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# Navigation Act 2012

## Development and Overview



# National Reform Agenda

- Three phases
  1. Tax reforms, Coastal Trading and International Register
  2. Navigation Act 2012
  3. National law for domestic commercial vessels
- Timing
  - Phase 1 – July 2012
  - Phase 2 and 3 together – July 2013





# Objectives of the Reform

- Revitalise the Australian shipping industry and ensure its long term future
- Improve safety
- Reduce regulatory burden and cost to industry
- Modernise regulatory framework
- Provide consistent national regulation





# Navigation Act 2012

- Planned presentation overview
  - Implementation timetable
  - Overview of the Act
  - Definitions
  - Application
  - Enforcement
  - Marine Orders, Regulations and transition
  - Impact on OHSMI





# Navigation Act Implementation timetable

- Navigation Act 2012 - passed by Parliament March 2012
- Commences by proclamation or 12 months after royal assent - TBC but **NOT** 25 March 2013
- Consequential Amendment Act - passed March 2012:
  - repeals Navigation Act 1912 and Lighthouse Act 1911
  - changes all current references related to the Navigation Act 1912 in whole of statute book
  - Amends the 2012 Act to implement MLC from August 2013



# Overview

- Act provides framework but leaves details to regulations (marine orders + one regulation)
  - Modern terminology
  - Whole of government standard clauses
- Retains policy to the maximum extent possible:
  - Varied by terminology changes
  - Some matters removed
- Explanatory memorandum and Mapping document



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# Some Important Definitions



## Objects of the Act

- (a) to promote the safety of life at sea; and
- (b) to promote safe navigation; and
- (c) to prevent pollution of the marine environment;  
and
- (d) to ensure that AMSA has the necessary power to carry out inspections of vessels and enforce national and international standards.





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## Approved form

A form approved in writing for the purpose of a provision of the Act



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## *aid to navigation*

Replicates and expands the definition of marine navigational aid contained in the *Lighthouses Act 1911* to **expressly include advances in technology since 1911.**



# Owner

**owner** of a vessel means one or more of the following:

- (a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee;
- (b) a person with overall general control and management of the vessel;
- (c) a person who has assumed responsibility for the vessel from a person referred to in paragraph (a) or (b).

For the purposes of paragraph (b), a person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.



# Operate and Taken to Sea

***operate*** a vessel means:

- (a) determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel, whether or not the vessel is underway; or
- (b) load or unload the vessel when it is moored or berthed.

***taken to sea***

(1) A vessel is ***taken to sea*** if the vessel:

- (a) goes to sea, plies, runs or proceeds on a voyage; or
- (b) has been got underway for the purpose of going to sea, plying, running or proceeding on a voyage.

**(2) Despite subsection (1), a vessel is not taken to sea merely because the vessel has been got underway for the purpose of moving it from one berth or place in a port to another berth or place in the port.**



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# Overseas Voyage

A vessel's voyage is an **overseas voyage** if in the course of the voyage the vessel is **present in waters outside the outer limits of the exclusive economic zone** of Australia





## Port

Includes Harbour which means a natural or artificial harbour, and includes:

- (a) navigable estuary, river, creek or channel; or
- (b) a haven, roadstead, dock, pier, jetty or offshore terminal;  
or
- (c) any other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.



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# Inspector / Surveyor / AMSA

Inspector is a statutory function

Surveyor is not there

AMSA also has powers







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# Seafarer

Don't want to spoil Darryl's thunder.....so  
will have to wait for this one



# Unseaworthy

A vessel is **seaworthy** if, and only if:

- (a) it is in a fit state as to the condition of hull and equipment, boilers (if any) and machinery, the stowage of ballast or cargo, the number and qualifications of seafarers, and in every other respect, to:
  - (i) encounter the ordinary perils of the voyage undertaken; and
  - (ii) not pose a threat to the environment; and
- (b) it is not overloaded; and
- (c) **the living and working conditions on board the vessel do not pose a threat to the health, safety or welfare of the vessel's seafarers.**



# Substandard

A vessel to which the Safety Convention, the Load Lines Convention or the Prevention of Pollution Convention applies is **substandard**, in relation to the condition of the vessel or its equipment in respect of a particular voyage or operation of the vessel, if:

- (a) a certificate required by the Convention concerned for the proposed voyage or operation is not in force; or
- (b) both:
  - (i) one or more certificates required by the Convention concerned for the proposed voyage or operation are in force; and
  - (ii) the condition of the vessel or its equipment does not correspond substantially with the particulars of the certificate or certificates.



## Regulated Australian vessel (RAV)

A vessel is a ***regulated Australian vessel*** if:

- (a) under the *Shipping Registration Act 1981*, the vessel is registered, required to be registered or exempt under section 13 of that Act from that requirement;  
**and**
- (b) the vessel is not a recreational vessel; **and**
- (c) **any** of the following apply:
  - (i) the vessel is proceeding on an overseas voyage or is for use on an overseas voyage;
  - (ii) a certificate issued under this Act, other than a non-Convention tonnage certificate or a certificate prescribed by the regulations, is in force for the vessel;
  - (iii) an opt-in declaration is in force for the vessel.



## Regulated Australian vessel (RAV)

- (2) A vessel **is** a ***regulated Australian vessel*** if the vessel is a customs vessel.
- (3) A vessel referred to in subparagraph (c)(i) or (ii) **is not** a regulated Australian vessel if a **declaration under section 19 is in force** for the vessel.
- (4) A vessel in the course of construction **is** a ***regulated Australian vessel*** if the vessel is, after completion, for use as a vessel referred to in subparagraph (c)(i) or subsection (2).
- (5) For the purposes of subsection (4), a vessel that has been launched, but has not been completed and delivered, **is** taken to be a vessel in the course of construction.



## Application– the SIMPLE version



Regulated Australian vessels



Foreign flagged vessels

Domestic commercial vessels



Defence vessels



Recreational vessels





## Application– the not so simple version

- Each chapter (and some Divisions) have an application provision, so depending on the subject matter, the Act may apply to:
  - RAV
  - Foreign flagged vessels
  - Domestic commercial vessels
  - Recreational vessels



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## Enforcement – old tools

- Detention
- Penal provisions – criminal and financial





# Enforcement – new tools

- Civil penalties
  - Civil penalty orders
  - Infringement notices
  - Voluntary enforceable undertakings
- Directions (2 types)
  - Not enter port or to comply with requirements
- Improvement and Prohibition Notices



## Compliance - tools

**Allows for a proportionate response**

**Allows for escalation depending on breach and the circumstances that gave rise to breach, likelihood of recurrence and any history.**

**Best enforcement tool for the breach or suspected breach**

**Who decides and how????**

**Policy and Protocols – publicly available**



Compliance tool	Decision Maker
Detention	AMSA*
Improvement and Prohibition Notices	Inspector
Directions	Inspector
Directions	AMSA
Infringement	AMSA*
Voluntary Enforceable undertaking	AMSA
Civil Penalty	AMSA
Criminal Penalty	AMSA



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## Some other checks

For entry into premises, Inspectors either need warrants or consent, which can be withdrawn.

Access to ships not changed – ie no consent or warrant required.

Search and Seize powers of inspectors



# Marine Orders - gone

- Five Marine Orders removed
  - 10 Medical first aid
  - 11 Substandard ships
  - 14 Accommodation
  - 53 Employment of crews
  - 61 Safe working on board ships





# Marine Orders – new kids on the block

- MO4 - modifies remaining 44 Orders to work under new Act
  - defined terms, Act references, addition of material required by new Act structure:
    - Identifying by ‘type’ of certificate (safety/pollution)
    - Criteria for issue ore revocation of certificates
    - inclusion of civil penalties
  - No changes to policy
  - No new subject matter (including corrections)





# Transition

- Transition managed through MO4/MO1:
  - All existing certificates will remain in force
  - All existing qualifications will remain in force
  - All existing manning documents will remain in force
- All existing Marine Orders exemptions and equivalents **will remain in force**
- All existing Act exemptions and determinations **will cease to have effect**



# OHSMI

***prescribed ship*** means a ship that is either:

(i) a ship to which Part II of the *Navigation Act 1912* would apply if that Act had not been repealed; or

(ii) a ship that is declared under subsection 4A(1) to be a prescribed ship





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# *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

**Subsection 640(3) (paragraph (a) of the definition of *Commonwealth maritime legislation*)**

**Omit “1912”, substitute “2012”.**