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Marine and Safety (Maritime Incidents) Regulations 2017

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Marine and Safety (Maritime Incidents) Regulations 2017

I, the Lieutenant-Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the Marine and Safety Authority Act 1997 .

20 November 2017

A. M. BLOW

Lieutenant-Governor

By His Excellency's Command,

M. T. (RENE) HIDDING

Minister for Infrastructure

PART 1 - Preliminary

1. Short title

These regulations may be cited as the Marine and Safety (Maritime Incidents) Regulations 2017 .

2. Commencement

These regulations take effect on 29 November 2017.

3. Interpretation

In these regulations –

Act means the Marine and Safety Authority Act 1997 ;

approved means approved by MAST;

assessor means a person who is authorised by the Minister under regulation 35 to assist a court of inquiry;

inquiry means an inquiry under Part 3 ;

investigation means an investigation under Part 2;

investigator means a person who is authorised as an investigator under regulation 8 ;

magistrate means a magistrate within the meaning of the *Magistrates Court Act 1987*;

maritime incident – see regulation 4;

MAST means the Marine and Safety Authority established under the Act;

serious injury means any injury other than –

(a) an injury that is merely superficial, such as a scratch or graze; or

(b) an injury that, though more than superficial, is one for which a reasonably healthy and robust person would not ordinarily seek or require medical attention of any kind or medical attention beyond very basic and immediate first aid.

4. Meaning of "*maritime incident*"

(1) For the purposes of these regulations, a maritime incident is –

(a) the occurrence, in waters that are navigable, of any of the following:

(i) the death or serious injury of a person on board a vessel;

(ii) the death or serious injury of a person caused by a vessel;

(iii) the loss overboard, or presumed loss overboard, of a person from a vessel;

(iv) the loss, or presumed loss, of a vessel (whether from sinking, structural failure, explosion, fire or otherwise);

(v) the abandonment of a vessel;

(vi) the theft, hijacking or suspicious disappearance of a vessel; or

(b) the occurrence, in waters that are navigable, of any of the following to a serious degree:

(i) the collision, or near collision, of a vessel with another vessel or any object;

(ii) the grounding or stranding of a vessel;

(iii) the flooding or swamping of a vessel;

(iv) the capsizing or complete roll-over of a vessel;

(v) a loss of stability of a vessel affecting the safety of the vessel (whether from shifting cargo or ballast or other causes);

- (vi) a loss of steerage or propulsion on a vessel;
- (vii) the disablement of a vessel to the extent that it requires assistance;
- (viii) a structural failure in the hull or superstructure of a vessel;
- (ix) damage caused to or by a vessel;
- (x) a fire, explosion or emergency involving dangerous substances on a vessel;
- (xi) the loss overboard of a shipping container, or other major item or quantity of cargo, from a commercial vessel;
- (xii) the loss overboard of spars, or rigging or other major items of equipment, from a sailing vessel;
- (xiii) the loss overboard of nets, dredges, cables or other major items of equipment, from a commercial fishing vessel.

(2) For the purposes of subregulation (1) , it is immaterial whether the relevant vessel is under way or secured at the time of the relevant occurrence.

(3) In this regulation –

secured, in relation to a vessel, means –

- (a) riding at anchor (other than a sea anchor); or
- (b) tied up to a mooring, moored raft or moored pontoon; or
- (c) tied up to a jetty, wharf or breakwater; or
- (d) berthed in a marina; or
- (e) secured to a vessel to which paragraph (a) , (b) , (c) or (d) applies; or
- (f) connected up to something such as a crane, slipway cradle or trailer winch in order to be put into or taken out of the water;

serious degree, in relation to an occurrence, means to such a degree that –

- (a) a navigation hazard is or is realistically likely to be created as a result of the occurrence; or
- (b) a vessel sustains, or is realistically in danger of sustaining, damage that is not merely superficial as a result of the occurrence; or
- (c) the environment sustains, or is realistically in danger of sustaining, serious harm as a result of the occurrence; or
- (d) the safety of any person is at serious risk as a result of the occurrence.

5. Power to investigate maritime incident

For the purposes of these regulations, MAST may investigate a maritime incident under these regulations whether or not the maritime incident is directly reported to MAST.

PART 2 - Reporting and Investigation of Maritime Incidents

6. Masters, &c., to report maritime incidents

(1) If a maritime incident occurs in respect of a vessel, the master of the vessel must report the maritime incident to MAST by the quickest practicable means.

Penalty: Fine not exceeding 20 penalty units.

(2) If a vessel is lost, presumed lost or abandoned, the owner of the vessel must report this situation to MAST by the quickest practicable means as soon as practicable after the owner becomes aware of the situation.

Penalty: Fine not exceeding 20 penalty units.

(3) It is a defence in proceedings for an offence under subregulation (2) if the defendant establishes that he or she knew, or reasonably believed, that the master of the vessel had already reported the situation to MAST.

7. MAST may investigate maritime incidents

(1) MAST may investigate any maritime incident –

(a) reported to it under regulation 6 ; or

(b) on its own motion.

(2) In deciding whether to investigate a maritime incident, MAST is to have regard to –

(a) its statutory functions; and

(b) the apparent nature and seriousness of the maritime incident; and

(c) whether appropriate and adequate investigative action has been, is being or is likely to be taken in respect of the maritime incident by another agency of the State or an agency of the Commonwealth; and

(d) any interest that an agency in another jurisdiction that is equivalent to MAST may have in the matter; and

(e) whether any civil, coronial or criminal proceedings have been instituted in the matter; and

(f) any other matters it considers relevant.

8. Authorisation of investigator

(1) If MAST decides to investigate a maritime incident under regulation 7 , MAST is to authorise a person as an investigator for the purposes of that investigation.

(2) A person authorised as an investigator under subregulation (1) may be –

(a) a person employed or engaged under section 19 of the Act; or

(b) a State Service officer or State Service employee, if the Head of the State Service Agency by which the officer or employee is employed agrees to the authorisation; or

(c) a person that MAST is satisfied holds relevant expertise.

(3) If subregulation (2)(b) applies, the investigator may perform the role of investigator in conjunction with State Service employment.

(4) For the purposes of the investigation, MAST is to furnish the investigator with a letter, specifying the authority of the investigator, in an approved form.

(5) The investigator is to investigate the maritime incident that he or she is authorised to investigate so as to establish –

(a) the circumstances in which the maritime incident occurred; and

(b) the cause of the maritime incident.

(6) An authorisation under this regulation may be revoked by MAST on reasonable grounds at any time.

9. Preliminary notice of investigation

Before investigating a maritime incident, an investigator, by written notice, is to notify or make a reasonable attempt to notify the following persons of the investigation:

- (a) the master of each vessel known, or believed, by MAST to have been involved in the maritime incident;
- (b) the owner of each vessel known, or believed, by MAST to have been involved in the maritime incident, or such owner's agent.

10. General conduct of investigation

In investigating a maritime incident, an investigator –

- (a) is not bound to act formally; and
- (b) is not bound by the rules of evidence; and
- (c) may inform himself or herself on any matter in any way he or she thinks fit; and
- (d) may make a record of evidence given by a person.

11. Confidentiality of evidence

(1) An investigator who makes a record of evidence under regulation 10(d) must not, except as may be necessary to exercise a power or perform a function under these regulations, divulge that evidence or any part of it to any person other than –

- (a) the person who provided the evidence; or
- (b) a court of inquiry in respect of the maritime incident; or
- (c) MAST.

(2) A person to whom evidence is divulged under this regulation has the same rights and obligations as if the person were the investigator.

12. Powers of entry by investigator

(1) In this regulation –

responsible person means –

- (a) in the case of a vessel, the owner or master of the vessel; and
- (b) in the case of premises, the owner or occupier of the premises.

(2) An investigator who is investigating a maritime incident may, on production of his or her letter of authority –

- (a) board and inspect any vessel that he or she has reasonable grounds to believe was, or may have been, involved in the maritime incident; and
- (b) enter and inspect any premises where he or she has reasonable grounds to believe there is, or may be, evidentiary material that is relevant to the maritime incident.

(3) The power under subregulation (2) may be exercised –

- (a) at any reasonable time of the day or night; and
- (b) using such personal and material assistance as the investigator reasonably considers necessary.

(4) The power under subregulation (2) may only be exercised by an investigator if the investigator –

- (a) has the consent of the responsible person in respect of the vessel, or premises, to be inspected; or
- (b) reasonably believes that –
 - (i) the vessel to be inspected is likely to leave the State before a consent can be obtained; or

(ii) the evidence located in the vessel, or premises, to be inspected is in danger of being removed, destroyed or interfered with before a consent can be obtained.

(5) If a responsible person has given consent under subregulation (4)(a) , the investigator who obtained the consent must request a written acknowledgment from the responsible person specifying –

- (a) that the consent was given voluntarily; and
- (b) that the responsible person was aware that he or she could refuse to give the consent; and
- (c) the time and date at or on which the consent was given.

13. Powers of inspection by investigator

An inspector who is investigating a maritime incident may, after boarding a vessel or entering premises under regulation 12 , do any one or more of the following:

- (a) inspect any object or document found on the vessel or premises;
- (b) take copies of, and make extracts from, any document found on the vessel or premises;
- (c) take measurements;
- (d) make notes and sketches;
- (e) take photographs and make video and audio recordings;
- (f) take samples of substances away for analysis;
- (g) require a person on the vessel or premises to provide a demonstration, furnish information or answer questions;
- (h) require a person on the vessel or premises to open and, if necessary, unlock any –
 - (i) door, gate, hatch, bulkhead or other kind of barrier; or
 - (ii) locker, hold or other kind of container;
- (i) require a person on the vessel or premises to undo and, if necessary, move any tarpaulin, sheeting or other covering.

14. Use of force during investigation

Nothing in regulation 12 or 13 authorises an investigator to use physical force in respect of any person or object.

15. Offence to obstruct, &c., investigator

(1) A person must not –

- (a) obstruct or hinder; or
- (b) threaten; or
- (c) attempt to intimidate; or
- (d) attempt to improperly influence –

an investigator who is carrying out an investigation.

Penalty: Fine not exceeding 20 penalty units.

(2) For the avoidance of doubt, the withholding of a consent under regulation 12 does not constitute obstruction or hindrance of an investigation for the purposes of this regulation.

16. Reports

(1) An investigator must give MAST an interim report at any time during an investigation if –

- (a) MAST requests such a report; or

(b) the investigator considers that urgent or special circumstances make the preparation of such a report necessary or advisable.

- (2) As soon as practicable after an investigation into a maritime incident is complete, the investigator is to –
- (a) prepare a report setting out the results of the investigation; and
 - (b) subject to subregulation (3) , give the investigation report to MAST.
- (3) If an investigation report prepared under subregulation (2) relates to a person's affairs to a material extent –
- (a) the investigator is to give the person a copy of the investigation report; and
 - (b) within 30 days after being given that copy, the person may give the investigator written information or comments on the investigation report; and
 - (c) the investigator, at his or her discretion, may amend the investigation report consequent on the receipt of any such information or comments.
- (4) MAST may cause a report prepared under this regulation to be printed and published in such ways as it considers appropriate.
- (5) In this regulation –
- report* includes part of a report.

17. Conclusion of investigation

- (1) For the purposes of regulation 16(2) , an investigation into a maritime incident is taken to be completed once –
- (a) the investigator has completed his or her collection of evidence in relation to the maritime incident; or
 - (b) the Minister has appointed a court of inquiry to inquire into the maritime incident; or
 - (c) the Minister or MAST directs the investigator to conclude the investigation.
- (2) An investigation into a maritime incident is taken to have concluded once MAST has received a report in accordance with regulation 16(2)(b) in respect of that incident.

18. MAST may recommend court of inquiry

If MAST decides that a maritime incident that it has investigated under this Part requires further inquiry, it is to recommend to the Minister that a court of inquiry be established for that purpose.

PART 3 - Courts of Inquiry

19. Establishment of courts of inquiry

- (1) The Minister may establish a court of inquiry to inquire into a maritime incident.
- (2) The power under subregulation (1) may be exercised –
 - (a) on the Minister's own motion; or
 - (b) on the recommendation of MAST under regulation 18 .
- (3) The court of inquiry is to consist of 3 persons appointed by the Minister as follows:
 - (a) a magistrate;
 - (b) 2 persons who, in the Minister's opinion, have expertise relevant to the subject of the inquiry.
- (4) The magistrate is the chairperson of the court of inquiry.

20. Appearance before courts of inquiry

- (1) Any person may appear before a court of inquiry if the court is satisfied that the person has an interest in the subject of the inquiry.
- (2) A person without an interest in the subject of an inquiry may appear before a court of inquiry by leave of the court of inquiry.

21. Parties to proceedings

The following are parties to proceedings before a court of inquiry:

- (a) a person on whom a notice of inquiry is served under regulation 22 ;
- (b) a person who appears before the court of inquiry in accordance with regulation 20 ;
- (c) MAST.

22. Notice of inquiries

- (1) If a court of inquiry is established, the court of inquiry is to serve or cause to be served a notice of inquiry on –
 - (a) persons likely to be affected by the inquiry; and
 - (b) such other persons as the court may direct.
- (2) A notice of inquiry is to specify at least –
 - (a) the subject of the inquiry; and
 - (b) the time and place of the hearing of the inquiry; and
 - (c) the matter or matters to be raised at the hearing.
- (3) The court of inquiry may amend the notice of inquiry before or during the hearing of the inquiry by adding to, or omitting, any matter specified in that notice.

23. Powers of court of inquiry

A court of inquiry may –

- (a) proceed with an inquiry, at the time and place fixed for the hearing in the notice of inquiry served under regulation 22 in respect of the inquiry, whether or not all the parties are present; and
- (b) adjourn an inquiry for any reason, and for any duration, that it considers appropriate; and
- (c) authorise any person to board and inspect any vessel, and any machinery and equipment on that vessel, relevant to its inquiry; and

(d) authorise any person to enter and inspect any premises and any machinery and equipment on those premises, relevant to its inquiry.

24. Investigator to give information to court of inquiry

If an investigator has investigated a maritime incident in relation to which a court of inquiry has been established, the investigator, as soon as practicable, is to give the court of inquiry –

- (a) all information that the investigator has obtained concerning the maritime incident; and
- (b) copies of all reports prepared under regulation 16 in relation to the maritime incident.

25. Procedure of courts of inquiry

(1) A court of inquiry is to be open to the public.

(2) Except as provided in this Part, Part 3 and sections 8 , 33 , 36 and 37 of the Commissions of Inquiry Act 1995 apply to a court of inquiry as if –

- (a) the court were a Commission established under that Act; and
- (b) the inquiry were conducted by that Commission; and
- (c) a member of a court of inquiry were a Commissioner appointed under that Act.

(3) Except as provided by these regulations, a court of inquiry may regulate its own proceedings.

26. Representation

A party to, or a person appearing at, any proceedings before a court of inquiry may –

- (a) appear personally; or
- (b) be represented by another person appointed by the party or person in that behalf.

27. Subpoenas

The court of inquiry may issue a subpoena in an inquiry summoning a witness to –

- (a) give evidence; and
- (b) produce documents.

28. Production of documents

(1) A party to any proceedings before a court of inquiry may give another party to those proceedings a notice in writing –

- (a) to produce any document relating to the subject matter of the proceedings that is in the possession or under the control of that other party; or
- (b) to admit any documents.

(2) If a party to whom notice under subregulation (1) is given does not comply with that notice, the party that gave the notice may give secondary evidence of the contents of any document to which the notice relates.

29. Service in absence of person

If a notice or other document is to be served on a person in relation to a court of inquiry in respect of the incompetence or misconduct of the person and the person is absent from the State or cannot be found, the court of inquiry may –

- (a) place a copy of the notice or document in an envelope addressed to the person and send it and a notification of its contents to the owner of the appropriate vessel with a request that it be forwarded to the person; or
- (b) if the owner cannot be found, notify, by notice in the *Gazette* or in a daily newspaper circulating in the State, that the notice or document is thereby taken to be served on the person.

30. Orders of courts of inquiry

(1) If it considers it appropriate to do so, having regard to its finding or decision, a court of inquiry may request in writing that MAST do any one or more of the following under the Act:

- (a) cancel a marine authorisation;
- (b) suspend a marine authorisation for a specified time;
- (c) replace a marine authorisation with a marine authorisation of a lower grade;
- (d) detain a vessel for a specified period;
- (e) release a vessel from detention, if that vessel is detained by MAST.

(2) If it considers it appropriate to do so, having regard to its finding or decision, a court of inquiry may, by written notice, require a party to proceedings before the court of inquiry to pay all or any part of the costs reasonably incurred by MAST in investigating the maritime incident under inquiry.

(3) An amount ordered to be paid to MAST under subregulation (2) is recoverable in a court of competent jurisdiction as a debt due to MAST.

(4) In this regulation –

marine authorisation means a certificate, licence or permit issued under the authority of the Act or by the National Regulator.

31. Findings or decisions of courts of inquiry

(1) A finding or decision of any 2 members of a court of inquiry is the finding or decision of the court of inquiry.

(2) Each member of a court of inquiry is to sign the finding or decision of the court as concurring or dissenting.

32. Appeal against finding or decision

(1) A person aggrieved by a finding or decision of a court of inquiry made under regulation 31 may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.

(2) A finding or decision of a court of inquiry made under regulation 31 is a reviewable decision for the purposes of the Magistrates Court (Administrative Appeals Division) Act 2001 .

33. Records of court of inquiry

A court of inquiry –

- (a) has the custody of its records, minutes and proceedings; and
- (b) is to keep a minute book to record its findings, decisions and orders.

34. Reports of findings or decisions

(1) A court of inquiry is to give the Minister –

- (a) a report of its finding or decision, and any orders made as part of that finding or decision; and
- (b) the evidence and reasons for that finding or decision; and
- (c) any observations relating to the inquiry or its finding or decision.

(2) The Minister is to cause the finding or decision to be published in the *Gazette* and such other ways, if any, as the Minister considers appropriate.

(3) Without limiting subregulation (2) , the Minister may refer the finding or decision to –

- (a) any Minister, Authority or Agency of the Commonwealth or of any State or Territory; or
- (b) any international maritime organisation.

PART 4 - Assessors

35. Authorisation of assessors

- (1) The Minister may authorise a person to assist a court of inquiry (*an assessor*).
- (2) The assessor may be –
 - (a) a person employed or engaged under section 19 of the Act; or
 - (b) a State Service officer or State Service employee, if the Head of the State Service Agency by which the officer or employee is employed agrees to the authorisation; or
 - (c) a person with relevant expertise.
- (3) If subregulation (2)(a) applies, the assessor may perform that role in conjunction with State Service employment.
- (4) In the performance of his or her functions, the assessor is subject to the direction and control of the court of inquiry.
- (5) An authorisation under this regulation may be revoked by the Minister for reasonable cause at any time.

36. Restrictions on assessors

- (1) A person must not act as an assessor in any proceedings before a court of inquiry if the person –
 - (a) has acted in the capacity of marine surveyor of a vessel relevant to the inquiry; or
 - (b) is retained as a marine surveyor by a person who is a party to the proceedings; or
 - (c) has a pecuniary interest in any subject matter of the proceedings.

Penalty: Fine not exceeding 10 penalty units.

- (2) Despite subregulation (1), the proceedings of a court of inquiry are not invalid or ineffectual by reason only of the fact that an assessor has acted in contravention of that subregulation.

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Notified in the *Gazette* on 29 November 2017