

# A "SEA CHANGE" IN QUEENSLAND'S MARINE SAFETY LAWS: RECENT MARINE SAFETY REFORMS IN QUEENSLAND

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## 1 Introduction

On February 2016 the Queensland Government passed the *Transport Operations (Marine Safety-Domestic Commercial Vessel National Law Act Application) Act 2016* (Qld) ('National Law Application Act') and the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (Qld) ('Marine Safety Amendment Act'). They came into effect on 1 September 2016. This legislation has a practical effect on approximately 5% of Queensland's commercial vessels.<sup>1</sup>

The purpose of this legislative reform is to implement the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) ('National Law Act') in all Queensland waters and to transfer all regulatory power to the Australian federal government over registration, licensing and other safety-related matters for "domestic commercial vessels" operating in Queensland waters under the National Law Act.

This article considers the changes made by this legislative reform and canvasses the likely operation of this reform in practice. Firstly, a broad overview of the legislative framework applicable to the regulation of vessels in Australian and Queensland waters will be provided. Against this context, the reasons for, and the specific changes effected by, the National Law Application Act and Marine Safety Amendment Act will then be explained. Lastly, the article will consider the practical impact that this legislative reform is likely to have on vessels operating in Queensland waters.

## 2 Regulation of vessels in Australian and Queensland waters

Vessels in Australian waters are regulated by both state and federal legislation. The interaction between the jurisdictions of the Australian federal government and the Australian state governments within the area of maritime law is inherently complex. In essence, both the federal government and the states have jurisdiction from the low water mark, however, the states' jurisdiction ends after three nautical miles.<sup>2</sup> Where both the federal government and states have legislated on a particular point within three nautical miles, the federal legislation is "rolled back" so that it only applies beyond the three nautical mile limit.<sup>3</sup>

### 2.1 Federal maritime regulatory framework

The key pieces of federal legislation relevant to the regulation of vessels in Australian waters are the *Shipping Registration Act 1981* (Cth), *Navigation Act 2012* (Cth), the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) and the National Law Act.

#### 2.1.1 Shipping Registration Act 1981

The *Shipping Registration Act 1981* (Cth) ('Shipping Registration Act') prescribes what vessels are required to be, or may be, registered in Australia as Australian "flagged" vessels. This is then relevant to how the vessel is regulated under other applicable legislation.

Under the Shipping Registration Act a vessel is required to be registered in Australia (unless exempt from registration) if it is "Australian-owned".<sup>4</sup> An "Australian-owned" vessel is one that:

- (a) is owned by an Australian national or Australian nationals, and by no other person;

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<sup>1</sup> Explanatory Notes, *Transport Operations (Marine Safety-Domestic Commercial Vessel National Law Application) Bill 2016* (Qld) 3.

<sup>2</sup> See *Coastal Waters (State Powers) Act 1980* (Cth) s 4(1), which gives effect to the Offshore Constitutional Settlement concluded between the Commonwealth and the States in 1979.

<sup>3</sup> *Ibid* s 4(2).

<sup>4</sup> *Shipping Registration Act 1981* (Cth) s 12(1).

is owned (otherwise than as described in paragraph (c)) by 3 or more persons as joint owners, where the majority of those persons are Australian nationals; or  
is owned by 2 or more persons as owners in common, where more than half of the shares in the ship are owned by an Australian national or Australian nationals.<sup>5</sup>

Australian-owned vessels that are exempt from registration include ships that are less than 24 metres in tonnage length, Government ships, fishing vessels and pleasure craft.<sup>6</sup>

## 2.1.2 Navigation Act 2012

Broadly, the *Navigation Act 2012* (Cth) ('Navigation Act') regulates:

- (1) health, accommodation and welfare of seafarers;<sup>7</sup>
- (2) alcohol and drugs;<sup>8</sup>
- (3) vessel safety;<sup>9</sup>
- (4) pollution and damage to the marine environment;<sup>10</sup> and
- (5) safety of navigation.<sup>11</sup>

The Navigation Act applies, within its terms, to "regulated Australian vessels", "foreign vessels", "domestic commercial vessels" and "recreational vessels".

A vessel is a regulated Australian vessel if:

- (a) the vessel is registered, required to be registered or exempt from registration under the Shipping Registration Act 1981; and  
the vessel is not a recreational vessel; and  
any of the following apply:
  - the vessel is proceeding on an overseas voyage or is for use on an overseas voyage;
  - a certificate issued under the Navigation Act, other than a non-Convention tonnage certificate or a certificate prescribed by the regulations, is in force for the vessel;
  - an opt-in declaration is in force for the vessel.<sup>12</sup>

The relevant provisions of the Navigation Act apply to a regulated Australian vessel irrespective of that vessel's geographical location.

A vessel is a foreign vessel for the purposes of the Navigation Act if it is not registered, or required to be registered, under the Shipping Registration Act and it is not a recreational vessel.<sup>13</sup>

The Navigation Act will generally apply to foreign vessels if the vessel is, at the time when the conduct constituting the alleged offence or contravention occurs, in an Australian port, entering or leaving an Australian port, in the internal waters of Australia, or in the territorial sea of Australia.<sup>14</sup>

A "domestic commercial vessel" has the same meaning as in the National Law Act<sup>15</sup> (as to which refer to section 2.1.3 below).

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<sup>5</sup> Ibid s 8.

<sup>6</sup> Ibid s 13.

<sup>7</sup> *Navigation Act 2012* (Cth) ch 2 pt 5.

<sup>8</sup> Ibid ch 2 pt 6.

<sup>9</sup> Ibid ch 3.

<sup>10</sup> Ibid ch 4 pt 3.

<sup>11</sup> Ibid ch 6.

<sup>12</sup> Ibid s 15(1).

<sup>13</sup> Ibid s 14.

<sup>14</sup> Ibid s 9.

<sup>15</sup> Ibid s 14.

A "recreational vessel" is defined to mean a vessel that is not for use in connection with a commercial, governmental or research activity.<sup>16</sup>

In summary, the Navigation Act regulates domestic commercial vessels and recreational vessels in relation to the carrying out of musters and drills, pollution, collisions, the obligation to render assistance, and safe navigation. It does not apply to such vessels where, for example, the National Law Act applies and gives effect to provisions of a relevant Convention.<sup>17</sup>

### 2.1.3 National Law Act

On 19 August 2011, the Council of Australian Governments ('COAG') signed an Intergovernmental Agreement ('IGA') that provided for the establishment of a single national regulator and a single National Law Act covering domestic commercial vessel safety in Australia from 1 January 2013. The IGA formalised the agreement of all Australian governments to the operating arrangements under which the previous single National System operated.

The National Law Act applies to any domestic commercial vessels which are not within the scope of the Navigation Act<sup>18</sup> and overrides any State law relating to the same matters of marine safety for domestic commercial vessels. The focus of the National Law Act is on regulating the safe operation, design, construction and equipping of domestic commercial vessels within a single national framework.<sup>19</sup>

The National Law Act is not intended to provide for the regulation of every aspect of commercial maritime activity and many activities continue to be regulated by state and territory law. There is an extensive list of activities set out in section 6(2)(b) of the National Law Act that are not purported to be displaced by the National Law Act.<sup>20</sup>

### Domestic commercial vessels

The National Law Act applies to "domestic commercial vessels", which is defined to mean a vessel that is for use in connection with a commercial, governmental or research activity, provided it does not fall within an exception.<sup>21</sup>

"Vessel" is defined very broadly to mean a craft for use, or that is capable of being used, in navigation by water, however propelled or moved, and includes an air-cushion vehicle, a barge, a lighter, a submersible, a ferry in chains and a wing-in-ground effect craft.<sup>22</sup>

A vessel is excluded from the definition of domestic commercial vessel if it is a regulated Australian vessel,<sup>23</sup> a foreign vessel, a defence vessel, or is owned by a primary or secondary school, or a community group as prescribed by the regulations.<sup>24</sup>

"Regulated Australian vessel" and "foreign vessel" have the same meaning as given in the Navigation Act (as to which refer to section 2.1.2 above).

## 2.2 Queensland maritime regulatory framework

The key pieces of state legislation regulating maritime activity in Queensland are the *Transport Infrastructure Act 1994* (Qld), the *Transport Operations (Marine Safety) Act 1994* (Qld), and the *Transport Operations (Marine Pollution) Act 1995* (Qld).

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<sup>16</sup> Ibid s 14.

<sup>17</sup> Safety Convention, Prevention of Pollution Convention, Prevention of Collisions Convention or the Maritime Labour Convention: *Navigation Act 2012* (Cth) s 12.

<sup>18</sup> *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Act 2016* (Qld).

<sup>19</sup> *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) s 3.

<sup>20</sup> *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Act 2016* (Qld) s 6(2)(b).

<sup>21</sup> Ibid s 7(1).

<sup>22</sup> Ibid s 8(1).

<sup>23</sup> In practice, an Australian vessel will be a regulated Australian vessel if it voyages outside of Australia's EEZ at any time, or if it maintains marine certification under the Navigation Act rather than under the National Law Act, or if there is an opt-in declaration in force for the vessel (*Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Application) Act 2016* (Qld) s 6; *Navigation Act 2012* (Cth) s 15).

<sup>24</sup> Ibid s 7(3).

TOMSA is the key piece of legislation regulating marine safety in Queensland. Broadly, it imposes general safety obligations and standards, establishes a registration system for ships regulated in Queensland, and confers powers and functions to shipping inspectors to monitor compliance.

### 3 Reasons for, and changes effected by, the reforms

It is against this legislative framework that the reasons for, and changes effected by, the enactment of the National Law Application Act and Marine Safety Amendment Act will now be considered.

As mentioned above, the National Law Act came into effect on 1 July 2013 and sought to introduce a uniform national approach to the regulation of domestic commercial vessels.

However, notwithstanding the introduction of the National Law Act, in Queensland TOMSA continued to govern certain aspects of maritime operations for domestic commercial vessels and all matters relating to recreational vessels. TOMSA also contained provisions relating to other areas of regulation for domestic commercial vessels which, constitutionally, ceased to have effect since 1 July 2013 as a result of the enactment of the National Law Act. This created a situation of regulatory uncertainty and overlapping competencies with respect to the regulation of vessels registered in Queensland or located within Queensland waters.

#### 3.1 National Law Application Act

The COAG IGA which led to the enactment of the National Law Act envisaged that the Commonwealth would regulate safety matters for:

the entire domestic commercial vessel fleet in Australia. However, there are a small number of ships that are beyond the constitutional reach of the Commonwealth. These are vessels that are owned by non-corporate entities (for example, individuals, sole traders, partnerships) and that only operate in waters within the limits of Queensland. Examples of such vessels would be a sightseeing ferry operating on an inland lake, or fishing vessels that operate exclusively on inland waterways such as eel fishers or seafood harvesting vessels.<sup>25</sup>

Prior to the reforms, these 'constitutional gap' vessels, which make up about 5% of the vessels in Queensland, were regulated under Queensland legislation.<sup>26</sup>

To ensure the National Law Act applies to all domestic commercial vessels, including the 'constitutional gap' vessels, the IGA provides that each jurisdiction is to apply the National Law Act within its jurisdiction.<sup>27</sup> The Queensland government expressed the view that to maintain separate state-based regulatory schemes for such a small percentage of the commercial vessel fleet would require an unnecessary duplication of administration and legislation and could result in confusion for ship owners and operators and for enforcement officers.<sup>28</sup>

The objective of the [National Law Application Act] is, therefore, to ensure that the National Law Act regulates all domestic commercial vessels that operate in Queensland.<sup>29</sup>

Part 3 of the National Law Application Act provides that the National Regulator established under the National Law Act, ie AMSA, and other authorities and officers have the same functions and powers under the applied provisions as they have under the National Law Act.<sup>30</sup>

#### 3.2 Marine Safety Amendment Act

Since the commencement of the National Law Act on 1 July 2013, significant parts of TOMSA have been effectively inoperative or have only applied to those vessels that fall outside of the constitutional reach of the

<sup>25</sup> Explanatory Notes, *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Bill 2015* (Qld) 1.

<sup>26</sup> *Ibid.*, 3.

<sup>27</sup> Council of Australian Governments, 'International Agreement on Commercial Vessel Safety Reform', 11 (Recital 46).

<sup>28</sup> Explanatory Notes, *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Bill 2015* (Qld) 1–2.

<sup>29</sup> Explanatory Notes, *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Bill 2015* (Qld) 2.

<sup>30</sup> *Transport Operations (Marine Safety – Domestic Commercial Vessel National Law Act Application) Act 2016* (Qld) s 7.

Commonwealth. The Marine Safety Amendment Act removes the inoperative provisions and changes the regulatory regime for ships that do not fall within the scope of the extended National Law Act.<sup>31</sup>

The most significant change made to TOMSA by the Marine Safety Amendment Act is the introduction of the concept of "Queensland regulated ships",<sup>32</sup> which are:

- (a) recreational ships (ie ships used only for private recreation and tenders to those ships); and
- (b) other ships that are not domestic commercial vessels, for example, vessels owned by community groups, primary schools or surf lifesaving organisations (also called "Queensland regulated ships").

Generally, the amended provisions of TOMSA will only apply to Queensland regulated ships.<sup>33</sup>

However, certain very important parts of TOMSA will continue to apply to all ships in Queensland waters. For example, pilots will continue to be required by all applicable ships in pilotage areas, irrespective of whether they are Queensland regulated ships or not.<sup>34</sup>

The Marine Safety Amendment Act also replaces certificates of survey, which will no longer be relevant to Queensland regulated ships, with survey reports.<sup>35</sup>

Survey reports will be used to establish that the general safety obligations imposed on the owners, operators and masters of Queensland regulated ships have been complied with (either in whole or in part).<sup>36</sup> Survey reports will be able to be issued by:

- (a) marine surveyors accredited under the National Law Act to survey a category that covers a ship's, or part of a ship's, seaworthiness; and
- (b) other individuals who are able to competently decide a ship's, or part of a ship's, seaworthiness because of his or her training, qualifications or experience.

The Marine Safety Amendment Act also:

- (a) amends the definition of "owner" to reflect the fact that domestic commercial vessels will no longer be registered under TOMSA and, instead, a certificate of operation will be issued for them under the National Law Act;<sup>37</sup>
- (b) removes the provisions relating to boards of inquiry,<sup>38</sup> as MSQ currently investigates marine incidents in Queensland and the National Law Act regulates investigations into domestic commercial vessels;
- (c) removes the provisions relating to the accreditation of ship designers, ship builders and marine surveyors, as these are now regulated by the National Law Act;<sup>39</sup> and
- (d) removes the obligation on the chief executive of the Department of Transport and Main Roads to develop a marine pollution strategy,<sup>40</sup> although the explanatory notes to the Marine Safety Amendment Bill state that the chief executive will continue to develop such plans.<sup>41</sup>

In short, most of the amendments under the Marine Safety Amendment Act deal with the consequential effect of the fact that the registration and certification of domestic commercial vessels are now largely regulated under the

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<sup>31</sup> *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016 (Qld)*.

<sup>32</sup> *Ibid* s 7.

<sup>33</sup> *Ibid* ss 19, 26, 27, 30, 36, 51.

<sup>34</sup> *Ibid* s 24.

<sup>35</sup> *Ibid* s 16.

<sup>36</sup> *Ibid* s 16.

<sup>37</sup> *Ibid* s 6.

<sup>38</sup> *Ibid* s 45.

<sup>39</sup> *Ibid* s 21.

<sup>40</sup> *Ibid* s 70.

<sup>41</sup> Explanatory Memorandum, *Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015 (Qld)* 10.

National Law Act. For example, certificates of compliance will be removed as they were only issued in relation to ships that are now regulated under the National Law Act as domestic commercial vessels.<sup>42</sup>

## 4 Operation of the legislative reforms in practice

As a result of the legislative reforms, certain specific provisions of TOMSA will only apply to regulate the registration of Queensland regulated ships while certain provisions of TOMSA will continue to apply to all vessels in Queensland waters, including domestic commercial vessels, being the matters that are not covered by the National Law Act.<sup>43</sup>

### 4.1 TOMSA regulation of Queensland regulated ships

As mentioned, the Marine Safety Amendment Act introduces the new concept of a "Queensland regulated ship".<sup>44</sup> This category of vessel has been introduced to encapsulate all those vessels that will continue to be regulated in relation to registration, licensing and safety obligations under TOMSA rather than the National Law Act.<sup>45</sup> TOMSA now regulates Queensland regulated ships in relation to general safety duties, registration and licensing, vessel construction requirements, vessel operation, crew competency, marine safety regulation, reporting and investigating of marine incidents, and the obligation of the master of a vessel to help persons on a vessel or aircraft in distress.

Queensland regulated ships is defined to include "other Queensland regulated ships". The definition of "other Queensland regulated ship" has been intentionally drafted to automatically pick up vessels that are excluded from the coverage of the National Law Act. This is intended to ensure that vessels that may be excluded in the future from the coverage of the National Law Act will automatically become regulated under Queensland legislation.<sup>46</sup> The term "other Queensland regulated ship" has been used to describe ships that are used for purposes other than private recreation but, due to their relatively low risk, have been excluded from the coverage of the National Law Act.<sup>47</sup> However, if such vessels are being used for commercial-type purposes or activities as prescribed under the National Law Act, they will be categorised as a domestic commercial vessel and will be regulated under the National Law Act.<sup>48</sup>

### 4.2 TOMSA regulation of all vessels in Queensland waters

Importantly, TOMSA will continue to regulate all vessels, including domestic commercial vessels, in Queensland waters with respect to certain aspects of maritime operations.<sup>49</sup> These aspects are consistent with those matters listed in the National Law Act as continuing to be regulated by States and includes matters such as:

- (a) pilotage matters (including safety obligations and licensing of pilots);
- (b) ports and harbour management, including the appointment and powers of harbour masters;
- (c) aids to navigation;
- (d) responding to and the management of marine incidents; and
- (e) removing obstructions (including abandoned, sinking and derelict vessels) from navigable waters.

<sup>42</sup> *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (Qld) pt 4.

<sup>43</sup> *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (Qld) pt 5, s 123A.

<sup>44</sup> *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (Qld) s 7.

<sup>45</sup> Explanatory Memorandum, *Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015* (Qld) 3.

<sup>46</sup> *Ibid*, 9.

<sup>47</sup> Explanatory Memorandum, *Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015* (Qld), 9.

<sup>48</sup> *Ibid*, 3.

<sup>49</sup> Explanatory Memorandum, *Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015* (Qld) 2.

## 5 Administration of National Law Act and delegation of powers

AMSA is the national marine safety regulator under the National Law Act.<sup>50</sup> AMSA may delegate certain powers and functions. When a delegate or sub-delegate of AMSA performs a delegated function or exercises a delegated power, the activity is deemed to be the activity of AMSA.<sup>51</sup>

In Queensland, the regulatory function under the National Law Act has been delegated to Maritime Safety Queensland ('MSQ').<sup>52</sup> This delegation will cease on 1 July 2018, when AMSA will commence delivery of regulatory functions under the National Law Act.

From 1 July 2018 MSQ will continue to undertake regulatory functions under TOMSA which are not otherwise undertaken by AMSA.

## 6 Practical observations and challenges of jurisdiction

In practice, the regulation of vessels in Queensland waters is now effectively split between two pieces of legislation:

- (a) the National Law Act with respect to the registration and compliance issues for domestic commercial vessels, and
- (b) TOMSA for vessel related marine incidents involving a Queensland regulated ship and for the registration and compliance of Queensland regulated ships (noting that the *Transport Operations (Marine Pollution) Act 1995* still regulates for any marine pollution incidents).

There are two key practical points flowing from this.

First, it is important for regulators and enforcement officers to ensure that compliance with "domestic commercial vessel" registration and certification requirements is actioned under the National Law Act, and not TOMSA.<sup>53</sup> Effective from 1 September 2016, TOMSA no longer governs domestic commercial vessel registration and certification compliance issues.<sup>54</sup>

Secondly, there may be some instances where recourse to TOMSA *and* the National Law Act will be required. For example, if a domestic commercial vessel does not hold a current valid certificate, the National Law Act will govern. However, if that domestic commercial vessel is involved in a marine incident with a Queensland regulated ship within Queensland waters, TOMSA will apply.<sup>55</sup> In such circumstances, separate notices or enforcement actions, may well be required, one issued under each legislative regime. This will have particular practical implications for ship owners and masters once MSQ ceases to be the delegated authority for regulatory functions under the National Law. At present, whether reporting of a marine incident is required under the National Law or TOMSA is effectively irrelevant as MSQ is the delegated authority to respond to and manage marine incidents.

Once AMSA assumes this regulatory function under the National Law, a ship owner or master may be required to report a marine incident to both authorities. This will mean a ship owner/master will be required to consider whether a two-vessel marine incident involved a domestic commercial vessel or Queensland regulated ship, to whom reporting is required, and the time limits in which reporting is required.<sup>56</sup>

The exercise of statutory powers by shipping inspectors under TOMSA or marine safety inspectors under the National Law Act may also create some interesting issues in practice.

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<sup>50</sup> Ibid s 9.

<sup>51</sup> Ibid s 11(6); see *Acts Interpretation Act 1901* (Cth) s 34AB(1)(c).

<sup>52</sup> Australian Maritime Safety Authority, *Marine Safety Agencies* (2015) Australian Maritime Safety Authority, <<https://www.amsa.gov.au/domestic/msa/>>.

<sup>53</sup> *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, pt 4.

<sup>54</sup> TOMSA will continue to govern registration and certification compliance issues for Queensland regulated ships.

<sup>55</sup> *Transport Operations (Marine Safety) Act 1994* (Qld) pt 11.

<sup>56</sup> The *Transport Operations (Marine Safety) Act 1994* (Qld) s 125 requires reporting of marine incidents to occur within 48 hours (unless the master has a reasonable excuse), whereas reporting under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) ss 88-89 reporting is due within 72 hours of the incident.

By way of example, following the amendments, under s 175 of TOMSA, a shipping inspector will be able to require a person to produce a document kept under TOMSA *and* the National Law Act. Such documents may be required to be produced for the purpose of enforcing compliance with provisions that continue to govern domestic commercial vessels under TOMSA. These provisions *inter alia* include pilotage, aids to navigation, responding to and managing marine incidents.<sup>57</sup>

That being said, there may be occasions when the inspector will need to determine which legislative regime applies to determine the appropriate response to the circumstances of a particular incident. For example, when giving directions and issuing notices, the inspector would seem to have to determine whether the vessel is a domestic commercial vessel in order to determine whether the appropriate applicable powers are provided under the National Law Act rather than TOMSA. This is particularly relevant to the vessel monitoring powers, the giving of directions and the issuing of prohibition notices that are contained in sections 99, 109 and 111 of the National Law Act.

In such a case, the inspector will need to give the applicable direction under the National Law Act if the ship is a domestic commercial vessel, and can only give the equivalent directions under the newly created Division 3A of Part 13 of TOMSA if the vessel is a Queensland regulated ship. In particular, it is unclear how the equivalent directions may be given by the inspector if the ship in question is a regulated Australian vessel or a foreign vessel for the purposes of the Navigation Act. It would seem that the inspector would need to be appropriately appointed and authorised to do so by AMSA under the Navigation Act.

## 7 Concluding comments

The regulation of vessels in Australian waters is governed by both federal and state legislation. Objects of the National Law Act include forming a cooperative scheme between the Commonwealth, the States and the Northern Territory, and to provide an effective enforcement framework. Arguably the National Law Act has achieved this with regard to the regulation of the operation, design, registration, construction, certification compliance and equipping of domestic commercial vessels, in that approximately 95% of Queensland's commercial vessels are covered by this legislation. The remaining 5% is now covered by this legislation following the passage of the National Law Application Act and the Marine Safety Amendment Act.

There remains however the need for operators of domestic commercial vessels to keep TOMSA in mind in relation to marine incidents which involve a Queensland regulated ship. This issue will perhaps become more pronounced from 1 July 2018 when AMSA will assume the regulatory function of responding to and managing marine incidents, which is currently delegated to MSQ.

TOMSA of course still also remains important for all matters which the National Law Act does not cover.

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<sup>57</sup> *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) s 6(2)(b).