

Marine Safety (Domestic Commercial Vessel National Law Application) Bill 2013

CLAUSE NOTES

Preliminary

- Clause 1 Short title and citation.
- Clause 2 The Act commences on a day or days to be proclaimed.
- Clause 3 This clause states the purpose of the Act (which is principally to adopt in this State a uniform national approach to the regulation of marine safety in relation to domestic commercial vessels).

Interpretation

- Clause 4 Defines certain words and expressions used in the Act. In particular, the ***Commonwealth domestic commercial vessel national law*** is defined as the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth), together with regulations and other legislative instruments made under that Law and savings and transitional provisions. The applied provisions are defined as the Commonwealth domestic commercial vessel national law that applies as a law of this State because of proposed clause 5.
- Clause 5 Applies the Commonwealth domestic commercial vessel national law as a law of this State. In addition, the proposed clause provides that the Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which this State may make laws, whether or not the Commonwealth may make laws in relation to those matters. The regulations may provide that the Commonwealth domestic commercial vessel national law applies as if amendments made to that law had not taken effect.
- Clause 6 Applies the Acts Interpretation Act 1901 of the Commonwealth as a law of this State in relation to the interpretation of the applied provision.
- Clause 7 Provides that the National Regulator appointed under the Commonwealth domestic commercial vessel national law and other authorities and officers have the same functions and powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law.
- Clause 8 Provides that any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law is taken to have effect for the purposes of the corresponding provision of the applied provisions. It is envisaged that the Chief Executive of Marine and Safety Tasmania will be delegated the functions of the National Regulator in this State.
- Clause 9 States the object of the proposed Part is to further the purpose of the proposed 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. In addition, the proposed Clause gives examples of the purposes for which an offence is to be so treated.

Clause 10 Applies the relevant Commonwealth laws as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth. In addition, the proposed clause provides that, except as provided by the regulations under the proposed Act, an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of this State.

Clause 11 Provides that a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law conferred on a Commonwealth officer or authority by Commonwealth laws (because of Clause 10) is also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provision.

Clause 12 Provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence under the Commonwealth domestic commercial vessel national law.

Clause 13 Applies the Commonwealth administrative laws (which are defined in Clause 4) as laws of this State to any matter arising in relation to the applied provisions, except as provided by the regulations under this Act. The clause further provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth, not this State.

This clause also provides that any provision of a Commonwealth administrative law applying because of this clause that purports to confer jurisdiction on the federal court is taken not to have that effect. This is consistent with the High Court decision that a State law cannot confer jurisdiction on the Federal Court.

Clause 14 Provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of clause 13 is also conferred on the officer or authority in relation to a matter arising in relation to the applied provisions.

Clause 15 Enables regulations to be made with respect to the fees payable to this State for things done under the Commonwealth domestic commercial vessel national law or the applied provisions by an officer or employee of this State or an officer or employee of a statutory authority who is acting as a delegate of the National Regulator. Also enables the current fees and charges fixed by regulations and by-laws under the *Marine and Safety Authority Act 1997* to remain in force until such time as regulations under this clause are made.

Clause 16 Provides that amounts paid to this State by the National Regulator in respect of infringement notices issued under the Commonwealth domestic commercial vessel national law are paid into the Consolidated Fund. It also provides that amounts payable by this State to the National Regulator are paid out of the Consolidated Fund.

- Clause 17 Requires any fees, penalties, fines and other amounts payable under the applied provisions (with certain exceptions) to be paid to the Commonwealth.
- Clause 18 Provides that 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.
- Clause 19 Provides that a reference in a Commonwealth law is taken, for the purposes of clause 10 and 13, to be a reference to that provision as applying because of those clauses.
- Clause 20 Enables regulations to be made to give effect for the purposes of this Act.
- Clause 21 Assigns the administration of this Act, until provision is made by order under Section 4 of the Administrative Arrangements Act 1990, to the Minister for Infrastructure. It also assigns the department responsible to the Minister in relation to the administration of this Act to the Department of Infrastructure, Energy and Resources.