Cancellation of certificate of competency by court
- 50. Cancellation of certificate of competency by Minister

PART 8 HIRE OF VESSELS

- 51. Vessels to which this Part applies
- 52. Obligation to hold licence
- 52A. Duration and granting of licence
- 53. Terms and conditions of licence

PART 9 REGISTRATION AND CERTIFICATES OF SURVEYS

DIVISION 1—REGISTRATION OF VESSELS

- 54. Application of Division
- 55. Registration

DIVISION 2—CERTIFICATES OF SURVEY

- 56. Application of this Division
- 57. Appointment of surveyors
- 58. Issue of certificate of survey
- 59. Certificate of survey
- 60. Obligation to hold certificate of survey

DIVISION 3—LOADLINE CERTIFICATES

- 61. Application of this Division
- 62. Issue of loadline certificate
- 63. Loadline certificate
- 64. Obligation to hold loadline certificate

Harbors and Navigation Act 1993

**PART 10
SAFETY**

DIVISION 1—SAFETY GENERALLY

- 65. General requirements
- 66. Power to prohibit use of unsafe vessel
- 67. Minister's power to act in emergency

DIVISION 2—SURVEY

- 68. Requirement of survey

DIVISION 3—OPERATION OF VESSELS

- 69. Vessels to be operated with due care

DIVISION 4—ALCOHOL AND OTHER DRUGS

- 70. Alcohol and other drugs
- 71. Requirement to submit to alcoltest or breath analysis
- 72. Police to facilitate blood test at request of incapacitated person, etc.
- 72A. Authorised person to provide transport assistance for blood tests in certain circumstances outside Metropolitan Adelaide
- 72B. Blood tests by nurses where breath analysis taken outside Metropolitan Adelaide
- 73. Evidence
- 73A. Breath analysis where drinking occurs after operation of vessel
- 74. Compulsory blood tests of injured persons including water skiers

**PART 11
ACCIDENTS**

- 75. Casualties to be reported
- 76. Duty to render assistance and provide particulars

**PART 12
COURT OF MARINE ENQUIRY**

DIVISION 1—CONSTITUTION OF COURT

- 77. Constitution of Court

DIVISION 2—ENQUIRIES INTO CASUALTIES

- 78. Enquiries into casualties

DIVISION 3—ENQUIRIES INTO MISCONDUCT OR INCOMPETENCE

- 79. Enquiries into misconduct or incompetence

DIVISION 4—ADMINISTRATIVE REVIEW

- 80. Appellate jurisdiction

**PART 13
APPLICATION OF COMMONWEALTH ACT AND
INTERNATIONAL CONVENTIONS**

- 81. Application of Commonwealth Act
- 82. Agreement between the Commonwealth and the State

**PART 14
MISCELLANEOUS**

- 83. Regattas, etc.
- 84. Conduct on board vessels

- 85. Unlawful use of vessels
- 87. Evidentiary provision
- 88. Time within which prosecution must be commenced
- 89. Officers' liability
- 90. Recreational boating fund
- 91. Regulations

SCHEDULE 1

Harbors

SCHEDULE 2

Repeal and Transitional Provisions

APPENDIX 1

LEGISLATIVE HISTORY

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

HARBORS AND NAVIGATION ACT 1993

being

Harbors and Navigation Act 1993 No. 41 of 1993
[Assented to 20 May 1993]¹

as amended by

Harbors and Navigation (Ports Corporation and Miscellaneous) Amendment Act 1994 No. 45 of 1994 [Assented to 2 June 1994]

Statutes Amendment (Drink Driving) Act 1995 No. 95 of 1995 [Assented to 7 December 1995]²

Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]³

¹ Came into operation 24 October 1994: *Gaz.* 20 October 1994, p. 1220

² **Part 2 (ss. 4-10) came into operation 7 December 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).**

³ Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix 1.*

An Act to provide for the administration, development and management of harbors; to provide for safe navigation in South Australian waters; to repeal the Harbors Act 1936, the Marine Act 1936 and the Boating Act 1974; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Harbors and Navigation Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects of this Act

3. The objects of this Act are—

- (a) to provide for the efficient and effective administration and management of South Australian harbors and harbor facilities for the purpose of maximising their use and promoting trade; and
- (b) to ensure that efficient and reliable cargo transfer facilities are established and maintained; and
- (c) to promote the safe, orderly and efficient movement of shipping within harbors; and
- (d) to promote the economic use and the proper commercial exploitation of harbors and harbor facilities; and
- (e) to provide for the safe navigation of vessels in South Australian waters; and
- (f) to provide for the safe use of South Australian waters for recreational and other aquatic activities.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"adjacent land" means—

- (a) land extending from the low water mark on the seashore to the nearest road or section boundary, or to a distance of 50 metres from high water mark (whichever is the lesser distance); or
- (b) land extending from the edge of any other navigable waterway or body of water in the State to the nearest road or section boundary or for a distance of 50 metres (whichever is the lesser),

(but does not include land vested in fee simple in any person other than the Minister or land withdrawn from the Minister under the transitional provisions);

"alcotest" means a test by means of apparatus approved for the purpose of conducting alcotests under the *Road Traffic Act 1961*;

"authorised person" means a person appointed under Part 2 or a member of the police force;

Harbors and Navigation Act 1993

"**breath analysing instrument**" means apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;

"**CEO**" means the chief executive officer of the Department;

"**commercial vessel**" means a vessel used for industrial, commercial or scientific purposes and includes a vessel of a class declared by regulation to be a class of commercial vessels;

"**Commonwealth Act**" means the *Navigation Act 1912* of the Commonwealth;

"**the Corporation**" means the South Australian Ports Corporation established under the *South Australian Ports Corporation Act 1994*;

"**a Corporation port**" means a port vested in the Corporation;

"**crew**", of a vessel, includes—

- (a) in the case of a commercial vessel—the master;
- (b) in the case of a recreational vessel—the operator,

and any person acting in a position declared by regulation to be a position of responsibility;

"**department**" means the department or administrative unit of the Public Service that has, subject to the Minister, responsibility for administering this Act;

"**expiable offence**" means an offence against this Act declared by regulation to be an expiable offence;

"**fishing vessel**" means—

- (a) a vessel (not propelled solely by oars) used in the taking of fish for sale; or
- (b) a vessel (not propelled solely by oars) used in connection with a fish farm whether or not it is used in the taking of fish for sale;

"**harbor**" means—

- (a) any of the harbors mentioned in Schedule 1 (unless declared by regulation not to be a harbor); or
- (b) a place—
 - (i) at which facilities exist for the loading or mooring of vessels or at which such facilities might be conveniently established; and
 - (ii) declared by regulation to be a harbor;

"**interest**" in land means—

- (a) any legal or equitable estate or interest in the land; or
- (b) any easement, right, power, or privilege in, under, over, affecting, or in connection with, the land;

"jurisdiction" means—

- (a) the State (and, in particular, the navigable waters within its limits); and
- (b) so much of the territorial sea of Australia as is adjacent to the State; and
- (c) any other navigable waters declared by regulation to be within the jurisdiction,

but does not include navigable waters declared by regulation not to be within the jurisdiction;

"key position", in relation to the crew of a vessel, means—

- (a) the position of master or operator of the vessel; or
- (b) a position of a class declared by regulation to be one in relation to which a certificate of competency is required;

"land" includes an interest in land;

"master" means the person in charge of a commercial vessel but does not include a licensed pilot acting as such;

"misconduct" includes negligence;

"navigation" of a vessel includes any movement of the vessel from place to place whether or not the vessel moves or is moved under its own power;

"navigational aid" means—

- (a) a lighthouse, beacon, buoy, or other mark or structure (whether equipped with a light or not) intended to be an aid to navigation; or
- (b) a radio beacon or other device intended to be an aid to navigation;

"operator" means the person in charge of a recreational vessel, while that vessel is under way;

"owner" of a vessel includes—

- (a) in relation to a commercial vessel—
 - (i) a charterer; and
 - (ii) an agent of the owner or the charterer;
- (b) in relation to a recreational vessel—a person who takes the vessel on hire;

"pilot" means a person, who although not a member of a vessel's crew, temporarily takes control (subject however to the master's overriding authority) of the vessel's navigation;

"recreational vessel" means a vessel used for purposes that are not solely industrial, commercial or scientific purposes and includes a vessel of a class declared by regulation to be a class of recreational vessels;

"subjacent land" means land underlying navigable waters within the jurisdiction;

Harbors and Navigation Act 1993

"**speed**", in relation to a vessel, means speed with reference to a stationary horizontal plane (as distinct from speed through water which may itself be in motion);

"**vessel**" means—

- (a) a ship, boat or vessel used in navigation; or
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in transporting passengers or goods by water; or
- (c) a surf board, wind surf board, motorised jet ski, water skis or other similar device on which a person rides through water; or
- (d) a structure that is designed to float in water and is used for commercial, industrial or scientific purposes,

but does not include a structure of a class excluded by regulation from the ambit of this definition;

"**wreck**" includes an abandoned vessel.

(2) For the purposes of this Act, a person is taken to operate a vessel if that person—

- (a) rides on a surfboard or water skis or other similar device; or
- (b) is towed by a vessel.

(3) For the purposes of this Act, the length of a vessel is to be determined in accordance with the regulations.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Crown bound

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

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

Application of this Act

6. This Act applies throughout the jurisdiction.

**PART 2
ADMINISTRATION**

DIVISION 1—MINISTER

Responsibility for administration

7. The Minister is responsible for the administration of this Act.

Minister to be corporation sole

8. (1) The Minister is a corporation sole.

(2) The Minister has in his or her corporate capacity all the powers of a natural person.

(3) A document apparently bearing the common seal of the Minister will be presumed, in the absence of contrary evidence, to have been duly executed by the Minister.

DIVISION 2—CHIEF EXECUTIVE OFFICER

Responsibility of CEO

9. The CEO is, subject to the Minister's control and direction, responsible for carrying this Act into effect.

Annual report

10. (1) The CEO must, on or before 31 October in each year, report on the administration of this Act during the preceding financial year.

(2) The Minister must, within six sitting days after receiving the report, cause copies to be laid before both Houses of Parliament.

DIVISION 3—DELEGATION

Delegation

11. (1) The Minister may delegate to the CEO or to any other person any of the Minister's powers under this Act.

(2) The CEO may delegate powers under this Act (including powers delegated to the CEO by the Minister).

(3) If a delegation under this section is expressed to be made to the person holding, or acting in, a specified office or position, the delegated powers are exercisable by any person who holds, or is acting in, that position when an occasion for exercising the powers arises.

(4) A delegation under this section is revocable at will and does not derogate from the powers of the delegator.

DIVISION 4—AUTHORISED PERSONS

Appointment of authorised persons

12. (1) The CEO may appoint suitable persons to be authorised persons for the purposes of this Act.

(1a) The CEO may, with the concurrence of the Corporation, appoint a person who is an authorised person under the *South Australian Ports Corporation Act 1994* to be an authorised person for the purposes of this Act.

Harbors and Navigation Act 1993

- (2) An appointment under this section may be subject to conditions.
- (3) An authorised person appointed under this section must be issued with an identity card—
 - (a) containing a photograph of the person; and
 - (b) stating any conditions of the appointment limiting the authorised person's authority.

Production of identity card

13. If it is practicable to do so, an authorised person must, at the request of a person against whom the authorised person proposes to exercise statutory powers, produce his or her identity card or, if the authorised person is a member of the police force, his or her warrant card, for inspection by that person.

Powers of an authorised person

14. (1) An authorised person may, for any purpose connected with the administration or enforcement of this Act, exercise any of the following powers—

- (a) the authorised person may direct any person who is apparently in charge of a vessel to manoeuvre the vessel in a specified manner, to stop the vessel, or to stop the vessel and secure it in a specified manner;
- (b) the authorised person may board a vessel—
 - (i) for the purpose of determining—
 - (A) whether the person in charge of the vessel and the persons acting in key positions as members of the crew of the vessel hold appropriate certificates of competency or exemptions from the requirement to hold certificates of competency;
 - (B) whether the vessel is safe;
 - (C) whether the vessel is registered in accordance with this Act;
 - (D) whether there is a current certificate of survey or loadline certificate in force in relation to the vessel;
 - (E) whether the vessel has the equipment and markings required by the regulations and whether the equipment is in good working order;
 - (F) whether the vessel is properly loaded in accordance with the regulations or the conditions of a certificate of survey or loadline certificate;
 - (ii) for the purpose of investigating—
 - (A) a suspected offence; or
 - (B) an accident involving a vessel in the jurisdiction and resulting in loss of life or injury or in damage to property; or
 - (C) any other matter having a proper connection with the administration of this Act;

- (iii) for the purpose of requiring a person who is operating the vessel or a member of the crew of the vessel who is, or ought to be, engaged in duties affecting the safe navigation of the vessel to submit to an alcotest or breath analysis;
- (c) the authorised person may require a person apparently acting in a position for which a certificate of competency is required under this Act to produce, at a specified place and within a specified period, the certificate of competency or evidence that the person is exempt from the requirement to hold a certificate of competency;
- (d) the authorised person may require a person who is apparently in charge of a vessel—
 - (i) to produce a certificate of registration in respect of the vessel; or
 - (ii) if the vessel is of a class for which a certificate of survey or loadline certificate is usually required—to produce the certificate for inspection or evidence that the vessel is exempt from the requirement to be surveyed or to have a loadline certificate;
- (e) the authorised person may require a person whom the authorised person reasonably suspects of having committed an offence against this Act or who is, in the authorised person's opinion, in a position to give evidence of the commission of such an offence, to state his or her name and address;
- (f) for the purposes of investigating—
 - (i) a suspected offence; or
 - (ii) an accident involving a vessel in the jurisdiction and resulting in loss of life or injury, or in damage to property; or
 - (iii) any other matter having a proper connection with the administration of this Act, the authorised person may—
 - (iv) require a person to answer questions relevant to the investigation; and
 - (v) require a person to produce records or equipment that the authorised person reasonably suspects are relevant to the investigation; and
 - (vi) may inspect the records or equipment, make copies of the records or their contents or test the equipment and, where reasonably necessary for those purposes, seize and retain the records or equipment.

(2) A person who—

- (a) without reasonable excuse, fails to obey a direction or requirement of an authorised person under this Act; or
- (b) hinders or obstructs an authorised person in the exercise of powers under this Act,

is guilty of an offence.

Penalty: Division 8 fine.

Harbors and Navigation Act 1993

**PART 3
PROPERTY**

DIVISION 1—VESTING OF PROPERTY

Property of Crown

15. (1) Subject to subsection (2), the following property is vested in the Minister—

- (a) all adjacent and subjacent land;
- (b) all wharves, docks, jetties and other structures that are situated in a harbor;
- (c) all wharves, docks, jetties and other structures situated outside a harbor but on adjacent or subjacent land;
- (d) all navigational aids within the jurisdiction.

(2) The land that is vested in the Minister under this section is vested for an estate in fee simple but subject to any pre-existing registered interests in that land.

(3) This section does not apply to—

- (a) real or personal property vested in the Commonwealth, a council, or in private ownership at the commencement of this Act or subsequently transferred to the Commonwealth, a council or to private ownership by the Minister; or
- (b) land that forms part of a reserve under the *National Parks and Wildlife Act 1972*; or
- (ba) real or personal property (including navigational aids) subsequently vested in the Corporation under the *South Australian Ports Corporation Act 1994*; or
- (c) real or personal property excluded by regulation from the ambit of this section.

(4) The *Crown Lands Act 1929* does not apply in relation to land vested in the Minister under this Act but the Crown may, with the concurrence of the Minister, exercise any other power that it has to grant a lease or licence over its land in relation to land vested in the Minister under this Act.

DIVISION 2—ACQUISITION OF LAND

Acquisition of land

16. (1) The Minister may acquire land—

- (a) for the purpose of establishing or improving a harbor or harbor facilities; or
- (b) for the purposes of facilitating industrial or commercial development associated with or to be associated with a harbor.

(2) The *Land Acquisition Act 1969* applies to the acquisition of land under this section.

DIVISION 3—RESUMPTION OF LAND

Resumption

17. The Governor may, by proclamation, resume land held by a council or other public authority as a reserve, street, road or for other public purposes—

- (a) for the purpose of establishing or improving a harbor or harbor facilities; or
- (b) for the purposes of facilitating industrial or commercial development associated with or to be associated with a harbor.

DIVISION 4—CARE, CONTROL AND MANAGEMENT OF PROPERTY

Care, control and management of property

18. (1) The Governor may, by proclamation, place any adjacent or subjacent land belonging to the Minister or any structure belonging to the Minister on adjacent or subjacent land, under the care, control and management of—

- (a) any Minister of the Crown; or
- (b) a council; or
- (c) the Coast Protection Board; or
- (d) any other authority or body.

(2) A proclamation under subsection (1)—

- (a) may impose conditions in relation to the care, control and management of the land or structure to which it relates; and
- (b) may be varied or revoked by a later proclamation.

(3) A proclamation under subsection (1) may not be made in relation to land, or a structure on land, that is within the area of a council unless the council has been consulted and given an opportunity to make representations on the matter.

(4) Subject to any provision made by proclamation under this section, the care, control and management of adjacent and subjacent land, and of structures situated on adjacent or subjacent land (except land and structures in private ownership) are—

- (a) if within the area of a council but not within a harbor—under the care, control and management of the council; and
- (b) in any other case—under the care, control and management of the Minister.

By-laws

18A. (1) A council may, with the approval of the Minister, make by-laws that operate in relation to—

- (a) a harbor, or part of a harbor; or
- (b) any other adjacent or subjacent land vested in the Minister.

Harbors and Navigation Act 1993

(2) The *Local Government Act 1934* applies to by-laws made under this section as if—

- (a) any part of the harbor or land in relation to which the by-laws operate that is not within the area of the council were within the area of the council; and
- (b) any part of the harbor or land in relation to which the by-laws operate that is not under the care, control and management of the council were under the care, control and management of the council.

(3) The Governor may at any time, by notice in the *Gazette*, revoke by-laws made under this section.

(4) The Minister must consult with the council concerned before by-laws are revoked under subsection (3).

DIVISION 5—DEALINGS WITH PROPERTY

Power to grant leases and licences over land

19. (1) The Minister may, on such terms and conditions as the Minister thinks fit, grant a lease of, a licence over, or other rights to occupy or use, land or a structure that is under the Minister's care, control and management under this Act.

(2) The Minister may, on such terms and conditions as the Minister thinks fit, sell or otherwise dispose of land or a structure that is under the Minister's care, control and management under this Act.

(3) An authority or body may, with the Minister's approval, grant a lease of, a licence over, or other rights to occupy or use, land or a structure under its care, control and management under this Act.

DIVISION 6—RATEABILITY OF LAND

Rateability of land

20. (1) Subject to subsection (2), land vested in the Crown under this Act is not rateable under the *Local Government Act 1934*.

(2) If any such land is occupied under a lease or licence by some person other than the Crown or an instrumentality or agency of the Crown, that person is liable as occupier of the land to rates levied under the *Local Government Act 1934*.

DIVISION 7—DAMAGE TO PROPERTY

Liability for damage

21. (1) If property of the Crown or the Minister (not being property of the Corporation) is damaged by a vessel, the owner of the vessel is liable to the Minister for the amount of the damage.

(2) If property in private ownership consisting of harbor facilities or a navigational aid is damaged by a vessel, the owner of the vessel is liable to the owner of the property for the amount of the damage.

(3) The liability may be enforced by action against the owner or by action against the vessel (or both).

(4) This section creates a strict liability that exists irrespective of fault and irrespective of whether the vessel is under compulsory pilotage at the time the damage is caused.

Harbors and Navigation Act 1993

**PART 4
GENERAL POWERS TO PROTECT NAVIGATION AND TO
RESTRICT USE OF WATERS**

DIVISION 1—NAVIGATIONAL AIDS

Control of navigational aids

22. The Minister is entitled to possession and control of all navigational aids within the jurisdiction except those belonging to the Commonwealth or the Corporation.

Establishment of navigational aids

23. (1) The Minister may establish and maintain such navigational aids as the Minister considers necessary or desirable for the safe navigation of vessels within the jurisdiction.

(2) The Minister may direct any person who carries on a business involving the mooring, loading or unloading of vessels to establish, maintain and operate navigational aids of a specified kind at specified places.

(3) A person who fails, without reasonable excuse, to comply with a direction under subsection (2) is guilty of an offence.

Penalty: Division 6 fine.

Interference with navigational aids

24. (1) A person must not, without the Minister's permission, interfere with a navigational aid.

Penalty: Division 9 fine.

(2) For the purposes of subsection (1), the mooring of a vessel to a navigational aid constitutes interference with the navigational aid.

(3) If the Minister is of the opinion that a particular light or signal might be confused with the light or signal produced by a navigational aid, the Minister may, by notice in writing to the person in charge of the device that produces the light or signal, require the person to take action specified in the notice to prevent the possibility of confusion.

(4) If a person fails to comply with a requirement under subsection (3) within the time allowed in the notice, the Minister may take the action specified in the notice and recover the cost of doing so from the person.

(5) A person who fails, without reasonable excuse, to comply with a notice under subsection (3) is guilty of an offence.

Penalty: Division 9 fine.

DIVISION 2—CLEARANCE OF WRECKS

Clearance of wrecks, etc.

25. (1) The Minister may, by notice in writing, require the owner of any wreck within the jurisdiction to remove the wreck.

(2) If a person deposits any substance or thing within the jurisdiction so as to obstruct navigation, or to pollute waters, the Minister may, by notice in writing, require that person to take action specified in the notice to remove the substance or thing or to mitigate the consequences of the pollution.

(3) If a person fails to comply with a requirement under this section within the time allowed in the notice, the Minister may remove the wreck or take the action specified in the notice and recover the cost of doing so from the person.

(4) A person who fails without reasonable excuse to comply with a notice under this section is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 3—RESTRICTIONS ON USE OF WATERS

Licences for aquatic activities

26. (1) The CEO may grant to any organisation or person a licence entitling that organisation or person to use, in accordance with the terms and conditions of the licence, any waters within the jurisdiction (other than waters within a Corporation port) for the purposes of an aquatic sport or activity or for any other purposes stated in the licence.

(2) The CEO may require the licensee to take specified action for the purposes of informing the public of the area of waters to which the licence relates and of the times the licensee is entitled to the use of those waters in accordance with the licence.

(3) If the licensee fails to comply with a requirement under subsection (2) the licence is ineffective to confer rights on the licensee.

(4) A person who, without the consent of the licensee or the authority of the CEO, intrudes into waters at a time when the licensee has, under the licence, an exclusive right to use those waters is guilty of an offence.

Penalty: Division 9 fine.

(5) The CEO may revoke a licence under this section for breach of a term or condition of the licence.

Restricted areas

27. (1) The Governor may, by regulation, regulate, restrict or prohibit—

- (a) the entry of vessels or vessels of a specified class into specified waters within the jurisdiction; or
- (b) the operation or use of vessels in specified waters within the jurisdiction; or
- (c) aquatic activity or aquatic activity of a specified class in specified waters within the jurisdiction.

(1a) The power under subsection (1) is not exercisable in relation to waters within a Corporation port.

(2) The Minister must take reasonable steps to inform the public of the nature of requirements of any regulation under this section and of the waters to which it applies by marking out the waters and erecting notices in the vicinity or by other appropriate means.

(3) If a regulation is made under this section at the request of a council, the Minister may recover any costs incurred under subsection (2) from the council as a debt.

Harbors and Navigation Act 1993

**PART 5
HARBORS**

DIVISION 1—CONTROL OF HARBORS AND HARBOR FACILITIES

Control and management of harbors and harbor facilities

28. (1) Subject to this Act, the Minister has exclusive control and management of—

- (a) all harbors in the State; and
- (b) all harbor facilities that are not in private ownership.

(2) This section does not apply to a port or port facilities vested in the Corporation.

DIVISION 2—HARBOR IMPROVEMENT WORK

Dredging and other similar work

29. (1) The Minister may carry out dredging or other work to deepen, extend or clear a harbor.

(2) If a private wharf is situated in the harbor, the Minister may recover a reasonable proportion of the cost of the work from the owner of the private wharf.

(3) The proportion of the cost to be recovered from the owner of the private wharf is to be determined by agreement between the Minister and the owner, or, in default of agreement, by an arbitrator appointed under the *Commercial Arbitration Act 1988*.

Development of harbors and maritime facilities

30. (1) The Minister may carry out work of any kind for the development or improvement of a harbor.

(2) The Minister may, for example, establish facilities for—

- (a) the anchorage or mooring of vessels;
- (b) the maintenance and repair of vessels;
- (c) the loading and unloading of passengers or goods;
- (d) the storage of goods;
- (e) facilitating industrial or commercial development associated with or to be associated with a harbor;
- (f) sporting or recreational purposes.

(3) The Minister may establish and maintain such facilities and equipment as the Minister considers necessary to ensure the safety of life and property in harbors.

(4) The Minister may carry out work under this section independently or as a member of a joint or co-operative venture.

DIVISION 3—FEES AND CHARGES

Fees and charges

31. (1) The charges—

- (a) for use of facilities provided under this Act for—
 - (i) the mooring of vessels;
 - (ii) the loading or unloading of passengers or goods;
 - (iii) the storage of goods;
 - (iv) the safe navigation of vessels;
 - (v) any other purpose; or
- (b) for entry of vessels into a harbor or other specified parts of the jurisdiction; or
- (c) for services provided by the Minister,

are to be fixed by the Minister.

(2) The Minister may fix default charges to be paid if a charge fixed under this section is not paid within a specified period.

(3) The Minister will publish from time to time schedules of the charges and default charges fixed under this section.

(4) The Minister may waive or reduce charges or default charges, or extend the time for payment of charges or default charges, as he or she thinks fit.

(5) A charge (or default charge) payable under this section in respect of goods is recoverable as a debt from the consignor or the consignee of goods.

(6) The Minister may retain possession of goods until the appropriate charge has been paid, and, if it is not paid within 60 days after the goods are unloaded, the Minister may, after giving notice in writing to the consignee of the goods, sell the goods and retain the charge (and default charges and the costs of conducting the sale) from the proceeds of sale.

(7) If a charge payable in respect of a vessel is not paid, on or before the date when payment falls due, an authorised person may, at the Minister's direction, arrest the vessel and take it into the Minister's custody, and if the charge remains unpaid 60 days after the vessel is taken into the Minister's custody, the Minister may, after giving notice to the owner of the vessel, sell the vessel and retain the charge (and default charges and the costs of conducting the sale) from the proceeds of sale.

(8) If a person is in default in the payment of a charge or default charge imposed under this section, the Minister may, by notice to that person, prevent the person from using harbor facilities provided by the Crown until the charge or default charge (or both) have been paid.

Harbors and Navigation Act 1993

DIVISION 4—CONTROL OF VESSELS IN HARBORS

Conduct of vessels in harbors

32. (1) A person in charge of a vessel in a harbor must comply with any directions given by an authorised person.

Penalty: Division 6 fine.

(2) A direction may, for example, require that vessels proceed to load or unload in a particular order, that a vessel be moored or anchored in a particular position, that a vessel be secured in a particular way, or that a vessel be moved from a particular area or position.

(3) A person in charge of a vessel must permit an authorised person to board the vessel and inspect it and any cargo that it is carrying.

Penalty: Division 7 fine.

(4) An authorised person may, if there is no-one on board a vessel to whom a direction may be given, board the vessel and cause the vessel to be moved as the authorised person thinks fit.

(5) Any costs incurred by the authorised person in acting under subsection (4) are recoverable as a debt from the owner of the vessel.

DIVISION 5—PILOTAGE

Licensing of pilots

33. (1) The CEO may license persons qualified in accordance with the regulations as pilots.

(1a) A licence remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.

(2) A licence may be granted under this section on such conditions as the CEO thinks fit.

(3) The CEO may, by notice in writing to the holder of a licence under this Division, vary or revoke a condition of the licence.

(4) A person who holds a licence under this Division must not contravene or fail to comply with a condition of the licence.

Penalty: Division 6 fine.

(5) The CEO may, by notice in writing to a licensed pilot, cancel the licence if satisfied that the pilot—

(a) has been guilty of incompetence or breach of duty; or

(b) has breached a condition of licence; or

(c) has suffered mental or physical incapacity rendering the pilot incapable of satisfactorily performing the duties of a pilot.

(6) On cancellation of a licence under this section, the former licensee must return the licence to the CEO.

Penalty: Division 9 fine.

Pilotage exemption certificate

34. (1) The CEO may issue a pilotage exemption certificate to the master of a vessel in accordance with the regulations.

(1a) A pilotage exemption certificate remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.

(2) A pilotage exemption certificate may be granted on such conditions as the CEO thinks fit.

(3) The CEO may, by notice in writing to the holder of a pilotage exemption certificate under this Division, vary or revoke a condition of the certificate.

(4) A person who holds a pilotage exemption certificate under this Division must not contravene or fail to comply with a condition of the certificate.

Penalty: Division 6 fine.

(4a) A pilotage exemption certificate lapses if the holder does not continue to have the periodic experience in the navigation of vessels required by the regulations.

(5) The CEO may, by notice in writing to the holder of a pilotage exemption certificate, cancel the certificate if there are, in the CEO's opinion, proper reasons for doing so.

(6) On cancellation of a pilotage exemption certificate under this section, the former holder of the certificate must return the certificate to the CEO.

Penalty: Division 9 fine.

Compulsory pilotage

35. (1) A vessel 35 metres or more in length must not be navigated within a harbor to which this section applies, unless—

(a) the vessel is navigated under the control or at the direction of a licensed pilot; or

(b) the master of the vessel holds a pilotage exemption certificate under this Division.

(2) If a vessel is navigated in contravention of this section, the owner and the master are each guilty of an offence.

Penalty: Division 5 fine.

(3) This section applies to a harbor declared by regulation to be a harbor to which this section applies.

(4) The CEO may, subject to such conditions as the CEO thinks fit, exempt a vessel from the requirements of this section.

Duties and immunities of pilots

36. (1) The duty of a pilot is to pilot the vessel subject to the authority of the master, and the fact that a vessel is under pilotage does not relieve the master from responsibility for the navigation of the vessel.

Harbors and Navigation Act 1993

(2) No civil liability attaches to a pilot or to a pilot's employer for negligence by the pilot in relation to the pilotage of the vessel (but this subsection does not relieve from liability that may attach to a person as owner of a vessel).

(3) The liability of the owner or master of a ship for damage resulting from a fault in the navigation of the ship is unaffected by the fact that the vessel is under pilotage or that the pilotage is compulsory.

**PART 6
CREWING**

DIVISION 1—APPLICATION OF THIS PART

Vessels to which this Part applies

37. This Part applies to a vessel of a class declared by regulation to be a class of vessels to which this Part applies.

DIVISION 2—OBLIGATION TO HAVE ADEQUATE CREW

Obligation to have adequate crew

38. (1) If a fishing vessel to which this Part applies is operated in the jurisdiction and the crew of the vessel does not conform to the requirements of the regulations with regard to the minimum number and qualifications of the crew, the owner is guilty of an offence.

Penalty: Division 6 fine.

(2) If a vessel (other than a fishing vessel) to which this Part applies is operated in the jurisdiction and—

- (a) there is no current determination of the State Crewing Committee fixing the minimum number and qualifications of the crew required for the safe navigation of the vessel; or
- (b) the crew of the vessel does not comply with the requirements of such a determination,

the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 6 fine.

Exemptions

39. (1) The CEO may, on such conditions as the CEO thinks fit, exempt the owner or master of a vessel from the obligation to comply with the requirements of the regulations with regard to the minimum number and qualifications of the crew of the vessel or a determination of the State Crewing Committee.

(2) The CEO may, by notice in writing to the holder of an exemption, revoke the exemption or impose further conditions if there are, in the CEO's opinion, proper reasons for doing so.

DIVISION 3—STATE CREWING COMMITTEE

State Crewing Committee

40. (1) The *State Crewing Committee* is established.

(2) The Committee consists of—

- (a) five members (the "appointed members") appointed by the Governor of whom—
 - (i) two are to be master mariners and one is to be a marine engineer nominated by the Minister;
 - (ii) two are to be persons who have, in the opinion of the Governor, appropriate qualifications and experience to be members of the Committee, nominated by maritime or waterfront unions;

Harbors and Navigation Act 1993

(b) the members (the "nominated members") nominated by the owner of the vessel in respect of which a determination is to be made or reviewed by the Committee.

(3) One of the appointed members will be appointed by the Governor to preside at meetings of the Committee and another will be appointed to deputise for that member in his or her absence.

(4) The Governor may appoint a suitable person to act as an appointed member of the Committee when a particular appointed member is absent or during a temporary vacancy in the office of that member.

(5) The provisions governing the nomination of a member extend to the appointment of a person to act in the absence of that member or during a temporary vacancy in the office of that member.

Nomination of members by owner

41. (1) The CEO must, at least 14 days before the Committee sits to make or review a determination in respect of a vessel, give the owner a written notice—

(a) informing the owner of the proposed making or review of the determination and of the date when the proceedings are to commence; and

(b) inviting the owner to nominate a person or persons (not exceeding two in number) to be members of the Committee for the purposes of the proceedings.

(2) The owner may, by written notice to the CEO, nominate a person or persons (not exceeding two in number) to be members of the Committee for the purposes of the proceedings.

(3) A person may not be nominated under subsection (2) unless that person is a qualified master mariner or marine engineer or is, in the opinion of the CEO, otherwise appropriately qualified to participate in the proceedings.

(4) A nomination must be made at least 7 days before the Committee is to commence the proceedings for the making or review of the determination.

(5) If the owner fails to make a nomination in accordance with this section the right to make the nomination lapses.

Conditions of office

42. (1) An appointed member of the Committee holds office for such term and on such terms and conditions as may be determined by the Governor.

(2) A nominated member holds office as a member of the Committee only while matters relating to the vessel in respect of which that member was nominated are being considered or otherwise dealt with by the Committee.

(3) A member of the Committee is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

DIVISION 4—PROCEDURES AND POWERS OF COMMITTEE

Procedures at meetings

43. (1) The member appointed to preside at meetings of the Committee must, if present at a meeting, preside at that meeting and, in the absence of that member, his or her deputy must preside but, if both are absent, a member chosen by those present will preside.

(2) Subject to subsection (3), three members of the Committee constitute a quorum of the Committee.

(3) A quorum must, unless the CEO otherwise directs, include the members (if any) duly nominated by the owner of the ship in respect of which the Committee is to make or review a determination.

(4) A decision supported by a majority of the votes of the members present at a meeting of the Committee is a decision of the Committee.

(5) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at that meeting and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.

Power to obtain information

44. (1) For the purposes of this Act, the Committee may—

- (a) by summons signed by the presiding or deputy presiding member, require any person to attend before the Committee to give evidence, or to produce documents to the Committee;
- (b) examine witnesses on oath or affirmation;
- (c) require any person appearing before the Committee (whether summoned to appear or not) to answer questions relating to any matter before the Committee;
- (d) enter and inspect any vessel in respect of which a determination is to be made or reviewed under this Act.

(2) A person who—

- (a) fails without proper excuse to comply with a summons to attend before the Committee or to produce documents;
- (b) misbehaves before the Committee, or wilfully insults or obstructs the Committee;
- (c) refuses to be sworn or to affirm when required to do so by the Committee;
- (d) refuses to answer any relevant question when required to do so by the Committee,

is guilty of an offence.

Penalty: Division 7 fine.

Determinations in relation to crew

45. The Committee may, on application by the owner of a vessel (other than a fishing vessel) to which this Part applies, make or review a determination fixing the minimum number and qualifications of the crew required for the safe navigation of the vessel.

Harbors and Navigation Act 1993

**PART 7
CERTIFICATES OF COMPETENCY**

Vessels to which this Part applies

46. This Part applies to—

- (a) a recreational vessel fitted with an engine;
- (b) a vessel (other than a recreational vessel) of a class declared by regulation to be a class of vessels to which this Part applies.

Requirement for certificate of competency

47. (1) A person must not accept employment in a key position in the crew of a commercial vessel to which this Part applies unless that person holds—

- (a) a certificate of competency of the appropriate class in force under this Act; or
- (b) a qualification under the law of some other place declared by the CEO in accordance with the regulations to be equivalent to a certificate of competency of the relevant class; or
- (c) an exemption from the requirement to hold a certificate of competency of the relevant class.

Penalty: Division 7 fine.

(2) A person must not employ another in a key position in the crew of a commercial vessel to which this Part applies unless that person holds—

- (a) a certificate of competency of the appropriate class; or
- (b) a qualification under the law of some other place declared by the CEO in accordance with the regulations to be equivalent to a certificate of competency of the relevant class; or
- (c) an exemption from the requirement to hold a certificate of competency of the relevant class.

Penalty: Division 7 fine.

(3) A person must not operate a recreational vessel to which this Part applies unless that person holds—

- (a) a certificate of competency of the appropriate class (a boat operator's licence); or
- (b) an exemption from the requirement to hold a certificate of competency of the relevant class; or
- (c) a special permit granted under the regulations.

Penalty: Division 7 fine.

Expiation fee: Division 9 fee.

(4) A person must not hire out a recreational vessel to which this Part applies to another unless that person holds—

- (a) a certificate of competency of the appropriate class (a boat operator's licence); or
- (b) an exemption from the requirement to hold a certificate of competency of the relevant class; or
- (c) a special permit granted under the regulations.

Penalty: Division 7 fine.

Expiation fee: Division 9 fee.

(5) A person who commits an offence against this section while disqualified from holding a certificate of competency of the relevant class is liable to a fine of twice the amount prescribed above.

Issue of certificates of competency or exemptions

48. (1) The CEO must arrange for the examination of applicants seeking certificates of competency.

- (2) A person who—
 - (a) passes the examinations appropriate to a certificate of competency of a particular class; and
 - (b) satisfies the requirements of the regulations appropriate to an applicant for a certificate of competency of that class; and
 - (c) satisfies the CEO that he or she is a fit and proper person to hold a certificate of competency of that class,

is entitled to be issued with a certificate of competency of that class.

(3) A person who is entitled to a certificate of competency will, on payment of the fee fixed by regulation, be issued with a certificate of competency.

(4) A certificate of competency issued in respect of a recreational vessel (a boat operator's licence) continues in operation without renewal and without payment of any further fee.

(5) The CEO may, on such conditions as the CEO thinks fit, exempt a person from the obligation to sit an examination for a certificate of competency or to hold a certificate of competency of a particular class.

Cancellation of certificate of competency by court

49. Where a court convicts the holder of a certificate of competency of an offence against this Act showing the holder to have been incompetent or guilty of misconduct or to have failed in his or her duty in a matter related to navigation, the court may, in addition to imposing any other penalty, cancel the certificate of competency and disqualify the holder from again holding such a certificate for a specified period or until further order.

Harbors and Navigation Act 1993

Cancellation of certificate of competency by Minister

50. (1) If the holder of a certificate of competency—

- (a) is shown by the findings of the Court of Marine Enquiry or a court or tribunal with similar powers under the law of some other place to have been incompetent or guilty of misconduct or to have failed in his or her duty in a matter related to navigation; or
- (b) is convicted of an offence showing the holder of the certificate to have been incompetent or guilty of misconduct or to have failed in his or her duty in a matter related to navigation; or
- (c) is disqualified from holding such a certificate under the law of another place, or
- (d) is shown to have suffered mental or physical incapacity rendering him or her incapable of satisfactorily operating a vessel or performing duties pursuant to the certificate of competency,

the Minister may, by notice in writing given to the holder, cancel the certificate of competency and disqualify the holder from again holding such a certificate for a specified period or until further notice.

(2) If the holder of a qualification under the law of some other place—

- (a) is convicted of an offence showing the holder of the qualification to have been incompetent or guilty of misconduct or to have failed in his or her duty in a matter related to navigation; or
- (b) has been found by the Court of Marine Enquiry or a court or tribunal with similar powers under the law of some other place to have been incompetent or guilty of misconduct or to have failed in his or her duty in a matter related to navigation, or
- (c) is shown to have suffered mental or physical incapacity rendering him or her incapable of satisfactorily operating a vessel or performing duties pursuant to the qualification,

the Minister may declare the qualification to be inoperative in the jurisdiction and while such a declaration remains in force the person to whom it relates will not be regarded as the holder of a qualification equivalent to a certificate of competency.

(3) On cancellation of a certificate of competency (under this or any other section of this Act), the former holder of the certificate must return the certificate to the Minister.

Penalty: Division 9 fine.

**PART 8
HIRE OF VESSELS**

Vessels to which this Part applies

51. This Part applies to vessels of a class declared by regulation to be a class of vessels to which this Part applies.

Obligation to hold licence

52. A person must not carry on a business of hiring out vessels to which this Part applies unless licensed to do so under this Part.

Penalty: Division 7 fine.

Duration and granting of licence

52A. (1) A licence under this Part remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.

(2) The regulations may set out the circumstances in which the CEO may grant or refuse to grant a licence under this Part.

Terms and conditions of licence

53. (1) A licence under this Part may be granted subject to such conditions as the CEO thinks fit and specifies in the licence.

(2) The CEO may, by notice in writing to the holder of a licence under this Part, vary or revoke a condition of the licence.

(3) A person who holds a licence under this Division must not contravene or fail to comply with a condition of the licence.

Penalty: Division 7 fine.

(4) The CEO may, by notice in writing to the licensee, cancel a licence for breach of a condition.

(5) On cancellation of a licence under this section, the former licensee must return the licence to the CEO.

Penalty: Division 9 fine.

Harbors and Navigation Act 1993

**PART 9
REGISTRATION AND CERTIFICATES OF SURVEYS**

DIVISION 1—REGISTRATION OF VESSELS

Application of Division

54. This Division applies to—

- (a) a recreational vessel fitted with an engine ;
- (b) a vessel of a class declared by regulation to be a class of vessels to which this Division applies.

Registration

55. (1) A vessel to which this Division applies must not be operated in the jurisdiction unless it is registered and marked in accordance with the regulations.

(2) If a vessel to which this Division applies is operated in the jurisdiction contrary to this section, the owner of the vessel, and the master or operator of the vessel, are each guilty of an offence (but it is a defence to a charge of such an offence brought against the owner for the owner to prove that the vessel was operated without the owner's consent).

Penalty: Division 9 fine.

- Expiation fee:
- (a) if the vessel is registered but not marked in accordance with the regulations—division 11 fee;
 - (b) if the vessel is neither registered nor marked in accordance with the regulations—division 10 fee.

(3) The CEO may, subject to such conditions as the CEO thinks fit, grant exemptions from the requirements of this section.

DIVISION 2—CERTIFICATES OF SURVEY

Application of this Division

56. This Division applies in respect of vessels of a class declared by regulation to be a class of vessels in respect of which a certificate of survey is required.

Appointment of surveyors

57. (1) The CEO may license a suitably qualified person to be a surveyor of vessels generally or of a particular class of vessels.

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

(3) A person who holds a licence under this Division must not contravene or fail to comply with a condition of the licence.

Penalty: Division 6 fine.

(4) The CEO may, by notice in writing to a licensed surveyor, cancel the surveyor's licence if the surveyor is shown to have been guilty of incompetence or breach of duty or to have breached a condition of the licence.

(5) On cancellation of a licence under this section, the former licensee must return the licence to the CEO.

Penalty: Division 9 fine.

Issue of certificate of survey

58. (1) The CEO may, on the recommendation of a licensed surveyor, issue a certificate of survey in respect of a vessel.

(2) A certificate of survey may, if the licensed surveyor so recommends, be issued subject to conditions stated in the certificate.

Certificate of survey

59. (1) A certificate of survey issued in respect of a vessel certifies—

(a) that the vessel is structurally sound and conforms with the requirements of the regulations; and

(b) that the vessel has the equipment required by the regulations and that the equipment is in working order.

(2) A certificate of survey remains in force for a period stated in the certificate.

(3) If—

(a) a structural alteration is made, without the consent of the CEO, to the hull of a vessel in respect of which a certificate of survey is in force; or

(b) a material alteration is made, without the consent of the CEO, to the equipment of a vessel in respect of which a certificate of survey is in force,

the certificate of survey is void.

(4) A certificate of survey that is void under subsection (3) must be returned to the CEO at his or her request.

(5) If a certificate is not returned in accordance with subsection (4), the owner and the master of the vessel to which the certificate relates are each guilty of an offence.

Penalty: Division 9 fine.

Obligation to hold certificate of survey

60. (1) If a vessel to which this Division applies is operated in the jurisdiction without a current certificate of survey, the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 5 fine.

(2) If a vessel in respect of which a certificate of survey is in force is operated contrary to a condition of the certificate, the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 5 fine.

(3) In this section, a reference to a certificate of survey extends to a certificate or document issued under some other law but recognised under the regulations as equivalent to a certificate of survey.

Harbors and Navigation Act 1993

(4) The CEO may, subject to such conditions as the CEO thinks fit, exempt a vessel from the requirement to be surveyed under this Division.

DIVISION 3—LOADLINE CERTIFICATES

Application of this Division

61. This Division applies in respect of vessels of a class declared by regulation to be a class of vessels in respect of which a loadline certificate is required.

Issue of loadline certificate

62. (1) The CEO may issue a loadline certificate in respect of a vessel.

(2) A loadline certificate may be issued subject to conditions stated in the certificate.

Loadline certificate

63. (1) A loadline certificate issued in respect of a vessel certifies that the vessel conforms with the requirements of the regulations in relation to markings displayed for the purposes of determining whether the vessel is properly loaded.

(2) A loadline certificate remains in force for a period stated in the certificate.

(3) If—

(a) a structural alteration is made, without the consent of the CEO, to the hull of a vessel in respect of which a loadline certificate is in force; or

(b) a material alteration is made, without the consent of the CEO, to the markings on a vessel in respect of which a loadline certificate is in force,

the loadline certificate is void.

(4) A loadline certificate that is void under subsection (3) must be returned to the CEO at his or her request.

(5) If a certificate is not returned in accordance with subsection (4), the owner and the master of the vessel to which the certificate relates are each guilty of an offence.

Penalty: Division 6 fine.

Obligation to hold loadline certificate

64. (1) If a vessel to which this Division applies is operated in the jurisdiction without a current loadline certificate, the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 5 fine.

(2) If a vessel in respect of which a loadline certificate is in force is operated contrary to a condition of the certificate, the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 5 fine.

(3) In this section, a reference to a loadline certificate extends to a certificate or document issued under some other law but recognised under the regulations as equivalent to a loadline certificate.

(4) The CEO may, subject to such conditions as the CEO thinks fit, exempt a vessel from the requirement to have a loadline certificate issued in respect of it under this Division.

**PART 10
SAFETY**

DIVISION 1—SAFETY GENERALLY

General requirements

65. (1) A vessel must not be operated in the jurisdiction if—

- (a) the vessel is unsafe;
- (b) the vessel does not have the equipment or markings required by the regulations or the equipment is not in good working order;
- (c) the vessel is overloaded or is not properly loaded in accordance with the regulations or the conditions of a certificate of survey or loadline certificate.

(2) If a vessel is operated in the jurisdiction contrary to subsection (1), the owner and the master or operator are each guilty of an offence.

Penalty: Division 5 fine.

Expiation fee: (a) if 1 or 2 items of equipment are involved—division 11 fee;
(b) if 3 or 4 items of equipment are involved—division 10 fee;
(c) if more than 4 items of equipment are involved—division 9 fee.

Power to prohibit use of unsafe vessel

66. (1) If the CEO suspects, on reasonable grounds—

- (a) that a vessel is unsafe; or
- (b) that a vessel does not have the equipment or markings required by the regulations or the equipment is not in good working order; or
- (c) that a vessel is overloaded or is not properly loaded in accordance with the regulations or the conditions of a certificate of survey or a loadline certificate,

the CEO may, by order, prohibit the use of the vessel.

(2) If an order is made under this section while the vessel is under way, the vessel must be brought as soon as possible to safe anchorage or be taken as soon as possible out of the water.

(3) Except as provided in subsection (2), if a vessel is operated contrary to an order under subsection (1), the owner and the master of the vessel are each guilty of an offence.

Penalty: Division 6 fine.

Minister's power to act in emergency

67. (1) In the event of an emergency arising involving a vessel within the jurisdiction, the Minister may take such action, and issue such directions to the master or owner of the vessel, as the Minister considers necessary (including sinking or ordering the sinking of a vessel) for the purpose of avoiding or minimising loss of life or injury, or serious damage to property.

Harbors and Navigation Act 1993

(2) A master or owner of a vessel who fails to comply with directions issued under subsection (1) is guilty of an offence.

Penalty: Division 5 fine.

DIVISION 2—SURVEY

Requirement of survey

68. (1) If the CEO is of the opinion that there are reasonable grounds to suspect that a vessel may be unsafe, that a vessel does not have the equipment or markings required by the regulations or that its equipment may not be in good working order, the CEO may, by notice in writing to the owner of the vessel, require the owner to obtain a certificate from a licensed surveyor nominated by the CEO certifying that—

- (a) the vessel is safe; and
- (b) the vessel has the equipment and markings required by the regulations and the equipment is in good working order.

(2) A notice under this section may prohibit the use of the vessel until the certificate is obtained.

(3) A person who—

- (a) fails without reasonable excuse to obtain a certificate of survey within the time allowed by a notice under this section; or
- (b) uses a vessel contrary to a notice under this section,

is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 3—OPERATION OF VESSELS

Vessels to be operated with due care

69. (1) A person who operates a vessel at a dangerous speed or in a dangerous manner is guilty of an offence.

Penalty: Division 6 fine.

(2) A person who operates a vessel without due care for the safety of any person or property is guilty of an offence.

Penalty: Division 7 fine.

DIVISION 4—ALCOHOL AND OTHER DRUGS

Alcohol and other drugs

70. (1) If—

- (a) a person operates a vessel or is a member of the crew of a vessel who is, or ought to be, engaged in duties affecting the safe navigation or operation of the vessel; and

- (b) that person is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vessel or of effectively discharging the duties that he or she is or ought to be performing (as the case requires),

that person is guilty of an offence.

Penalty—

- (a) for a first offence—

- (i) a fine of not less than \$700 and not more than \$1 200; or
(ii) imprisonment for not more than 3 months;

- (b) for a subsequent offence—

- (i) a fine of not less than \$1 500 and not more than \$2 500; or
(ii) imprisonment for not more than 6 months.

- (2) If—

- (a) a person operates a vessel or is a member of the crew of a vessel who is, or ought to be, engaged in duties affecting the safe navigation, operation or use of the vessel; and

- (b) the prescribed concentration of alcohol is present in the blood of that person,

that person is guilty of an offence.

Penalty—

- (a) for a first offence—

- (i) if the offence is a category 1 offence—a fine of \$700;
(ii) if the offence is a category 2 offence—a fine of not less than \$500 and not more than \$900;
(iii) if the offence is a category 3 offence—a fine of not less than \$700 and not more than \$1 200;

- (b) for a second offence—

- (i) if the offence is a category 1 offence—a fine of \$700;
(ii) if the offence is a category 2 offence—a fine of not less than \$700 and not more than \$1 200;
(iii) if the offence is a category 3 offence—a fine of not less than \$1 200 and not more than \$2 000;

- (c) for a subsequent offence—

- (i) if the offence is a category 1 offence—a fine of \$700;

Harbors and Navigation Act 1993

- (ii) if the offence is a category 2 offence—a fine of not less than \$1 100 and not more than \$1 800;
- (iii) if the offence is a category 3 offence—a fine of not less than \$1 500 and not more than \$2 500.

(3) In this section—

"category 1 offence" means an offence involving a concentration of alcohol of less than .08 grams in 100 millilitres of blood;

"category 2 offence" means an offence involving a concentration of alcohol of not less than .08 grams but less than .15 grams in 100 millilitres of blood;

"category 3 offence" means an offence involving a concentration of alcohol of not less than .15 grams in 100 millilitres of blood;

"prescribed concentration of alcohol" means a concentration of .05 grams or more in 100 millilitres of blood.

(4) For the purpose of determining whether a particular offence is a first, second or subsequent offence, each offence against this Division for which the defendant has been convicted will be taken into account except any category 1 offence or an offence committed more than 5 years before the date of commission of the offence in question.

Requirement to submit to alcotest or breath analysis

71. (1) An authorised person may require any person—

- (a) who is operating or has operated a vessel within the preceding period of two hours; or
- (b) who is or was a member of the crew of a vessel that is being operated or has been operated within the preceding period of two hours, and who is or was, or ought to be or to have been engaged in duties affecting the safe operation of the vessel,

to submit to an alcotest or a breath analysis.

(2) A person required to submit to an alcotest or breath analysis must comply with all reasonable directions of the authorised person and, in particular, must exhale into the apparatus by which the alcotest or breath analysis is conducted, in accordance with the directions of the authorised person.

Penalty: Division 7 fine.

(3) If a person is required to submit to breath analysis, the breath analysis must be conducted by a member of the police force experienced in the operation of breath analysing instruments.

(4) It is a defence to a prosecution under subsection (2) to establish that the requirement or direction to which the prosecution relates was not lawfully made or that there was, in the circumstances of the case, good reason for the defendant to refuse or fail to comply with the requirement or direction.

(5) No person is entitled to refuse or fail to comply with a requirement or direction under this section on the ground that—

- (a) the person would, or might, by complying with that requirement or direction, furnish evidence that could be used against himself or herself; or
- (b) the person consumed alcohol after the person last operated a vessel or was on duty as a member of the crew of a vessel and before the requirement was made or the direction given.

(6) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or direction under this section by reason of some physical or medical condition of the person unless—

- (a) a sample of the person’s blood was taken in accordance with section 72; or
- (b) the person made a request as referred to in section 72(2), but—
 - (i) an authorised person failed to facilitate the taking of a sample of the person’s blood as required by that section; or
 - (ii) a medical practitioner was not reasonably available for the purpose of taking such a sample; or
- (c) the taking of a sample of a person’s blood in accordance with section 72 was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.

Police to facilitate blood test at request of incapacitated person, etc.

72. * * * * *

(2) Where a person of whom a requirement is made or to whom a direction is given under section 71 refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and immediately requests an authorised officer that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person’s blood—

- (a) by a medical practitioner nominated by the person; or
- (b) if a medical practitioner is not nominated or it appears unlikely to an authorised person that the nominated medical practitioner will be available to take the sample within one hour of the time of the request at some place within ten kilometres of the place of the request—by any medical practitioner who is available to take the sample.

(3) The taking of a sample of blood under this section—

- (a) must be carried out in the presence of an authorised person; and
- (b) must be at the expense of the Crown.

(4) The provisions of subsections (7) to (17) (inclusive) of section 74 apply in relation to a sample of blood taken under this section in the same way as to a sample of blood taken under section 74.

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Harbors and Navigation Act 1993

Authorised person to provide transport assistance for blood tests in certain circumstances outside Metropolitan Adelaide

72A. (1) Where—

- (a) a person submits to a breath analysis conducted under this Division at a place outside Metropolitan Adelaide; and
- (b) the person requests a blood test kit as referred to in section 73(4); and
- (c) it appears to an authorised person that the person has failed or will fail, despite reasonable endeavours, to make safe and appropriate transport arrangements within the period of two hours after the conduct of the breath analysis to attend at a place at which a sample of the person's blood may be taken and dealt with in accordance with the procedures prescribed by regulation for the purposes of section 73(2); and
- (d) the person requests of an authorised person that an authorised person transport the person, or arrange for the transport of the person, to such a place,

an authorised person must transport, or arrange for the transport of, the person to such a place.

(2) In subsection (1)—

"**Metropolitan Adelaide**" has the same meaning as in the *Development Act 1993*.

Blood tests by nurses where breath analysis taken outside Metropolitan Adelaide

72B. (1) Where a person submits to a breath analysis conducted under this Division at a place outside Metropolitan Adelaide—

- (a) a sample of the person's blood may be taken by a registered nurse instead of a medical practitioner for the purposes of section 72 or the procedures prescribed by regulation for the purposes of section 73(2); and
- (b) the provisions of this Division and the regulations under this Division apply in relation to the taking of the sample of the person's blood and the subsequent dealing with the sample as if a reference in those provisions to a medical practitioner included a reference to a registered nurse.

(2) In subsection (1)—

"**Metropolitan Adelaide**" has the same meaning as in the *Development Act 1993*;

"**registered nurse**" means a person registered on the nurses register under the *Nurses Act 1984*.

Evidence

73. (1) If the requirements of this Act relating to breath analysing instruments and breath analysis are complied with, it will be presumed in proceedings for an offence against this Division or against any other Act, subject to subsection (2), that a concentration of alcohol indicated as being present in the blood of a person by a breath analysing instrument was present in the blood of the person at the time of analysis.

(2) In proceedings for an offence against this Division, no evidence can be adduced in rebuttal of the presumption created by subsection (1) except—

- (a) evidence of the concentration of alcohol in the blood of the defendant as indicated by analysis of a sample of blood taken and dealt with in accordance with section 74 or in accordance with the procedures prescribed by regulation; and
- (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave an exaggerated reading of the concentration of alcohol present in the blood of the defendant.

(2a) In proceedings for an offence against this Division, if it is proved that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the analysis.

(3) As soon as practicable after a person has submitted to breath analysis, the person operating the breath analysing instrument must give the person whose breath has been analysed a written statement specifying—

- (a) the date and time of the analysis; and
- (b) the concentration of alcohol indicated as being present in the blood expressed in grams per 100 millilitres of blood.

(4) If the breath analysis indicates a concentration of alcohol in the blood equal to or exceeding the prescribed concentration, the person operating the breath analysing instrument must immediately—

- (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Division in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
- (b) at the request of the person made in accordance with the regulations, deliver to the person an approved blood test kit.

(5) In proceedings for an offence against this Division or against any other Act—

- (a) a certificate apparently signed by an authorised person certifying that an apparatus referred to in the certificate is of a kind approved by the Governor under the *Road Traffic Act 1961* for the purposes of carrying out alcotests;
- (b) a certificate apparently signed by an authorised person certifying that a person named in the certificate submitted to breath analysis on a day and at a time stated in the certificate and that a specified concentration of alcohol was indicated by the breath analysing instrument as being present in the person's blood;
- (ba) a certificate apparently signed by an authorised person certifying that a breath analysis carried out in relation to a person named in the certificate on a day and at a time stated in the certificate was carried out in conformity with the requirements of this Act;

Harbors and Navigation Act 1993

- (bb) a certificate apparently signed by an authorised person certifying that—
- (i) on a day and at a time stated in the certificate, a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument; and
 - (ii) a written statement required by subsection (3) was given to the person in accordance with that subsection;
- (c) a certificate apparently signed by a pathologist certifying that a specimen of blood identified in the certificate was analysed and found to contain a specified concentration of alcohol or some other drug referred to in the certificate,

will be accepted, in the absence of proof to the contrary, as proof of the matters stated in the certificate.

(5a) In proceedings for an offence against this Division or against any other Act, a certificate apparently signed by an authorised person certifying—

- (a) that, on a day and at a time stated in the certificate, a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument; and
- (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (4)(a); and
- (c) that—
 - (i) the person did not make a request for an approved blood test kit in accordance with the regulations; or
 - (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subsection (4)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (4) were complied with in relation to the person.

(6) A certificate may not be received in evidence in proceedings for an offence unless a copy of the certificate has been given to the defendant not less than seven days before the commencement of the trial and the person by whom the certificate is given must be called as a witness if the defendant, by notice given to the prosecutor not less than two days before the commencement of the trial, so requires, or if the court in its discretion requires the attendance of that person as a witness.

(7) A prosecution for an offence against this Division or against any other Act will not fail because of a deficiency of a kit delivered to the defendant in purported compliance with subsection (4)(b) and the presumption under subsection (1) will apply despite such a deficiency unless it is proved—

- (a) that the defendant delivered the kit unopened to a medical practitioner for use in taking a sample of the defendant's blood; and

- (b) by evidence of the medical practitioner, that the medical practitioner was, because of a deficiency of the kit, unable to comply with the prescribed procedures governing the manner in which a sample of a person's blood must be taken and dealt with for the purposes of subsection (2).

(8) In this section—

"**approved blood test kit**" has the same meaning as is given to the term by section 47A of the *Road Traffic Act 1961*.

Breath analysis where drinking occurs after operation of vessel

73A. (1) This section applies to proceedings for an offence against this Division in which the results of a breath analysis under this Division are relied on to establish the commission of the offence.

(2) If in proceedings to which this section applies the defendant satisfies the court—

- (a) that the defendant consumed alcohol during the period ("**the relevant period**") after the defendant last operated a vessel or was on duty as a member of the crew of a vessel and before the performance of the breath analysis; and
- (b) in a case where the defendant was required to submit to the breath analysis after involvement of the vessel in an accident—
 - (i) that the requirements of section 76 were complied with in relation to the accident; and
 - (ii) that alcohol was not consumed by the defendant during the relevant period while at the scene of the accident; and
- (c) that, after taking into account the quantity of alcohol consumed by the defendant during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the defendant's blood by the breath analysis, the defendant should not be found guilty of the offence charged or, in the case of an offence against section 70(2), should be found guilty of an offence of a less serious category,

the court may, despite the other provisions of this Division, find the defendant not guilty of the offence charged or guilty of an offence of a less serious category.

Compulsory blood tests of injured persons including water skiers

74. (1) If a vessel is involved in an accident and, within eight hours after the accident, a person apparently over the age of 14 years who was injured in the accident is admitted into a hospital for the purpose of receiving treatment for that injury, it is, subject to this section, the duty of the medical practitioner by whom that patient is attended to take, as soon as practicable, a sample of that patient's blood (even though the patient may be unconscious) in accordance with this section.

(2) A medical practitioner must not take a sample of blood under this section if, in his or her opinion, it would prejudice the patient's medical condition to do so.

(3) A medical practitioner is not obliged to take a sample of blood under this section if the patient objects to the taking of the sample and persists in that objection after the medical practitioner has informed the patient that, unless the objection is made on genuine medical grounds, it may constitute an offence against this section.

Harbors and Navigation Act 1993

(4) If a vessel is involved in an accident and a person apparently over the age of 14 years who was injured in the accident is dead on arrival at the hospital, or dies before a sample of blood has been taken in accordance with this section and within eight hours after admission to the hospital, it is the duty of the medical practitioner who certifies the cause of death, or reports the death to a coroner—

- (a) to take a sample of blood from the body of the deceased in accordance with this section; or
- (b) to notify a coroner as soon as practicable that, in view of the circumstances in which the death of the deceased occurred, a sample of blood should be taken from the body under this section.

(5) A coroner who receives a notification under subsection (4) may authorise and direct a pathologist to take a sample of blood from the body of the deceased in accordance with this section.

(6) A medical practitioner is not obliged to take a sample of blood under this section if a sample has already been taken by another medical practitioner.

(7) A medical practitioner by whom a sample of blood is taken under this section must—

- (a) place the sample of blood, in approximately equal proportions, in two separate containers marked with an identification number distinguishing the sample of blood from other samples of blood taken under this section and seal the containers; and
- (b) give to the person from whom the sample was taken, or leave with that person's personal effects at the hospital, a notice in writing advising that—
 - (i) the sample of blood has been taken under this section; and
 - (ii) a container containing part of the sample of blood and marked with the identification number specified in the notice will be available for collection by or on behalf of the person at a specified place; and
- (c) complete and sign a certificate containing the information required under subsection (10); and
- (d) make the containers and the certificate available to a member of the police force.

(8) Each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of the concentration of alcohol present in the blood and the sample of blood taken by the medical practitioner must be such as to furnish two such quantities of blood.

(9) It is the duty of the medical practitioner by whom the sample of blood is taken to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol present in the blood of the person from whom the sample was taken.

(10) The certificate referred to in subsection (7) must state—

- (a) the identification number of the sample of blood marked on the containers referred to in that subsection; and
- (b) the name and address of the person from whom the sample of blood was taken; and

- (c) the name of the medical practitioner by whom the sample of blood was taken; and
- (d) the date, time and hospital at which the sample of blood was taken; and
- (e) that the medical practitioner gave the notice referred to in that subsection to the person from whom the sample of blood was taken, or, as the case may be, left the notice with the person's personal effects.

(10a) One of the containers containing the sample of the person's blood must—

- (a) as soon as reasonably practicable be collected by a member of the police force and delivered to the place specified in the notice given to the person or left with the person's personal effects under subsection (7); and
- (b) be kept available at that place for collection by or on behalf of the person for the prescribed period.

(11) After analysis of the sample of blood, the analyst must sign a certificate containing the following information:

- (a) the identification number of the sample of blood marked on the container; and
- (b) the name and professional qualifications of the analyst; and
- (c) the date the sample of blood was received in the laboratory in which the analysis was performed; and
- (d) the concentration of alcohol or other drug found to be present in the sample; and
- (e) any factors relating to the blood sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis; and
- (f) any other information relating to the blood sample or analysis that the analyst thinks fit to include.

(12) On completion of an analysis of a sample of blood, the certificate of the medical practitioner by whom the sample of blood was taken and the certificate of the analyst who performed or supervised the analysis must be sent to the Minister or retained on behalf of the Minister and, in either event, copies of the certificates must be sent—

- (a) to the Commissioner of Police; and
- (b) to the medical practitioner by whom the sample of blood was taken; and
- (c) to the person from whom the sample of blood was taken or, if the person is dead, a relative or personal representative of the deceased.

(13) If a copy cannot be sent under subsection (12)(c) because the whereabouts of that person are unknown, a copy must be provided on application made within three years of the date of the analysis by the person from whom the sample of blood was taken or a relative or the personal representative of that person.

Harbors and Navigation Act 1993

(14) Subject to subsection (17), an apparently genuine document purporting to be a certificate, or a copy of a certificate, of a medical practitioner or analyst under this section is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters stated in the certificate.

(15) If certificates of a medical practitioner and analyst are received as evidence in proceedings before a court and contain the same identification number for the samples of blood to which they relate, the certificates will be presumed, in the absence of proof to the contrary, to relate to the same sample of blood.

(16) If a certificate of an analyst is received in proceedings before a court, it will be presumed, in the absence of proof to the contrary, that the concentration of alcohol stated in the certificate as having been found to be present in the sample of blood to which the certificate relates was present in the sample when the sample was taken.

(17) A certificate cannot be received in evidence in proceedings for an offence unless a copy of the certificate proposed to be put in evidence at the trial is, not less than 7 days before the commencement of the trial, served on the defendant and, if the defendant, by written notice given to the complainant or informant at least 2 clear days before the commencement of the trial, requires the attendance of the person as a witness at the trial or the court in its discretion requires the personal attendance of that person, the certificate is not to be tendered.

(18) A person who, on being requested to submit to the taking of a sample of blood under this section, refuses or fails to comply with that request and who—

- (a) fails to assign a reason based on genuine medical grounds for that refusal or failure; or
- (b) assigns a reason for that refusal or failure that is false or misleading; or
- (c) makes any other false or misleading statement in response to the request,

is guilty of an offence.

Penalty—

- (a) for a first offence—a fine of not less than \$700 and not more than \$1 200;
- (b) for a subsequent offence—a fine of not less than \$1 500 and not more than \$2 500.

(19) For the purpose of determining whether a particular offence is a first, second or subsequent offence, each offence against this Division for which the defendant has been convicted will be taken into account except any category 1 offence within the meaning of section 61 or an offence committed more than 5 years before the date of commission of the offence in question.

**PART 11
ACCIDENTS**

Casualties to be reported

75. (1) If an accident involving a vessel occurs in the jurisdiction and the accident results in loss of life or personal injury or in damage to property (except minor injury or damage excluded by regulation from the ambit of this section), the accident must be reported to the CEO or an authorised person as soon as reasonably practicable but in any event within 48 hours.

(2) A report under subsection (1) must include such particulars as may be required by the regulations, the CEO or the authorised person.

(3) If a report is not made as required by this section, the owner and the master or operator of the vessel are each guilty of an offence.

Penalty: Division 9 fine.

Expiation fee: Division 11 fee.

Duty to render assistance and provide particulars

76. (1) If an accident involving a vessel occurs in the jurisdiction resulting in—

- (a) loss of life or personal injury or possible loss of life or personal injury; or
- (b) damage to a vessel or possible damage to a vessel,

it is the duty of a person who is in a position to do so to take any action that is reasonably practicable in the circumstances to prevent or minimise the loss, injury or damage.

(2) If an accident occurs involving a vessel, it is the duty of the person who was in charge of the vessel at the time of the accident to inform any person injured in the accident and the owner of any property damaged in the accident of his or her name and address and of the registration number of the vessel.

(3) A person who fails to discharge a duty imposed by this section is guilty of an offence.

Penalty: Division 8 fine.

Harbors and Navigation Act 1993

**PART 12
COURT OF MARINE ENQUIRY**

DIVISION 1—CONSTITUTION OF COURT

Constitution of Court

77. (1) The Magistrates Court is constituted the Court of Marine Enquiry for the purposes of this Act.

(2) The Magistrates Court, when sitting as the Court of Marine Enquiry, will sit with assessors.

(3) The Minister will establish a panel of expert assessors for the purposes of constituting the Court as a Court of Marine Enquiry.

(4) Whenever the Magistrates Court is to sit as the Court of Marine Enquiry, two assessors will be chosen in accordance with the regulations to sit with the Court.

(5) The function of the assessors is to assist the Court, but they do not take part in the decision of the Court.

DIVISION 2—ENQUIRIES INTO CASUALTIES

Enquiries into casualties

78. (1) If an accident involving a vessel occurs in the jurisdiction and the accident results in loss of life or injury or in damage to property, the Minister may refer the matter to the Court of Marine Enquiry for investigation and report.

(2) If such a reference is made to the Court of Marine Enquiry, the Court must enquire into the matter and report to the Minister on the cause of the accident.

(3) If, on such an enquiry, the Court finds that a person who holds a certificate of competency under this Act is guilty of misconduct or incompetence, the Court may cancel or suspend the certificate of competency.

DIVISION 3—ENQUIRIES INTO MISCONDUCT OR INCOMPETENCE

Enquiries into misconduct or incompetence

79. (1) If there is reasonable cause to believe that a particular incident involving a vessel in the jurisdiction shows a member of the crew of the vessel to have been guilty of misconduct or incompetence, the Minister may refer the matter to the Court of Marine Enquiry for investigation and report.

(2) If such a reference is made to the Court of Marine Enquiry, the Court must enquire into the matter and report to the Minister on the matter.

(3) If, on such an enquiry, the Court finds that a person who holds a certificate of competency under this Act is guilty of misconduct or incompetence, the Court may cancel or suspend the certificate of competency.

DIVISION 4—ADMINISTRATIVE REVIEW

Appellate jurisdiction

80. (1) A person who is dissatisfied with a reviewable decision or determination under this Act may, within 30 days after receiving notice of the decision or determination, apply to the person by whom the decision was made for a review of the decision.

(2) The following decisions and determinations are reviewable:

- (a) a decision by the CEO to refuse or cancel a pilot's licence or a pilotage exemption certificate, or to impose conditions on such a licence or certificate;
- (b) a decision by the CEO to refuse a certificate of competency;
- (c) a decision by the Minister to cancel a certificate of competency or to disqualify a person from holding a certificate of competency;
- (d) a decision by the Minister to declare a qualification that is under the regulations equivalent to a certificate of competency to be inoperative in the jurisdiction;
- (e) a decision by the CEO to refuse or cancel a licence permitting the hiring out of vessels or to impose conditions on such a licence;
- (f) a decision by the CEO to refuse a certificate of survey or to impose conditions on a certificate of survey or to refuse consent to a structural alteration to the hull of a vessel, or material alteration to the equipment of a vessel, in respect of which a certificate of survey is in force;
- (g) a decision by the CEO to refuse a loadline certificate or to impose conditions on a loadline certificate or to refuse to consent to a structural alteration to the hull of a vessel, or a material alteration to the markings on a vessel, in respect of which a loadline certificate is in force;
- (h) a decision by the CEO to prohibit use of a vessel;
- (i) a determination by the State Crewing Committee.

(3) If the applicant is dissatisfied with the decision made on the review, the applicant may apply to the Court of Marine Enquiry for a further review of the decision and, on such a review, the Court may—

- (a) confirm, vary or reverse that decision or determination; and
- (b) make such consequential or ancillary orders as the Court thinks fit.

Harbors and Navigation Act 1993

**PART 13
APPLICATION OF COMMONWEALTH ACT AND
INTERNATIONAL CONVENTIONS**

Application of Commonwealth Act

81. The regulations may apply the Commonwealth Act or specified provisions of the Commonwealth Act (subject to exclusions, adaptations and modifications set out in the regulations) to vessels in the jurisdiction or to the owners and crews of such vessels.

Agreement between the Commonwealth and the State

82. The Governor may arrange with the Governor-General of the Commonwealth—

- (a) for the carrying out on behalf of the State of functions under this Act by officers of the Commonwealth; or
- (b) for the carrying out on behalf of the Commonwealth of functions under the Commonwealth Act by officers of the State.

**PART 14
MISCELLANEOUS**

Regattas, etc.

83. (1) The CEO may, by instrument in writing, exempt the participants, and any person or class of persons performing incidental or ancillary functions, in any regatta, race, contest or other activity likely to involve the operation of vessels in contravention of this Act from specified provisions of this Act.

(2) An exemption under this section—

(a) may be granted or refused at the discretion of the CEO (but an exemption cannot be granted in respect of an activity that is to take place within a Corporation port unless the Corporation concurs); and

(b) operates for a period specified in the instrument of exemption; and

(c) is subject to conditions specified in the instrument of exemption.

(3) The CEO has an absolute discretion to cancel an exemption granted under this section.

Conduct on board vessels

84. (1) A person who behaves in an offensive or disorderly manner while on board a vessel is guilty of an offence.

Penalty: Division 8 fine.

(2) A person who molests a passenger or a member of the crew of a vessel is guilty of an offence.

Penalty: Division 8 fine.

(3) If the conduct of a person on board a vessel threatens the safety of the vessel or disrupts good order on the vessel, the person in charge of the vessel, or a person acting on his or her authority, may exercise reasonable force to restrain that person.

Unlawful use of vessels

85. A person who operates or interferes with a vessel without the owner's consent and without any other lawful authority or excuse is guilty of an offence.

Penalty: Division 8 fine.

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Evidentiary provision

87. (1) In any legal proceedings—

(a) a certificate apparently signed by the Minister or the CEO as to a delegation of powers under this Act is, in the absence of proof to the contrary, proof of the matter certified;

(b) a certificate apparently signed by an authorised person that a place referred to in the certificate is within the jurisdiction is, in the absence of proof to the contrary, proof of the fact so certified;

Harbors and Navigation Act 1993

- (c) a certificate apparently signed by the CEO or a delegate of the CEO certifying that, as at a date specified in the certificate, a person named in the certificate held or did not hold a licence, certificate, or exemption under this Act of a kind referred to in the certificate is, in the absence of proof to the contrary, proof of the matter so certified;
- (d) a certificate apparently signed by the CEO or a delegate of the CEO certifying that, as at a date specified in the certificate, a vessel referred to in the certificate was or was not registered under this Act is, in the absence of proof to the contrary, proof of the matter so certified;
- (e) a certificate apparently signed by the CEO or a delegate of the CEO certifying that, as at a date specified in the certificate, a certificate of survey or loadline certificate was or was not in force in respect of a vessel is, in the absence of proof to the contrary, proof of the matter so certified;
- (f) a certificate apparently signed by the CEO or a delegate of the CEO, as to the engine capacity or power of a specified vessel is, in the absence of proof to the contrary, proof of the matter so specified;
- (g) a certificate apparently signed by the CEO or a delegate of the CEO to the effect that a specified document had not been received by the CEO or the department on or before a specified date is, in the absence of proof to the contrary, proof that the document had not been lodged or given on or before that day.

(2) In proceedings for an offence against this Act, an allegation in a complaint that a specified person is or was the owner, the master or the operator of a vessel will be accepted, in the absence of proof to the contrary, as proof of the matter so alleged.

Time within which prosecution must be commenced

88. A prosecution for an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

Officers' liability

89. (1) The Crown, the Minister or the CEO incurs no civil liability in consequence of—

- (a) the issue of any licence, certificate, exemption or consent under this Act; or
- (b) any act or omission with regard to the establishment, positioning or operation of navigational aids.

(2) An authorised person incurs no civil liability under this Act for an honest act or omission in the exercise or purported exercise of powers under this Act.

(3) Any liability that would, but for subsection (2), attach to an authorised person attaches instead to the Crown.

Recreational boating fund

90. (1) All fees and charges recovered under this Act in relation to recreational vessels (other than fees and charges recovered under Part 5) must be paid into a separate fund.

(2) That fund is to be applied to defray the costs of administering this Act insofar as it relates to recreational vessels and may only be applied for that purpose.

Regulations

91. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example—

- (a) provide for the management of harbors and the admission and removal of vessels from them;
- (b) regulate the mooring or anchorage of vessels;
- (c) empower an authorised person to take action to move and secure any vessel that has not been anchored or moored in accordance with the regulations;
- (d) regulate the loading, unloading, carriage or handling of goods, making any special provision that may be necessary or desirable in relation to dangerous goods or any other particular class of goods;
- (e) regulate the storage of goods, making any special provision that may be necessary or desirable for the storage of dangerous goods or any other particular class of goods;
- (f) require the use of lights or signals to minimise the risk of collisions in harbors;
- (g) make any provision necessary or desirable to secure safety and good order in harbors or on harbor facilities or otherwise within the jurisdiction;
- (h) regulate the navigation of vessels within the jurisdiction;
- (i) impose rules to regulate navigation within the jurisdiction, to prevent collisions and to improve safety;
- (j) regulate the use of hire-and-drive vessels;
- (k) require the lighting and marking of vessels and of structures situated in or in the vicinity of navigable waters;
- (l) require the master or agent of every vessel or of every vessel of a specified class to announce the arrival of the vessel in a harbor;
- (m) require information as to goods to be loaded or unloaded to be kept and provided by the master or owner of a vessel or shipping agents, regulate the form in which the information is to be provided, and fix civil or criminal penalties for failing to provide the required information within the time allowed by the regulations;
- (n) require information as to pilotage to be kept and provided by the master or pilot of a vessel;
- (o) limiting the Minister's liability for loss of, or damage to, goods occurring while the goods are in the Minister's custody or the Minister is otherwise responsible for the goods;
- (p) regulate, restrict or prohibit parking, or otherwise control traffic, on or in the vicinity of land or any structure under the care, control and management of the Minister;
- (q) require that specified equipment be carried by, or fitted to, vessels of a specified class;

Harbors and Navigation Act 1993

- (r) declare any part of the jurisdiction to be a speed zone and impose a speed limit for that zone or otherwise impose speed limits in any part of the jurisdiction;
- (s) regulate, restrict or prohibit the discharge of pollutants into waters within the jurisdiction or make any other provision to prevent or reduce pollution;
- (t) place limits on the mass or volume of cargo that may be carried by a vessel or the number of passengers and crew or otherwise regulate the loading of vessels;
- (u) provide for the designation of parts of wharfs or harbor facilities as restricted areas, and empower authorised persons to direct persons not to enter, or to leave, a restricted area;
- (v) place limits on the mass of vehicles on or in the vicinity of land, or any structure, under the care, control and management of the Minister;
- (w) require and regulate the reporting of accidents on or in the vicinity of land or any structure under the care, control and management of the Minister;
- (x) regulate, restrict or prohibit the deposit of waste on or in the vicinity of land or any structure under the care, control or management of the Minister;
- (y) regulate trade, advertisement or other commercial or recreational activity on or in the vicinity of land or any structure under the care, control and management of the Minister;
- (z) regulate, restrict or prohibit the carriage of dangerous cargoes;
- (aa) regulate the form or manner of any application under this Act and require documents or information to accompany such application;
- (ab) regulate the transfer of registration of a vessel or the transfer of a licence to carry on a business of hiring out vessels under this Act;
- (ac) fix fees to be paid in respect of any matter under this Act and regulate the recovery, waiving or reduction of such fees;
- (ad) fix and impose a levy to be paid (in addition to the registration fee) on the registration or renewal of the registration of a power-driven recreational vessel and provide for the revenue derived from the levy to be paid into a special fund to be used for the purpose of establishing, maintaining and improving recreational boating facilities;
- (ae) fix and impose a levy in respect of commercial fishing vessels, provide for the payment and recovery of the levy, and provide for the revenue derived from the levy to be paid into a special fund to be used for the purpose of establishing, maintaining and improving facilities for commercial fishing vessels;
- (af) provide for a committee (with a majority of members nominated by relevant interest groups) to advise the Minister on the amounts of the levies imposed under paragraphs (ad) and (ae) and the application of the special funds established under those paragraphs;
- (ag) fix default charges to be paid if an amount payable under this Act is not paid within a time allowed by the regulations for payment;

(ah) make provisions in relation to evidence in proceedings for an offence against the regulations;

(ai) exempt (conditionally or unconditionally) specified persons or vessels or persons or vessels of a specified class, from the provisions, or any specified provisions, of this Act.

(3) A regulation may be of general or limited application according to the class of vessels to which it applies, the area in which it applies, the circumstances of its application, or any other specified factor.

(4) A regulation may confer discretionary powers on the Minister, the CEO or an authorised person.

(5) The regulations may incorporate or operate by reference to a code or standard published by a specified authority as in force at a specified time or as in force from time to time.

(6) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

(7) A regulation may impose a penalty, not exceeding a division 6 fine, for contravention of or non-compliance with the regulation.

(8) The regulations may fix expiation fees for alleged offences against the regulations.

Harbors and Navigation Act 1993

SCHEDULE 1

Harbors

Harbors to which this Act applies

1. (1) This Act applies to the following harbors:

American River	Point Turton	Rapid Bay
Ardrossan	Port Adelaide	Robe
Beachport and Southend	Port Augusta	Streaky Bay
Cape Jaffa	Port Bonython	Thevenard
Cape Jervis	Port Broughton	Venus Bay
Coffin Bay	Port Giles	Victor Harbor
Cowell (Franklin Harbor)	Port MacDonnell	Vivonne Bay
Kingscote	Port Pirie	Wallaroo
Kingston SE	Port Lincoln	Whyalla
Klein Point	Port Stanvac	
Penneshaw	Port Wakefield	

(2) Regulations may be made under this Act defining the boundaries to any of the harbors referred to above.

SCHEDULE 2
Repeal and Transitional Provisions

Repeal

1. The following Acts are repealed:

- (a) the *Boating Act 1974*;
- (b) the *Harbors Act 1936*;
- (c) the *Marine Act 1936*.

Transitional provisions

2. (1) A certificate of survey in force under the *Marine Act 1936* immediately before the commencement of this Act continues in force subject to this Act as if it were a certificate of survey issued under this Act.

(2) A certificate of competency in force under the *Marine Act 1936*, or a boat operator's licence in force under the *Boating Act 1974*, immediately before the commencement of this Act, continues in force subject to this Act as if it were a certificate of competency issued under this Act.

(3) If the Governor had withdrawn land from the Minister under section 64(4) of the *Harbors Act 1936*, the withdrawal remains in effect for the purposes of this Act unless revoked by the Governor.

(4) A loadline certificate in force under the *Marine Act 1936* immediately before the commencement of this Act continues in force subject to this Act as if it were a loadline certificate issued under this Act.

(5) A special permit to operate a vessel in force under the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were a special permit issued under this Act.

(6) A licence in force under Part 3A of the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were a licence issued under Part 8 and as if the conditions of the licence had been imposed under Part 8.

(7) The registration of a vessel in force under the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were registration of the vessel under this Act.

(8) By-laws in force under the *Harbors Act 1936* immediately before the commencement of this Act continue in force subject to this Act as if they were made under this Act.

Harbors and Navigation Act 1993**APPENDIX 1****LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4(1):	definition of "the Corporation" inserted by 45, 1994, s. 2 definition of "a Corporation port" inserted by 45, 1994, s. 2 definition of "fishing vessel" substituted by 45, 1994, s. 11
Section 12(1a):	inserted by 45, 1994, s. 3
Section 15(3):	amended by 45, 1994, s. 4
Section 18A:	inserted by 45, 1994, s. 12
Section 21(1):	amended by 45, 1994, s. 5
Section 22:	amended by 45, 1994, s. 6
Section 25(2):	amended by 45, 1994, s. 13
Section 26(1):	amended by 45, 1994, s. 7
Section 27(1a):	inserted by 45, 1994, s. 8
Section 28:	redesignated as s. 28(1) by 45, 1994, s. 9
Section 28(2):	inserted by 45, 1994, s. 9
Section 33(1a):	inserted by 45, 1994, s. 14(a)
Section 33(5):	substituted by 45, 1994, s. 14(b)
Section 34(1a):	inserted by 45, 1994, s. 15(a)
Section 34(4a):	inserted by 45, 1994, s. 15(b)
Section 35(4):	inserted by 45, 1994, s. 16
Section 46:	amended by 45, 1994, s. 17
Section 47(1):	amended by 45, 1994, s. 18(a)
Section 47(2):	amended by 45, 1994, s. 18(b)
Section 47(3) and (4):	amended by 34, 1996, s. 4 (Sched. cl. 18)
Section 50(1):	amended by 45, 1994, s. 19(a)
Section 50(2):	amended by 45, 1994, s. 19(b)
Section 52A:	inserted by 45, 1994, s. 20
Section 54:	amended by 45, 1994, s. 21
Section 55(2):	amended by 34, 1996, s. 4 (Sched. cl. 18)
Section 57(4) and (5):	inserted by 45, 1994, s. 22
Section 65(2):	amended by 34, 1996, s. 4 (Sched. cl. 18)
Section 71(5):	substituted by 95, 1995, s. 4
Section 71(6):	inserted by 95, 1995, s. 4
Section 72(1):	repealed by 95, 1995, s. 5(a)
Section 72(2):	amended by 95, 1995, s. 5(b)
Section 72(3):	amended by 95, 1995, s. 5(c)
Section 72(4):	substituted by 95, 1995, s. 5(d)
Section 72(5):	repealed by 95, 1995, s. 5(d)
Sections 72A and 72B:	inserted by 95, 1995, s. 6
Section 73(1):	amended by 95, 1995, s. 7(a), (b)
Section 73(2):	substituted by 95, 1995, s. 7(c)
Section 73(2a):	inserted by 95, 1995, s. 7(c)
Section 73(4):	amended by 95, 1995, s. 7(d)
Section 73(5):	amended by 95, 1995, s. 7(e), (f)
Section 73(5a):	inserted by 95, 1995, s. 7(g)
Section 73(6):	amended by 95, 1995, s. 7(h)
Section 73(7) and (8):	inserted by 95, 1995, s. 7(i)
Section 73A:	inserted by 95, 1995, s. 8
Section 74(7):	substituted by 95, 1995, s. 9(a)
Section 74(10):	substituted by 95, 1995, s. 9(b)
Section 74(10a):	inserted by 95, 1995, s. 9(b)
Section 74(17):	amended by 95, 1995, s. 9(c), (d)
Section 75(3):	amended by 34, 1996, s. 4 (Sched. cl. 18)

Section 76(1):	amended by 95, 1995, s. 10(a)
Section 76(3):	amended by 95, 1995, s. 10(b)
Section 81:	substituted by 45, 1994, s. 23
Section 83(2):	amended by 45, 1994, s. 10
Section 86:	repealed by 34, 1996, s. 4 (Sched. cl. 18)
Section 91(8):	inserted by 34, 1996, s. 4 (Sched. cl. 18)
Schedule 1	
Clause 1(1):	amended by 45, 1994, s. 24
Schedule 2	
Clause 2(4) - (8):	inserted by 45, 1994, s. 25

Harbors and Navigation Act 1993**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.