

South Australia

# Harbors and Navigation Act 1993

An Act to provide for the administration, development and management of harbors; to provide for safe navigation in South Australian waters; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

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

### **3—Objects of this Act**

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; and
- (g) insofar as this Act applies to the Adelaide Dolphin Sanctuary, to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

### **4—Interpretation**

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

*Adelaide Dolphin Sanctuary* has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

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(but does not include land vested in fee simple in any person other than the Minister or land withdrawn from the Minister under the transitional provisions);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

***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;

***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;

**port** means land and waters (which must comprise or include the whole or some of the land and waters constituting a harbor) constituted as a port by the regulations;

**port management officer** means—

- (a) a port management officer appointed under section 29; or
- (b) an authorised person;

**port operator** means—

- (a) a person authorised by a port operating agreement to operate a port; or
- (b) if there is no such person—the Minister;

**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;

**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.

## **5—Crown bound**

- (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.

## **6—Application of Act**

- (1) This Act applies both within and outside the jurisdiction.
- (2) This Act applies outside the jurisdiction to the full extent of the extraterritorial power of the Parliament.

## **Part 2—Administration**

### **Division 1—Minister**

#### **7—Responsibility for administration**

The Minister is responsible for the administration of this Act.

#### **8—Minister to be corporation sole**

- (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**

#### **9—Responsibility of CEO**

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

#### **10—Annual report**

- (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**

#### **11—Delegation**

- (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**

#### **12—Appointment of authorised persons**

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

- (1a) The CEO may, with the agreement of a port operator, appoint an officer or employee of the operator to be an authorised person in relation to the relevant port.
- (1b) The CEO may, with the concurrence of a council, appoint an officer or employee of the council to be an authorised person for the purposes of this Act.
- (2) An appointment under this section may be subject to conditions, including a condition limiting the exercise of powers by the authorised person to the enforcement of specified provisions of the Act or to enforcement within a specified area of the State.
- (3) An authorised person appointed under this section must be issued with an identity card—
  - (a) containing a photograph of the person; and
  - (b) if the authorised person's authority is limited to a particular port—stating the name of the port; and
  - (c) stating any conditions of appointment limiting the authorised person's authority.

### **13—Production of identity card**

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.

### **14—Powers of an authorised person**

- (1) Subject to any conditions specified in the instrument of appointment, 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;

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- (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.
- (1a) Subject to any conditions specified in the instrument of appointment, an authorised person may give expiation notices under the *Expiation of Offences Act 1996* for alleged offences against this Act.
- (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.
- Maximum penalty: \$1 250.

## **Division 5—Miscellaneous**

### **14A—General duty of Minister, CEO, authorised persons etc**

The Minister, the CEO, an authorised person or any other person engaged in the administration of this Act must, if or when—

- (a) taking any action under this Act within any part of the Adelaide Dolphin Sanctuary; or
- (b) taking any action under this Act that is likely to have a direct impact on any part of the Adelaide Dolphin Sanctuary,

take into account, and seek to further, the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

## Part 3—Property

### Division 1—Vesting of property

#### 15—Property of Crown

- (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; or
  - (b) land that forms part of a reserve under the *National Parks and Wildlife Act 1972*; 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

#### 16—Acquisition of land

- (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

#### 17—Resumption

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

### 18—Care, control and management of property

- (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.

### 18A—By-laws

- (1) A council may, with the approval of the relevant authority, make by-laws that operate in relation to—
  - (a) a port or part of a port; or
  - (b) a harbor or part of a harbor; or
  - (c) adjacent or subjacent land that is neither within a port nor a harbor.
- (1a) The *relevant authority* is—
  - (a) for a port—the port operator; or
  - (b) in any other case—the Minister.
- (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**

### **19—Power to grant leases and licences over land**

- (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**

### **20—Rateability of land**

- (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 (other than subjacent land in a port) 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**

### **21—Liability for damage**

- (1) If property of the Crown or the Minister 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.



## **Part 4—General powers to protect navigation and to restrict use of waters**

### **Division 1—Navigational aids**

#### **22—Control of navigational aids**

- (1) The Minister is entitled to possession and control of all navigational aids within the jurisdiction except those belonging to the Commonwealth.
- (2) The Minister may, on terms and conditions consistent with any relevant port operating agreement, delegate to a port operator control over a navigational aid situated in, or on the approach to, the port.
- (3) If a navigational aid existing at the commencement of this subsection is situated on land that was not then owned by the Minister, or is later disposed of, an easement over the land is created entitling the Minister—
  - (a) to maintain a navigational aid on the land; and
  - (b) to have such access to the land as may be necessary for operating, maintaining, repairing, replacing or removing the navigational aid.
- (4) If the Minister reasonably requires access to land for the purpose of operating, maintaining, repairing, replacing or removing a navigational aid on adjacent land or waters, an easement is created conferring on the Minister the rights of access reasonably necessary for those purposes.

#### **23—Establishment of navigational aids**

- (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.  
Maximum penalty: \$5 000.

#### **24—Interference with navigational aids**

- (1) A person must not, without the Minister's permission, interfere with a navigational aid.  
Maximum penalty: \$750.
- (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.  
Maximum penalty: \$750.

## **Division 2—Clearance of wrecks**

### **25—Clearance of wrecks etc**

- (1) The Minister may, by notice in writing, require the owner of any wreck within the jurisdiction to remove the wreck.
  - (1a) A port operator may, by notice in writing, require the owner of any wreck within the port 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.
    - (2a) If a person deposits any substance or thing within a port so as to obstruct navigation, or to pollute waters, the port operator 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 or the port operator (as the case requires) may remove the wreck or take the action specified in the notice and recover the costs of doing so, as a debt, from the person in default.
  - (4) A person who fails without reasonable excuse to comply with a notice under this section is guilty of an offence.  
Maximum penalty: \$5 000.
  - (5) A court by which a person is convicted of an offence against subsection (4) may, on application by the Minister or the port operator (as the case requires), order the convicted person to reimburse costs reasonably incurred by the applicant in acting under subsection (3) (to the extent those costs have not been already recovered).

## **Division 3—Restrictions on use of waters**

### **26—Licences for aquatic activities**

- (1) The CEO may grant a licence entitling an organisation or person to use, in accordance with the terms and conditions of the licence, any waters within the jurisdiction for the purposes of an aquatic sport or activity or for any other purposes stated in the licence.
- (2) If the licence is to be granted in relation to waters within a port, the CEO may only grant the licence with the consent of the port operator (but the operator's consent must not be unreasonably withheld).

- (2a) If the licence is to be granted in relation to waters that form part of the River Murray, the CEO must—
- (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the issuing of the licence (including a direction that the licence not be granted, or that if it is to be granted, then the licence be subject to conditions specified by the Minister).
- (2b) If the licence is to be granted in relation to waters that form part of the Adelaide Dolphin Sanctuary, the CEO must consult with and have regard to the views of the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed.
- (2c) The regulations may exclude specified categories of licence from the operation of subsection (2a) or (2b).
- (3) The licensee may be required by the terms and conditions of the licence 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 use of those waters in accordance with the licence.
- (4) A person who, without the consent of the licensee, intrudes into waters when the licensee has, under the licence, an exclusive right to use those waters is guilty of an offence.
- Maximum penalty: \$750.<sup>1</sup>  
Expiation fee: \$105.
- (5) The CEO may revoke a licence granted under this section for a breach of a term or condition of the licence.
- (6) In this section—
- River Murray* has the same meaning as in the *River Murray Act 2003*.

**Note—**

- 1 By virtue of Act No. 17 of 2001 s 4 (see *Gazette 25.10.2001 p4686*) the maximum penalty for this offence was fixed at \$750 (no expiation fee) for 30 October 2001 only. Section 26 was substituted on 31 October 2001 by Act No. 81 of 2000 s 11 (see *Gazette 25.10.2001 p4687*).

## **27—Restricted areas**

- (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) A regulation may only be made under subsection (1) in relation to waters within a port with the consent of the port operator (but consent must not be unreasonably withheld).

**Harbors and Navigation Act 1993—30.7.2006 to 30.11.2007**

Part 4—General powers to protect navigation and to restrict use of waters

Division 3—Restrictions on use of waters

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- (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 port operator (other than the Minister) or a council, the Minister may recover costs incurred under subsection (2) from the port operator or council as a debt.

## Part 5—Harbors and ports

### Division 1—Control and management of harbors and ports

#### 28—Control and management of harbors

Subject to this Part, the Minister has the control and management of all harbors in the State.

#### 28A—Power to assign control and management of ports

- (1) The Minister may, by agreement, confer on another (the *proprietor*) the right to carry on the business of operating a particular port.
- (2) The proprietor must then enter into an agreement (a *port operating agreement*) under which the Minister assigns the control and management of the port to the proprietor or a nominee of the proprietor unless—
  - (a) the Minister and the proprietor enter into an agreement under which the Minister is to continue to have the control and management of the port; or
  - (b) the proprietor has committed a serious breach of a port operating agreement and the Minister has cancelled or refused to renew the agreement on that ground.
- (3) If the Minister has the control and management of a port, the Minister may, subject to the terms of any agreement between the Minister and the proprietor, recover the costs of operating the port from the proprietor.

#### 28B—Port operating agreements

- (1) A *port operating agreement* is an agreement providing for the control and management of the port to which the agreement relates by the person (the *port operator*) to whom the control and management of the port is assigned under the agreement.
- (2) A port operating agreement—
  - (a) must require the port operator to have appropriate resources (including appropriate contingency plans and trained staff and equipment to carry the plans into action) to deal with emergencies; and
  - (b) must require the port operator—
    - (i) to maintain the waters of the port to a specified navigable standard; and
    - (ii) to provide or maintain (or provide and maintain) navigational aids; and
    - (iii) to direct and control vessel movement in port waters; and
  - (c) may require the port operator to enter into and maintain in operation an agreement with the Royal Australian Navy about access to the port and port facilities by naval vessels; and
  - (d) may require the port operator to provide access to the port and port facilities for commercial fishing vessels on specified terms and conditions; and

- (e) may require the port operator to maintain and make available navigational charts and other information relating to the port; and
- (f) may regulate the performance of statutory powers by the port operator; and
- (g) may provide for the payment of an annual fee to the Minister (fixed by the Minister having regard to the cost of providing government supervision of the activities conducted under the agreement); and
- (h) may deal with any other matter relevant to the control and management of the port.

### **28C—General responsibility of port operator**

- (1) A port operator is responsible for the safe operation of the port.
- (2) A port operator is responsible for managing the port in a way that avoids unfair discrimination against or in favour of any particular user of the port or port facilities.

### **28D—Variation of port operating agreement**

The Minister may, by agreement with the port operator, vary a port operating agreement.

### **28E—Agreements to be tabled in Parliament**

The Minister must, as soon as practicable after entering into a port operating agreement or an agreement for the variation of a port operating agreement, have copies of the agreement laid before both Houses of Parliament.

### **28F—Power to deal with non-compliance**

- (1) The Minister may take disciplinary action against a port operator for non-compliance with a port operating agreement or this Act.
- (2) The disciplinary action may consist of—
  - (a) a reprimand; or
  - (b) a fine not exceeding a limit fixed in the port operating agreement; or
  - (c) cancellation of the port operating agreement.
- (3) Before the Minister takes disciplinary action against a port operator under this section, the Minister must give written notice to the port operator—
  - (a) specifying the non-compliance; and
  - (b) stating the disciplinary action the Minister proposes to take in respect of the non-compliance; and
  - (c) allowing the port operator a reasonable opportunity to make written representations.
- (4) After considering the port operator's representations, the Minister may—
  - (a) refrain from taking disciplinary action; or
  - (b) by written notice to the port operator—
    - (i) administer a reprimand; or

- (ii) impose a fine (to be recoverable as a debt due to the Crown) of an amount stated in the earlier notice or of a lesser amount; or
  - (iii) if cancellation of the port operating agreement was proposed in the earlier notice—
    - (A) impose a fine not exceeding the maximum permissible under the port operating agreement; or
    - (B) cancel the port operating agreement.
- (5) A port operator may appeal to the Court of Marine Enquiry against the disciplinary action.
- (6) On an appeal, the Court may—
  - (a) confirm, vary or reverse the Minister's decision; and
  - (b) make any consequential or ancillary order the Court thinks fit.
- (7) The port operating agreement may contain provisions governing the exercise of the Minister's powers under this section.

### **28G—Power to appoint manager**

- (1) If—
  - (a) a port operator is seriously in breach of its obligations under a port operating agreement; or
  - (b) a port operating agreement is cancelled or expires without renewal,the Minister may appoint an official manager to operate the port.
- (2) If a port operator—
  - (a) becomes insolvent within the meaning of Part 7.10 of the *Corporations Law*; or
  - (b) goes into liquidation,the Minister may appoint an official manager to operate the port.
- (3) An appointment under subsection (1) or (2) may be terminated at any time by the Minister.
- (4) The port operating agreement may contain provisions governing the exercise of the Minister's powers under this section.

### **28H—Powers of the manager**

- (1) The official manager—
  - (a) is to assume the control and management of the port; and
  - (b) is entitled to possession and control of property of the port operator (or former port operator)—
    - (i) used for the purpose of operating the port; and
    - (ii) defined in the port operating agreement as property subject to the application of this paragraph; and
  - (c) is, while the appointment continues in force, taken to be the port operator.

- (2) Any proceeds of the business while under official management are to be applied as follows:
  - (a) first, the proceeds are to be applied towards the costs of official management (including the official manager's remuneration); and
  - (b) secondly, a reasonable rental for the property over which the manager has assumed control is to be paid out of the proceeds while the property remains in the manager's possession; and
  - (c) thirdly, any remaining balance is to be paid into the Consolidated Account.
- (3) A port operating agreement may exclude or modify the provisions of subsection (1) or (2).
- (4) The regulations may confer powers and impose duties on official managers and regulate official management in other ways.

## **Division 2—Port management officers**

### **29—Port management officers**

- (1) A port operator may appoint officers or employees of the operator to be port management officers.
- (2) The port operator must issue to each port management officer appointed by it an identity card—
  - (a) containing a photograph of the officer; and
  - (b) stating the name of the port for which the officer is appointed; and
  - (c) stating any conditions of appointment limiting the officer's authority.
- (3) A port management officer must, at the request of any person in relation to whom the officer is exercising or about to exercise powers under this Act, produce his or her identity card for inspection by that person.

## **Division 2A—Operational powers**

### **29A—Interpretation**

In this Division—

*authorised officer* means—

- (a) in relation to a port—a port management officer;
- (b) in relation to a harbor that is not a port, or a part of a harbor that is not within a port—an authorised person.

### **29B—Power of direction**

- (1) An authorised officer may give a direction (orally, by signal, radio communication, or in any other appropriate manner) to a person in charge, or apparently in charge, of a vessel in or in the vicinity of a harbor or a port.
- (2) A direction may, for example—
  - (a) require that vessels proceed to load or unload in a particular order; or

- (b) require that a vessel be moored or anchored in a particular position; or
  - (c) require that a vessel be secured in a particular way; or
  - (d) require that a vessel be moved from a particular area or position; or
  - (e) require the production of documents relating to the navigation, operation, pilotage, use or loading of the vessel.
- (3) A person who fails, without reasonable excuse, to comply with a direction under this section is guilty of an offence.
- Maximum penalty: \$5 000.

### **29C—Power to board vessel**

- (1) A person in charge of a vessel in a harbor or port must, at the request of an authorised officer, permit the officer—
- (a) to board the vessel; and
  - (b) to inspect the vessel and its cargo; and
  - (c) to carry out on the vessel any investigation necessary to ensure that the vessel and the business in the course of which the vessel is being used is being operated lawfully.
- (2) If there is no-one on board a vessel to whom a request may be given under subsection (1), the authorised officer may board the vessel and cause the vessel to be moved as the officer thinks fit.
- (3) Any costs incurred by an authorised officer under subsection (2) are recoverable as a debt from the owner of the vessel.
- (4) A person who fails to comply with a request under this section is guilty of an offence.
- Maximum penalty: \$2 500.

## **Division 3—Harbor improvement work**

### **30—Dredging or other similar work**

- (1) The Minister or a port operator may carry out dredging or other work to deepen, extend or clear a harbor or port.
- (2) If the owner of a wharf benefits from work carried out by the Minister under subsection (1), the Minister may recover a reasonable proportion of the cost of the work from that owner.
- (3) The proportion of the cost to be recovered 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 1986*.

### **30A—Development of harbors and maritime facilities**

- (1) The Minister or a port operator may carry out work of any kind for the development or improvement of a harbor or port.
- (2) The Minister or port operator 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 or port;
  - (f) sporting or recreational purposes.
- (3) A port operator—
- (a) must establish and maintain facilities and equipment for the safety of life and property in the port as required under a port operating agreement; and
  - (b) may establish and maintain other facilities and equipment for the safety of life and property.

### **30B—Application of *Development Act 1993***

The powers conferred by this Division are subject to the *Development Act 1993*.

## **Division 4—Harbor charges etc**

### **31—Power to fix charges**

- (1) Subject to any relevant law or determination, the Minister may fix charges—
- (a) for the use of facilities provided by the Minister 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 the entry of vessels into waters under the Minister's control and management; or
  - (c) for services provided 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 must publish Schedules of the charges and default charges fixed under this section.

### **31A—Power to waive or reduce charges**

The Minister may waive or reduce a charge (or default charge), or extend the time for payment of a charge (or default charge), as the Minister thinks fit.

### **31B—Charges in respect of goods**

- (1) A charge (or default charge) payable under this Division in respect of the unloading or storage of goods is recoverable as a debt from the consignor or consignee of the goods.

- (2) The Minister may retain possession of goods until the appropriate charge is paid.
- (3) If the charge 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 (together with any default charges and the costs of conducting the sale) from the proceeds of sale.

### **31C—Charges in respect of vessels**

- (1) If a charge to which the Minister is entitled in respect of a vessel is not paid by the date payment falls due, an authorised person may, at the Minister's direction, arrest the vessel and take it into the Minister's custody.
- (2) 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 (together with any default charges and the costs of conducting the sale) from the proceeds of sale.

### **31D—Power to prevent use of harbor or port facilities**

- (1) If a person is in default in the payment of a charge (or default charge) payable under this Division, the Minister may, by written notice given to the person in default, prohibit the person from using harbor or port facilities provided by the Crown until the charge has been paid.
- (2) A person must not use facilities in contravention of a prohibition imposed under subsection (1).

Maximum penalty: \$2 500.



## **Part 5A—Pilotage**

### **33—Licensing of pilots**

- (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 Part, vary or revoke a condition of the licence.
- (4) A person who holds a licence under this Part must not contravene or fail to comply with a condition of the licence.  
Maximum penalty: \$5 000.
- (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.  
Maximum penalty: \$750.

### **34—Pilotage exemption certificate**

- (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 Part, vary or revoke a condition of the certificate.
- (4) A person who holds a pilotage exemption certificate under this Part must not contravene or fail to comply with a condition of the certificate.  
Maximum penalty: \$5 000.
- (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.

Maximum penalty: \$750.

### **35—Compulsory pilotage**

- (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 Part.
- (2) If a vessel is navigated in contravention of this section, the owner and the master are each guilty of an offence.  
Maximum penalty: \$10 000.
- (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.

### **36—Duties and immunities of pilots**

- (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.
- (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

#### 37—Vessels to which this Part applies

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

#### 38—Obligation to have adequate crew

- (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.

Maximum penalty: \$5 000.

- (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.

Maximum penalty: \$5 000.

#### 39—Exemptions

- (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

#### 39A—Interpretation

In this Division—

*qualified marine engineer* means a person who holds a certificate of competency as a marine engineer (of any class) issued under this Act or has, in the opinion of the CEO, other appropriate qualifications as a marine engineer;

**qualified master** means a person who holds a certificate of competency as a master (of any class) issued under this Act or has, in the opinion of the CEO, other appropriate qualifications as a master;

**qualified master mariner** means a person who holds—

- (a) a Master Class 1 certificate of competency issued by a marine authority of the Commonwealth; or
- (b) a qualification under the law of some other place recognised under the Commonwealth Act as equivalent to such a certificate of competency.

#### 40—State Crewing Committee

- (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) one is to be a qualified master mariner nominated by the Minister;
    - (ia) one is to be a qualified master nominated by the Minister;
    - (ib) one is to be a qualified 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;
  - (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.
- (2a) At least one appointed member of the Committee must be a woman and at least one must be a man.
- (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.

#### 41—Nomination of members by owner

- (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 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.

#### **42—Conditions of office**

- (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.

#### **42A—Vacancies or defects in appointment of members**

An act of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **Division 4—Procedures and powers of Committee**

#### **43—Procedures at meetings**

- (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.

#### **44—Power to obtain information**

- (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.

Maximum penalty: \$2 500.

#### **45—Determinations in relation to crew**

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.

## **Part 7—Certificates of competency**

### **46—Vessels to which this Part applies**

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.

### **47—Requirement for certificate of competency**

- (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.

Maximum penalty: \$2 500.

- (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.

Maximum penalty: \$2 500.

- (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.

Maximum penalty: \$2 500.

Expiation fee: \$105.

- (3a) A person must not cause, suffer or permit another to operate a recreational vessel to which this Part applies unless the other 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.

Maximum penalty: \$2 500.

Expiation fee: \$105.

(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.

Maximum penalty: \$2 500.

Expiation fee: \$105.

(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.

#### **48—Issue of certificates of competency or exemptions**

(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.

#### **49—Cancellation of certificate of competency by court**

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.

#### **50—Cancellation of certificate of competency by Minister**

- (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.  
Maximum penalty: \$750.



## **Part 8—Hire of vessels**

### **51—Vessels to which this Part applies**

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

### **52—Obligation to hold licence**

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.

Maximum penalty: \$2 500.

### **52A—Duration and granting of licence**

- (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.

### **53—Terms and conditions of licence**

- (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.  
Maximum penalty: \$2 500.
- (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.

Maximum penalty: \$750.



## **Part 9—Registration and certificates of surveys**

### **Division 1—Registration of vessels**

#### **54—Application of Division**

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.

#### **55—Registration**

- (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).

Maximum penalty: \$750.

Expiation fee:

- (a) if the vessel is registered but not marked in accordance with the regulations—\$55;
  - (b) if the vessel is neither registered nor marked in accordance with the regulations—\$80.
- (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**

#### **56—Application of this Division**

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.

#### **57—Appointment of surveyors**

- (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.

Maximum penalty: \$5 000.

- (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.

Maximum penalty: \$750.

### **58—Issue of certificate of survey**

- (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.

### **59—Certificate of survey**

- (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.

Maximum penalty: \$750.

### **60—Obligation to hold certificate of survey**

- (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.

Maximum penalty: \$10 000.

- (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.

Maximum penalty: \$10 000.

- (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.
- (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**

### **61—Application of this Division**

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.

### **62—Issue of loadline certificate**

- (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.

### **63—Loadline certificate**

- (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.  
Maximum penalty: \$5 000.

### **64—Obligation to hold loadline certificate**

- (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.  
Maximum penalty: \$10 000.
- (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.  
Maximum penalty: \$10 000.
- (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**

#### **65—General requirements**

- (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.

Maximum penalty: \$10 000.

Expiation fee:

- (a) if 1 or 2 items of equipment are involved—\$105;
- (b) if 3 or 4 items of equipment are involved—\$160;
- (c) if more than 4 items of equipment are involved—\$210.

#### **65A—Requirement to have emergency position indicating radio beacon**

- (1) A vessel of a class specified by the regulations must not be operated in the jurisdiction unless it is carrying an emergency position indicating radio beacon that is in good working order.
- (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.

Maximum penalty: \$10 000.

Expiation fee: \$400.

#### **66—Power to prohibit use of unsafe vessel**

- (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 this Act or 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.

Maximum penalty: \$5 000.

### **67—Minister's power to act in an emergency**

- (1) In an emergency, the Minister may take action for the purpose of avoiding or minimising danger to human life or damage to property.
- (2) The Minister may (for example) exercise one or more of the following powers:
- (a) take control of a harbor or harbor facility;
  - (b) issue directions to the master or owner of a vessel (including a direction to sink or destroy the vessel);
  - (c) issue any other directions the Minister considers appropriate in the circumstances.

- (3) A person who—

- (a) obstructs the Minister in the exercise of powers under this section; or
- (b) fails to comply with a direction under this section,

is guilty of an offence.

Maximum penalty: \$10 000.

- (4) A port operating agreement may contain provisions governing the exercise of the Minister's powers under this section in relation to the port.

## **Division 2—Survey**

### **68—Requirement of survey**

- (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 this Act and 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.

Maximum penalty: \$5 000.

## Division 3—Operation of vessels

### 69—Careless operation of a vessel

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

Maximum penalty:

- (a) for an aggravated offence—12 months imprisonment; or
  - (b) for any other offence—\$2 500.
- (2) For the purposes of this section, an aggravated offence is—
- (a) an offence that caused the death of, or serious harm to, a person; or
  - (b) an offence committed in any of the following circumstances:
    - (i) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
    - (ii) the offender was, at the time of the offence, operating the vessel in contravention of section 70(1).
- (3) If a person is charged with an aggravated offence against this section, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- (4) In this section—
- serious harm* means—
- (a) harm that endangers, or is likely to endanger, a person's life; or
  - (b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
  - (c) harm that consists of, or is likely to result in, serious disfigurement.

### 69A—Dangerous operation of a vessel

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

Maximum penalty: Imprisonment for 2 years.

## Division 4—Alcohol and other drugs

### 70—Alcohol and other drugs

- (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;
  - (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) In determining whether an offence is a first, second or subsequent offence for the purposes of this section, any previous offence against this Division for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.

### **71—Requirement to submit to alcotest or breath analysis**

- (1) An authorised person may require any person—

- (a) who is operating or has operated a vessel within the preceding period of 8 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 8 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.

Maximum penalty: \$2 500.

- (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.
- (3a) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than one sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the apparatus or instrument will be taken to be the result of the alcotest or breath analysis for the purposes of this Division and any other Act.
- (4) It is a defence to a prosecution under subsection (2) that—
- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
  - (b) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—

- (i) the consequences of refusing or failing to comply with the requirement or direction; and
    - (ii) the person's right to request the taking of a blood sample under section 72; or
  - (c) 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.

## **72—Police to facilitate blood test at request of incapacitated person etc**

- (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 person 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.

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- (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.

**72A—Authorised person to provide transport assistance for blood tests in certain circumstances outside Metropolitan Adelaide**

- (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*.

**72B—Blood tests by nurses where breath analysis taken outside Metropolitan Adelaide**

- (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 who is registered as a nurse under the *Nurses Act 1999*.

## **72C—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood**

Where a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

## **73—Evidence**

- (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) If, in any proceedings for an offence, it is proved—
  - (a) that the defendant—
    - (i) operated a vessel; or
    - (ii) was a member of the crew of a vessel that was being operated and was or ought to have been engaged in duties affecting the safe operation of the vessel; and
  - (b) that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis performed within the period of 2 hours immediately following the conduct referred to in paragraph (a),it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood at the time of the conduct referred to in paragraph (a).
- (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 reading produced by the breath analysing instrument.

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- (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 specifying the reading produced by the breath analysing instrument;
  - (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;
  - (bb) a certificate apparently signed by an authorised person certifying that—
    - (i) on a day and at a time stated in the certificate, a person named in the certificate submitted to a breath analysis; 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 person named in the certificate submitted to a breath analysis; 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*.

### **73A—Breath analysis where drinking occurs after operation of vessel**

- (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.

#### **74—Compulsory blood tests of injured persons including water skiers**

- (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.
- (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, pursuant to Part 5 of the *Coroners Act 2003*, notifies the State Coroner or a police officer of the death—
  - (a) to take a sample of blood from the body of the deceased in accordance with this section; or
  - (b) to notify the State 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) The State Coroner, on receiving 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

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- (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.
- (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.
- (16a) If it is proved by the prosecution in proceedings for an offence against this Division that a concentration of alcohol was present in the defendant's blood at the time at which a sample of blood was taken under this section, it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the taking of the sample.
- (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) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous offence against this Division for which the defendant has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.

## **Part 11—Accidents**

### **75—Casualties to be reported**

- (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.  
Maximum penalty: \$750.  
Expiation fee: \$55.

### **76—Duty to give assistance and provide particulars**

- (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,a person who is in a position to do so must take any action that is reasonably practicable in the circumstances to prevent or minimise the loss, injury or damage.  
Maximum penalty:
  - (a) in the case of a person who was the operator of a vessel involved in the accident—imprisonment for 5 years;
  - (b) in any other case—\$2 500.
- (2) If an accident occurs involving a vessel, the person who was in charge of the vessel at the time of the accident must 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.  
Maximum penalty: \$1 250.



## **Part 12—Court of Marine Enquiry**

### **Division 1—Constitution of Court**

#### **77—Constitution of Court**

- (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**

#### **78—Enquiries into casualties**

- (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**

#### **79—Enquiries into misconduct or incompetence**

- (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**

### **80—Review of administrative decisions**

- (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 Minister—
    - (i) to insist on the inclusion of a particular provision or particular provisions in a port operating agreement; or
    - (ii) not to renew a port operating agreement;
  - (b) 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;
  - (c) a decision by the CEO to refuse a certificate of competency;
  - (d) a decision by the Minister to cancel a certificate of competency or to disqualify a person from holding a certificate of competency;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) a decision by the CEO to prohibit use of a vessel;
  - (j) 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.

## **Part 13—Application of Commonwealth Act and International Conventions**

### **81—Application of Commonwealth Act**

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.

### **82—Agreement between the Commonwealth and the State**

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**

### **83—Regattas etc**

- (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 port unless the port operator has first been consulted); 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.

### **84—Conduct on board vessels**

- (1) A person who behaves in an offensive or disorderly manner while on board a vessel is guilty of an offence.  
Maximum penalty: \$1 250.
- (2) A person who molests a passenger or a member of the crew of a vessel is guilty of an offence.  
Maximum penalty: \$1 250.
- (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.

### **85—Unlawful use of vessels**

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.

Maximum penalty: \$1 250.

### **87—Evidentiary provision**

- (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;

- (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.

### **89—Officers' liability**

- (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) A liability that would, but for subsection (2), attach to an authorised person attaches instead—
- (a) if the authorised person is an officer or employee of a port operator—to the port operator; or
  - (b) in any other case—to the Minister.
- (4) A port management officer (other than an authorised person) incurs no civil liability for an honest act or omission in the exercise or purported exercise of powers under this Act.
- (5) Any liability that would, but for subsection (4), attach to a port management officer attaches instead to the port operator that appointed the officer.

## 90—Recreational boating fund

- (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.

## 91—Regulations

- (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;
- (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;

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- (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) The regulations may impose fines, not exceeding \$5 000, for offences against the regulations.
  - (8) The regulations may fix expiation fees for alleged offences against the regulations.



## **Schedule 1—Harbors**

### **1—Harbors to which this Act applies**

(1) This Act applies to the following harbors:

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

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

## **Schedule 2—Transitional provisions**

### **2—Transitional provisions**

- (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.

### **3—Vesting of land etc held in name of Minister of Marine**

- (1) All land vested in fee simple in the Minister of Marine<sup>1</sup> immediately before the commencement of this Act will be taken to have vested in fee simple, on the commencement of this Act, in the Minister responsible for the administration of this Act.
- (2) All other interests, rights and liabilities of the Minister of Marine in relation to land immediately before the commencement of this Act, will be taken to have become, on the commencement of this Act, interests, rights and liabilities of the Minister responsible for the administration of this Act.

- (3) A proclamation in force immediately before the commencement of this Act under which dedicated land was placed under the care, control and management of the Minister of Marine will, on the commencement of this Act, be taken to have been varied by replacing references to the Minister of Marine with references to the Minister responsible for the administration of this Act.
- (4) The Registrar-General will take such action for or in connection with—
- (a) the issue, alteration, correction or cancellation of certificates or other documents of title; or
  - (b) the making, recording, alteration, correction or cancellation of entries or endorsements in the Register Books,
- as may be necessary or expedient for the purposes of giving effect to this clause.

**Note—**

- 1 The Minister of Marine was a body corporate established under the provisions of the repealed *Harbors Act 1936*.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.7.2005
Part 2	1.7.2005
Part 3	15.12.2003 (Reprint No 11)
Part 4	1.7.2005
Part 5	15.12.2003 (Reprint No 11)
Part 5A	15.12.2003 (Reprint No 11)
Part 6	15.12.2003 (Reprint No 11)
Part 7	15.12.2003 (Reprint No 11)
Part 8	15.12.2003 (Reprint No 11)
Part 9	15.12.2003 (Reprint No 11)
Part 10	30.7.2006
Part 11	30.7.2006
Part 12	15.12.2003 (Reprint No 11)
Part 13	15.12.2003 (Reprint No 11)
Part 14	15.12.2003 (Reprint No 11)
Schedules	17.11.2005
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Harbors and Navigation Act 1993* repealed the following:

*Boating Act 1974*

*Harbors Act 1936*

*Marine Act 1936*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	41	<i>Harbors and Navigation Act 1993</i>	20.5.1993	24.10.1994 ( <i>Gazette 20.10.1994 p1220</i> )

## Harbors and Navigation Act 1993—30.7.2006 to 30.11.2007

### Legislative history

1994	45	<i>Harbors and Navigation (Ports Corporation and Miscellaneous) Amendment Act 1994</i>	2.6.1994	2.6.1994
1995	95	<i>Statutes Amendment (Drink Driving) Act 1995</i>	7.12.1995	Pt 2 (ss 4—10)—7.12.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 18)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
2000	79	<i>Harbors and Navigation (Miscellaneous) Amendment Act 2000</i>	14.12.2000	2.1.2001 ( <i>Gazette 21.12.2000 p3688</i> ) except ss 6, 7 & 13—12.4.2001 ( <i>Gazette 12.4.2001 p1582</i> )
2000	81	<i>Harbors and Navigation (Control of Harbors) Amendment Act 2000</i>	14.12.2000	25.1.2001 ( <i>Gazette 25.1.2001 p300</i> ) except ss 3(a), 4(a), 5(b), 8, 9(a), 11, 12(a) & 20—31.10.2001 ( <i>Gazette 25.10.2001 p4686</i> )
2001	17	<i>Statutes Amendment (Transport Portfolio) Act 2001</i>	17.5.2001	Pt 2 s 4—30.10.2001 ( <i>Gazette 25.10.2001 p4687</i> ); ss 5—9—27.5.2002 ( <i>Gazette 23.5.2002 p1928</i> )
2002	37	<i>Statutes Amendment (Transport Portfolio) Act 2002</i>	28.11.2002	Pt 3 (ss 6—9)—3.7.2003 ( <i>Gazette 3.7.2003 p2877</i> )
2003	8	<i>Statutes Amendment (Road Safety Reforms) Act 2003</i>	12.6.2003	Pt 2 (ss 5—7)—15.12.2003 ( <i>Gazette 11.12.2003 p4431</i> )
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cl 14)—1.7.2005 ( <i>Gazette 23.6.2005 p1899</i> )
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 8)—24.11.2003 ( <i>Gazette 20.11.2003 p4203</i> )
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	Sch 2 (c11 25—28)—1.7.2005 ( <i>Gazette 2.6.2005 p1684</i> )
2005	53	<i>Statutes Amendment (Transport Portfolio) Act 2005</i>	27.10.2005	Pt 2 (s 4)—17.11.2005 ( <i>Gazette 17.11.2005 p3973</i> )
<b>2005</b>	<b>81</b>	<b><i>Statutes Amendment (Vehicle and Vessel Offences) Act 2005</i></b>	<b>8.12.2005</b>	<b>Pt 4 (ss 14—17)—30.7.2006 (<i>Gazette 27.7.2006 p2400</i>)</b>
2007	4	<i>Fisheries Management Act 2007</i>	8.3.2007	Sch 2 (cl 5)—1.12.2007 ( <i>Gazette 15.11.2007 p4241</i> )
2007	23	<i>Harbors and Navigation (Australian Builders Plate) Amendment Act 2007</i>	28.6.2007	4.2.2008 ( <i>Gazette 25.10.2007 p4044</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
Pt 1		
s 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
s 3	amended by 5/2005 Sch 2 (cl 25)	1.7.2005
s 4		
s 4(1)		

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Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 (cl 26)	1.7.2005
<i>the Corporation</i>	<i>inserted by 45/1994 s 2</i>	<i>2.6.1994</i>
	<i>deleted by 81/2000 s 3(a)</i>	<i>31.10.2001</i>
<i>a Corporation port</i>	<i>inserted by 45/1994 s 2</i>	<i>2.6.1994</i>
	<i>deleted by 81/2000 s 3(a)</i>	<i>31.10.2001</i>
fishing vessel	substituted by 45/1994 s 11	2.6.1994
	amended by 4/2007 Sch 2 cl 5	uncommenced—not incorporated
port	inserted by 81/2000 s 3(b)	25.1.2001
port management officer	inserted by 81/2000 s 3(b)	25.1.2001
port operator	inserted by 81/2000 s 3(b)	25.1.2001
s 6	substituted by 79/2000 s 3	2.1.2001
Pt 2		
Pt 2 Div 4		
s 12		
s 12(1a)	inserted by 45/1994 s 3	2.6.1994
	substituted by 81/2000 s 4(a)	31.10.2001
s 12(1b)	inserted by 79/2000 s 4(a)	2.1.2001
s 12(2)	amended by 79/2000 s 4(b)	2.1.2001
s 12(3)	substituted by 81/2000 s 4(b)	25.1.2001
s 14		
s 14(1)	amended by 79/2000 s 5	2.1.2001
s 14(1a)	inserted by 37/2002 s 6	3.7.2003
s 14(2)	amended by 79/2000 Sch cl (b)	2.1.2001
Pt 2 Div 5	inserted by 5/2005 Sch 2 (cl 27)	1.7.2005
Pt 3		
s 15		
s 15(3)	amended by 45/1994 s 4	2.6.1994
	amended by 81/2000 s 5(a)	25.1.2001
	(ba) deleted by 81/2000 s 5(b)	31.10.2001
s 18A	inserted by 45/1994 s 12	2.6.1994
s 18A(1)	substituted by 81/2000 s 6	25.1.2001
s 18A(1a)	inserted by 81/2000 s 6	25.1.2001
s 20		
s 20(2)	amended by 81/2000 s 7	25.1.2001
s 21		
s 21(1)	amended by 45/1994 s 5	2.6.1994
	amended by 81/2000 s 8	31.10.2001
Pt 4		
s 22		
s 22(1)	s 22 amended by 45/1994 s 6	2.6.1994
	s 22 redesignated as s 22(1) by 81/2000 s 9(b)	25.1.2001

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	amended by 81/2000 s 9(a)	31.10.2001
s 22(2)—(4)	inserted by 81/2000 s 9(b)	25.1.2001
s 23		
s 23(3)	amended by 79/2000 Sch cl (b)	2.1.2001
s 24		
s 24(1) and (5)	amended by 79/2000 Sch cl (b)	2.1.2001
s 25		
s 25(1a)	inserted by 81/2000 s 10(a)	25.1.2001
s 25(2)	amended by 45/1994 s 13	2.6.1994
s 25(2a)	inserted by 81/2000 s 10(b)	25.1.2001
s 25(3)	substituted by 81/2000 s 10(c)	25.1.2001
s 25(4)	amended by 79/2000 Sch cl (b)	2.1.2001
s 25(5)	inserted by 81/2000 s 10(d)	25.1.2001
s 26	amended by 45/1994 s 7	2.6.1994
	amended by 17/2001 s 4	30.10.2001
	substituted by 81/2000 s 11	31.10.2001
s 26(2a)	inserted by 35/2003 Sch cl 8(a)	24.11.2003
s 26(2b)	inserted by 35/2003 Sch cl 8(a)	24.11.2003
	substituted by 5/2005 Sch 2 (cl 28)	1.7.2005
s 26(2c)	inserted by 5/2005 Sch 2 (cl 28)	1.7.2005
s 26(6)	inserted by 35/2003 Sch cl 8(b)	24.11.2003
s 27		
s 27(1a)	inserted by 45/1994 s 8	2.6.1994
	substituted by 81/2000 s 12(a)	31.10.2001
s 27(3)	substituted by 81/2000 s 12(b)	25.1.2001
Pt 5	heading substituted by 81/2000 s 13	25.1.2001
Pt 5 Div 1	amended by 45/1994 s 9	2.6.1994
	substituted by 81/2000 s 13	25.1.2001
Pt 5 Div 2	substituted by 81/2000 s 13	25.1.2001
Pt 5 Div 2A	inserted by 81/2000 s 13	25.1.2001
Pt 5 Div 3	substituted by 81/2000 s 13	25.1.2001
Pt 5 Div 4	substituted by 81/2000 s 13	25.1.2001
<i>Pt 5 Div 5</i>	<i>heading deleted by 81/2000 s 14</i>	<i>25.1.2001</i>
Pt 5A	heading inserted by 81/2000 s 14	25.1.2001
s 33		
s 33(1a)	inserted by 45/1994 s 14(a)	2.6.1994
s 33(3)	amended by 81/2000 s 15	25.1.2001
s 33(4)	amended by 79/2000 Sch cl (b)	2.1.2001
	amended by 81/2000 s 15	25.1.2001
s 33(5)	substituted by 45/1994 s 14(b)	2.6.1994
s 33(6)	amended by 79/2000 Sch cl (b)	2.1.2001
s 34		
s 34(1a)	inserted by 45/1994 s 15(a)	2.6.1994

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s 34(3)	amended by 81/2000 s 16	25.1.2001
s 34(4)	amended by 79/2000 Sch cl (b)	2.1.2001
	amended by 81/2000 s 16	25.1.2001
s 34(4a)	inserted by 45/1994 s 15(b)	2.6.1994
s 34(6)	amended by 79/2000 Sch cl (b)	2.1.2001
s 35		
s 35(1)	amended by 81/2000 s 17	25.1.2001
s 35(2)	amended by 79/2000 Sch cl (b)	2.1.2001
s 35(4)	inserted by 45/1994 s 16	2.6.1994
Pt 6		
s 38		
s 38(1) and (2)	amended by 79/2000 Sch cl (b)	2.1.2001
s 39A	inserted by 79/2000 s 6	12.4.2001
s 40		
s 40(2)	amended by 79/2000 s 7(a)	12.4.2001
s 40(2a)	inserted by 79/2000 s 7(b)	12.4.2001
s 41		
s 41(3)	amended by 79/2000 s 8	2.1.2001
s 42A	inserted by 79/2000 s 9	2.1.2001
s 44		
s 44(2)	amended by 79/2000 Sch cl (b)	2.1.2001
Pt 7		
s 46	amended by 45/1994 s 17	2.6.1994
s 47		
s 47(1)	amended by 45/1994 s 18(a)	2.6.1994
	amended by 79/2000 Sch cl (b)	2.1.2001
s 47(2)	amended by 45/1994 s 18(b)	2.6.1994
	amended by 79/2000 Sch cl (b)	2.1.2001
s 47(3)	amended by 34/1996 s 4 (Sch cl 18)	3.2.1997
	amended by 79/2000 Sch cl (b)	2.1.2001
s 47(3a)	inserted by 37/2002 s 7	3.7.2003
s 47(4)	amended by 34/1996 s 4 (Sch cl 18)	3.2.1997
	amended by 79/2000 Sch cl (b)	2.1.2001
s 50		
s 50(1)	amended by 45/1994 s 19(a)	2.6.1994
s 50(2)	amended by 45/1994 s 19(b)	2.6.1994
s 50(3)	amended by 79/2000 Sch cl (b)	2.1.2001
Pt 8		
s 52	amended by 79/2000 Sch cl (b)	2.1.2001
s 52A	inserted by 45/1994 s 20	2.6.1994
s 53		
s 53(3) and (5)	amended by 79/2000 Sch cl (b)	2.1.2001
Pt 9		

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s 54	amended by 45/1994 s 21	2.6.1994
s 55		
s 55(2)	amended by 34/1996 s 4 (Sch cl 18)	3.2.1997
	amended by 79/2000 Sch cl (b)	2.1.2001
s 57		
s 57(3)	amended by 79/2000 Sch cl (b)	2.1.2001
s 57(4)	inserted by 45/1994 s 22	2.6.1994
s 57(5)	inserted by 45/1994 s 22	2.6.1994
	amended by 79/2000 Sch cl (b)	2.1.2001
s 59		
s 59(5)	amended by 79/2000 Sch cl (b)	2.1.2001
s 60		
s 60(1) and (2)	amended by 79/2000 Sch cl (b)	2.1.2001
s 63		
s 63(5)	amended by 79/2000 Sch cl (b)	2.1.2001
s 64		
s 64(1) and (2)	amended by 79/2000 Sch cl (b)	2.1.2001
Pt 10		
s 65		
s 65(2)	amended by 34/1996 s 4 (Sch cl 18)	3.2.1997
	amended by 79/2000 s 10	2.1.2001
s 65A	inserted by 79/2000 s 11	2.1.2001
s 66		
s 66(1)	amended by 79/2000 s 12	2.1.2001
s 66(3)	amended by 79/2000 Sch cl (b)	2.1.2001
s 67	amended by 79/2000 Sch cl (b)	2.1.2001
	substituted by 81/2000 s 18	25.1.2001
s 68		
s 68(1)	amended by 79/2000 s 13	12.4.2001
s 68(3)	amended by 79/2000 Sch cl (b)	2.1.2001
<i>s 69 before substitution by 81/2005</i>		
<i>s 69(1) and (2)</i>	<i>amended by 79/2000 Sch cl (b)</i>	<i>2.1.2001</i>
<b>s 69</b>	<b>substituted by 81/2005 s 14</b>	<b>30.7.2006</b>
<b>s 69A</b>	<b>inserted by 81/2005 s 14</b>	<b>30.7.2006</b>
s 70		
s 70(4)	substituted by 8/2003 s 5	15.12.2003
s 71		
<b>s 71(1)</b>	<b>amended by 81/2005 s 15</b>	<b>30.7.2006</b>
s 71(2)	amended by 79/2000 Sch cl (b)	2.1.2001
s 71(3a)	inserted by 17/2001 s 5(a)	27.5.2002
s 71(4)	substituted by 17/2001 s 5(b)	27.5.2002

s 71(5)	substituted by 95/1995 s 4	7.12.1997
s 71(6)	inserted by 95/1995 s 4	7.12.1997
s 72		
s 72(1)	<i>deleted by 95/1995 s 5(a)</i>	7.12.1997
s 72(2)	amended by 95/1995 s 5(b)	7.12.1997
	amended by 37/2002 s 8	3.7.2003
s 72(3)	amended by 95/1995 s 5(c)	7.12.1997
s 72(4)	substituted by 95/1995 s 5(d)	7.12.1997
s 72(5)	<i>deleted by 95/1995 s 5(d)</i>	7.12.1997
ss 72A and 72B	inserted by 95/1995 s 6	7.12.1997
s 72B		
s 72B(2)		
registered nurse	substituted by 8/2003 s 6	15.12.2003
s 72C	inserted by 17/2001 s 6	27.5.2002
s 73		
s 73(1)	amended by 95/1995 s 7(a), (b)	7.12.1997
s 73(2)	substituted by 95/1995 s 7(c)	7.12.1997
s 73(2a)	inserted by 95/1995 s 7(c)	7.12.1997
	<b>substituted by 81/2005 s 16</b>	<b>30.7.2006</b>
s 73(3)	amended by 17/2001 s 7(a)	27.5.2002
s 73(4)	amended by 95/1995 s 7(d)	7.12.1997
s 73(5)	amended by 95/1995 s 7(e), (f)	7.12.1997
	amended by 17/2001 s 7(b), (c)	27.5.2002
s 73(5a)	inserted by 95/1995 s 7(g)	7.12.1997
	amended by 17/2001 s 7(d)	27.5.2002
s 73(6)	amended by 95/1995 s 7(h)	7.12.1997
s 73(7) and (8)	inserted by 95/1995 s 7(i)	7.12.1997
s 73A	inserted by 95/1995 s 8	7.12.1997
s 74		
s 74(4)	amended by 33/2003 Sch (cl 14(1), (2))	1.7.2005
s 74(5)	amended by 33/2003 Sch (cl 14(3))	1.7.2005
s 74(7)	substituted by 95/1995 s 9(a)	7.12.1997
s 74(10)	substituted by 95/1995 s 9(b)	7.12.1997
s 74(10a)	inserted by 95/1995 s 9(b)	7.12.1997
s 74(16a)	inserted by 17/2001 s 8	27.5.2002
s 74(17)	amended by 95/1995 s 9(c), (d)	7.12.1997
s 74(19)	substituted by 8/2003 s 7	15.12.2003
Pt 11		
s 75		
s 75(3)	amended by 34/1996 s 4 (Sch cl 18)	3.2.1997
	amended by 79/2000 Sch cl (b)	2.1.2001
s 76		
s 76(1)	amended by 95/1995 s 10(a)	7.12.1997

	<b>amended by 81/2005 s 17(1), (2)</b>	<b>30.7.2006</b>
<b>s 76(2)</b>	<b>amended by 81/2005 s 17(3), (4)</b>	<b>30.7.2006</b>
<i>s 76(3)</i>	<i>amended by 95/1995 s 10(b)</i>	<i>7.12.1997</i>
	<i>amended by 79/2000 Sch cl (b)</i>	<i>2.1.2001</i>
	<b>deleted by 81/2005 s 17(5)</b>	<b>30.7.2006</b>
Pt 12		
s 80		
s 80(2)	substituted by 81/2000 s 19	25.1.2001
Pt 13		
s 81	substituted by 45/1994 s 23	2.6.1994
Pt 14		
s 83		
s 83(2)	amended by 45/1994 s 10	2.6.1994
	amended by 81/2000 s 20	31.10.2001
84		
s 84(1) and (2)	amended by 79/2000 Sch cl (b)	2.1.2001
s 85	amended by 79/2000 Sch cl (b)	2.1.2001
<i>s 86</i>	<i>deleted by 34/1996 s 4 (Sch cl 18)</i>	<i>3.2.1997</i>
<i>s 88</i>	<i>deleted by 37/2002 s 9</i>	<i>3.7.2003</i>
s 89		
s 89(3)	substituted by 81/2000 s 21	25.1.2001
s 89(4) and (5)	inserted by 81/2000 s 21	25.1.2001
s 91		
s 91(7)	substituted by 79/2000 Sch cl (a)	2.1.2001
s 91(8)	inserted by 34/1996 s 4 (Sch cl 18)	3.2.1997
Sch 1		
cl 1		
cl 1(1)	amended by 45/1994 s 24	2.6.1994
Sch 2		
cl 1	omitted under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
cl 2		
cl 2(4)—(8)	inserted by 45/1994 s 25	2.6.1994
cl 3	inserted by 53/2005 s 4	17.11.2005

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996***

#### **5—Transitional provision**

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.

## ***Harbors and Navigation (Miscellaneous) Amendment Act 2000***

### **14—Transitional provision**

- (1) On the commencement of section 7 of this Act, the appointed members of the State Crewing Committee who held office immediately prior to that commencement vacate their offices so that appointments may be made to the Committee under the principal Act as amended by this Act.
- (2) Subsection (1) does not derogate from section 16 of the *Acts Interpretation Act 1915*.

## ***Statutes Amendment (Transport Portfolio) Act 2001***

### **9—Transitional provision**

An amendment to the principal Act effected by a provision of this Part does not apply in relation to an offence committed before the commencement of that provision.

### **Historical versions**

Reprint No 1—2.6.1994

Reprint No 2—3.2.1997

Reprint No 3—7.12.1997

Reprint No 4—2.1.2001

Reprint No 5—25.1.2001

Reprint No 6—12.4.2001

Reprint No 7—31.10.2001

Reprint No 8—27.5.2002

Reprint No 9—3.7.2003

Reprint No 10—24.11.2003

Reprint No 11—15.12.2003

1.7.2005

17.11.2005