

NORTHERN TERRITORY OF AUSTRALIA

MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) (NATIONAL UNIFORM LEGISLATION) ACT

As in force at 2 July 2013

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 2 July 2013

MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) (NATIONAL UNIFORM LEGISLATION) ACT

An Act to apply as a law of the Territory a national law regulating marine safety relating to domestic commercial vessels, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Purpose of Act

- (1) The purpose of this Act is to adopt in the Territory a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law).
- (2) Accordingly, this Act:
 - (a) applies the Commonwealth domestic commercial vessel national law as a law of the Territory; and
 - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of the Territory to be administered on a uniform basis by the Commonwealth (and by Territory officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

4 Definitions

(1) In this Act:

applied provisions means the Commonwealth domestic commercial vessel national law that applies as a law of the Territory because of section 5.

Commonwealth administrative laws means the following Commonwealth Acts, regulations or other legislative instruments:

- (a) the *Administrative Appeals Tribunal Act 1975* (excluding Part IVA);
- (b) the *Freedom of Information Act 1982*;
- (c) the *Ombudsman Act 1976*;
- (d) the *Privacy Act 1988*;
- (e) the regulations and other legislative instruments in force under any of those Acts.

Commonwealth domestic commercial vessel national law means the provisions of the following Acts, regulations or other legislative instruments:

- (a) the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth));
- (b) the regulations and other legislative instruments in force under that Law;
- (c) any other provision of a Commonwealth Act (or of a regulation or other legislative instrument in force under a Commonwealth Act) that is of a savings or transitional nature consequent on the enactment or amendment of that Law.

function includes a duty.

(2) Terms used in this Act and also in the Commonwealth domestic commercial vessel national law have the same meanings in this Act as they have in that law.

- (3) In this Act, a reference to a Commonwealth Act includes a reference to:
 - (a) that Commonwealth Act, as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

Part 2 Applied provisions

5 Application of Commonwealth laws as laws of Territory

- (1) The Commonwealth domestic commercial vessel national law, as in force from time to time, applies as a law of the Territory.
- (2) The Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which the Territory may make laws:
 - (a) whether or not the Commonwealth may make laws in relation to those matters; and
 - (b) even though the Commonwealth domestic commercial vessel national law provides that it applies only to specified matters with respect to which the Commonwealth may make laws.
- (3) Subsection (2) does not operate to exclude a law of the Territory relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law.
- (4) The regulations made under this Act may provide that the Commonwealth domestic commercial vessel national law applies under this section as if an amendment to that law:
 - (a) made by a law of the Commonwealth; and
 - (b) specified in the regulations made under this Act;had not taken effect.

6 Interpretation of Commonwealth domestic commercial vessel national law

- (1) The *Acts Interpretation Act 1901* (Cth) applies as a law of the Territory in relation to the interpretation of the applied provisions, and so applies as if the applied provisions were a Commonwealth Act or were regulations or other legislative instruments under a Commonwealth Act, as the case requires.

- (2) The *Interpretation Act* does not apply to the applied provisions.

Note for subsection (2)

Even though the Interpretation Act does not apply to the applied provisions, it applies to this Act and to instruments made under this Act.

Part 3 Functions and powers under applied provisions

7 Functions and powers of National Regulator and other authorities and officers

The National Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth.

8 Delegations by National Regulator

Any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

Part 4 Offences

9 Object of Part

- (1) The object of this Part is to further the purpose of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):
- (a) the investigation and prosecution of offences; and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
 - (e) the sentencing, punishment and release of persons convicted of offences; and

- (f) fines, penalties and forfeitures; and
 - (g) infringement notices in connection with offences; and
 - (h) liability to make reparation in connection with offences; and
 - (i) proceeds of crime; and
 - (j) spent convictions.
- (3) For the purposes of this Part, offences include contraventions for which a civil penalty may be imposed.

10 Application of Commonwealth criminal laws to offences against applied provisions

- (1) The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of the Territory.
- (2) For the purposes of a law of the Territory, an offence against the applied provisions:
- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth; and
 - (b) is taken not to be an offence against the laws of the Territory.
- (3) Subsection (2) has effect for the purposes of a law of the Territory except as provided by the regulations made under this Act.

11 Functions and powers conferred on Commonwealth officers and authorities relating to offences

- (1) A Commonwealth law applying because of section 10 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth domestic commercial vessel national law.

12 No double jeopardy for offences against applied provisions

If:

- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth domestic commercial vessel national law; and
- (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law;

the offender is not liable to be punished for the offence under the applied provisions.

Part 5 Administrative laws**13 Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of the Territory to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of the Territory.
- (2) For the purposes of a law of the Territory, a matter arising in relation to the applied provisions:
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth; and
 - (b) is taken not to be a matter arising in relation to laws of the Territory.
- (3) Subsection (2) has effect for the purposes of a law of the Territory except as provided by the regulations made under this Act.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cth) (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

14 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 13 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

Part 6 Fees and fines**15 Fees payable to officers or employees of Territory acting as delegates**

The Minister may, by *Gazette* notice, set fees payable to the Territory in relation to anything done under the Commonwealth domestic commercial vessel national law (as that law applies as a law of the Commonwealth), or under the applied provisions, by a delegate of the National Regulator, or an accredited person, who is an officer or employee of the Territory or an agency of the Territory.

16 Infringement notice penalties

Any amount paid to the Territory by the National Regulator under section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) in relation to an infringement notice is (subject to any refund payment under section 10(2) of that Act) payable into the Central Holding Authority.

17 Fines, fees etc. not otherwise payable to Territory

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the National Regulator.
- (2) Subsection (1) does not apply to any fees referred to in section 15.

Part 7 Miscellaneous matters

18 Things done for multiple purposes

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth domestic commercial vessel national law.

19 Reference in Commonwealth law to a provision of another law

For the purposes of sections 10 and 13, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

20 Regulations of Territory

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may not be inconsistent with this Act or the applied provisions.

Part 8 Repeal and transitional provisions

21 Regulations repealed

The Regulations specified in Schedule 1 are repealed.

22 Transitional regulations

- (1) The Administrator may make regulations for this Part.
- (2) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of this Act; or
 - (b) to otherwise allow or facilitate the transition from the operation of the former Act to the Marine Safety National Law.
- (3) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or

- (b) imposing liabilities on the person.
- (5) The regulation must declare it is made under this section.
- (6) This section, and each regulation made under it, expire 1 year after the commencement day.
- (7) In this section:

commencement means the commencement of section 21.

former Act means the *Marine Act* as in force immediately before commencement.

Schedule 1 Repealed Regulations

section 21

<i>Marine Amendment Regulations 2007</i>	<i>Subordinate Legislation No. 38 of 2007</i>
<i>Marine (Crew Accommodation) Regulations</i>	<i>Subordinate Legislation No. 17 of 1982</i>
<i>Amendment of Marine (Crew Accommodation) Regulations</i>	<i>Subordinate Legislation No. 5 of 2001</i>
<i>Marine (Examinations and Certificates) Regulations</i>	<i>Subordinate Legislation No. 16 of 1982</i>
<i>Amendment of the Marine (Examinations and Certificates) Regulations</i>	<i>Subordinate Legislation No. 9 of 1984</i>
<i>Amendments of the Marine (Examinations and Certificates) Regulations</i>	<i>Subordinate Legislation No. 34 of 1991</i>
<i>Amendments of the Marine (Examinations and Certificates) Regulations</i>	<i>Subordinate Legislation No. 48 of 1994</i>
<i>Amendment of the Marine (Examinations and Certificates) Regulations</i>	<i>Subordinate Legislation No. 6 of 2001</i>
<i>Marine (Hire-and-Drive Vessel) Regulations</i>	<i>Subordinate Legislation No. 36 of 1994</i>
<i>Amendments of Marine (Hire-and-Drive Vessel) Regulations</i>	<i>Subordinate Legislation No. 7 of 2001</i>
<i>Marine (Load Line) Regulations</i>	<i>Subordinate Legislation No. 15 of 1982</i>
<i>Amendments of Marine (Load Line) Regulations</i>	<i>Subordinate Legislation No. 8 of 2001</i>
<i>Marine (Pleasure Craft) Regulations</i>	<i>Subordinate Legislation No. 10 of 1985</i>
<i>Amendments of Marine (Pleasure Craft) Regulations</i>	<i>Subordinate Legislation No. 12 of 1993</i>
<i>Amendments of Marine (Pleasure Craft) Regulations</i>	<i>Subordinate Legislation No. 12 of 2001</i>

<i>Amendments of Marine (Pleasure Craft) Regulations</i>	<i>Subordinate Legislation No. 24 of 2002</i>
<i>Marine (Safety) Regulations</i>	<i>Subordinate Legislation No. 12 of 1982</i>
<i>Amendments of Marine (Safety) Regulations</i>	<i>Subordinate Legislation No. 11 of 1993</i>
<i>Amendments of Marine (Safety) Regulations</i>	<i>Subordinate Legislation No. 14 of 2001</i>
<i>Marine (Safety Manning) Regulations</i>	<i>Subordinate Legislation No. 14 of 1982</i>
<i>Amendments of the Marine (Safety Manning) Regulations</i>	<i>Subordinate Legislation No. 35 of 1991</i>
<i>Amendment of Marine (Safety Manning) Regulations</i>	<i>Subordinate Legislation No. 9 of 2001</i>
<i>Marine (Small Craft) Regulations</i>	<i>Subordinate Legislation No. 28 of 1985</i>
<i>Amendment of Marine (Small Craft) Regulations</i>	<i>Subordinate Legislation No. 16 of 2001</i>
<i>Amendments of Marine (Small Craft) Regulations</i>	<i>Subordinate Legislation No. 23 of 2002</i>
<i>Marine (Survey) Regulations</i>	<i>Subordinate Legislation No. 20 of 1982</i>
<i>Amendments of the Marine (Survey) Regulations</i>	<i>Subordinate Legislation No. 28 of 1984</i>
<i>Amendments of Marine (Survey) Regulations</i>	<i>Subordinate Legislation No. 17 of 2001</i>

ENDNOTES**1 KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION***Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act 2013***
(Act No. 11, 2013)

Assent date 29 May 2013
Commenced 1 July 2013 (*Gaz S24*, 25 June 2013)

3 LIST OF AMENDMENTS

pt 9 hdg	exp No. 11, 2013, s 67
pt 9	
div 1 hdg	exp No. 11, 2013, s 67
ss 23 – 65	exp No. 11, 2013, s 67
pt 9	
div 2 hdg	exp No. 11, 2013, s 67
s 66	exp No. 11, 2013, s 67
pt 9	
div 3 hdg	exp No. 11, 2013, s 67
s 67	exp No. 11, 2013, s 67
sch 2	exp No. 11, 2013, s 67