

TASMANIA

**MARINE SAFETY (DOMESTIC COMMERCIAL
VESSEL NATIONAL LAW APPLICATION) BILL
2013**

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**MARINE SAFETY (DOMESTIC COMMERCIAL
VESSEL NATIONAL LAW APPLICATION) BILL
2013**

*(Brought in by the Minister for Infrastructure, the Honourable
David James O'Byrne)*

A BILL FOR

**An Act to apply as a law of this State a national law
relating to domestic commercial vessels and for other
purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Marine Safety
(Domestic Commercial Vessel National Law
Application) Act 2013*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Purpose of Act

- (1) The purpose of this Act is to adopt in this State a
national approach to the regulation of marine

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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 this State; and
 - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of this State to be administered on a uniform basis by the Commonwealth (and by State officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

4. Interpretation

- (1) In this Act –

applied provisions means the Commonwealth domestic commercial vessel national law that applies as a law of this State 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);

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- (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 following Commonwealth provisions of Acts, regulations or other legislative instruments:

- (a) 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);
- (b) the regulations and other legislative instruments in force under that Law;
- (c) any other provisions of a Commonwealth Act (or of a regulation or other legislative instrument in force under a

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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.

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Part 2 – The Applied Provisions

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PART 2 – THE APPLIED PROVISIONS

5. Application of Commonwealth laws as laws of this State

- (1) The Commonwealth domestic commercial vessel national law, as in force from time to time, applies as a law of this State.
- (2) The Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which this State 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 this State 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 –

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Part 2 – The Applied Provisions

- (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* of the Commonwealth applies as a law of this State 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 *Acts Interpretation Act 1931* does not apply to the applied provisions.

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Part 3 – Functions and Powers Under Applied Provisions

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**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 the 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.

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Part 4 – Offences

PART 4 – OFFENCES

9. Object of this Part

- (1) The object of this Part is to further the object 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

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Part 4 – Offences

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- (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 this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, 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 this State.
- (3) Subsection (2) has effect for the purposes of a law of this state except as provided by the regulations made under this Act.

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Part 4 – Offences

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

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domestic commercial vessel national
law –

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

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Part 5 – Administrative Laws

PART 5 – ADMINISTRATIVE LAWS

13. Application of Commonwealth administrative laws to applied provisions

- (1) The Commonwealth administrative laws apply as laws of this State 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 this State.
- (2) For the purposes of a law of this State, 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 this State.
- (3) Subsection (2) has effect for the purposes of a law of this State 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* of the Commonwealth (as that provision applies as a law of this jurisdiction) to

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Part 5 – Administrative Laws

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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.

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Part 6 – Fees and Fines

PART 6 – FEES AND FINES

15. Fees payable to officers or employees of State acting as delegates

- (1) Regulations may be made under this Act for or with respect to fees payable to this State 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 this State or an agency of this State.
- (2) The regulations may rescind a provision of any regulations or by-laws made under the *Marine and Safety Authority Act 1997* relating to fees and charges that may be imposed by the Marine and Safety Authority of Tasmania under that Act.
- (3) The delegate of the National Regulator may charge for services rendered in the exercise of a delegated function in accordance with the fees and charges fixed by regulations and by-laws made under the *Marine and Safety Authority Act 1997* and in force before the regulations referred to in subsection (1) take effect for equivalent services provided by Authority.
- (4) In subsection (3) –

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Part 6 – Fees and Fines

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Authority means the Marine and Safety Authority established under the *Marine and Safety Authority Act 1997*.

16. Infringement notice fines

- (1) Any amount paid to this State by the National Regulator under section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth in relation to an infringement notice is (subject to any refund payment under section 10(2) of that Act) payable into the Consolidated Fund.
- (2) Any amount payable by this State under section 10(2) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth is payable out of the Consolidated Fund.

17. Fines, fees, &c., not otherwise payable to State

- (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 Commonwealth.
- (2) Subsection (1) does not apply to any fees referred to in section 15.

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Part 7 – Miscellaneous

PART 7 – MISCELLANEOUS

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 this State

The Governor may make regulations for the purposes of this Act.

21. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure; and

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- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.