



Maritime Powers (Consequential Amendments) Act 2013

No. 16, 2013

**An Act to deal with consequential matters arising
from the enactment of the *Maritime Powers Act
2013*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Maritime Powers (Consequential Amendments) Act 2013

No. 16, 2013

An Act to deal with consequential matters arising from the enactment of the *Maritime Powers Act 2013*, and for related purposes

[Assented to 27 March 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Maritime Powers (Consequential Amendments) Act 2013*.

Schedule 1 Amendment of the Customs Act 1901

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 27 March 2013 |
| 2. Schedules 1 to 6 | At the same time as section 3 of the <i>Maritime Powers Act 2013</i> commences. | |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Customs Act 1901

1 Subsection 4(1)

Insert:

aircraft identification powers has the same meaning as in the
Maritime Powers Act 2013.

2 Subsection 4(1)

Insert:

Australian aircraft means an aircraft that:

- (a) is an Australian aircraft as defined in the *Civil Aviation Act 1988*; or
- (b) is not registered under the law of a foreign country and is either wholly owned by, or solely operated by:
 - (i) one or more residents of Australia; or
 - (ii) one or more Australian nationals; or
 - (iii) one or more residents of Australia and one or more Australian nationals.

For the purposes of this definition, *Australian national* and *resident of Australia* have the same meanings as in the *Shipping Registration Act 1981*.

3 Subsection 4(1)

Insert:

authorising officer has the same meaning as in the *Maritime Powers Act 2013*.

4 Subsection 4(1)

Insert:

foreign aircraft means an aircraft that is not an Australian aircraft.

5 Subsection 4(1)

Insert:

maritime officer has the same meaning as in the *Maritime Powers Act 2013*.

6 Subsection 183UA(1) (paragraph (f) of the definition of authorised person)

Repeal the paragraph, substitute:

- (f) in relation to the exercise of powers under section 203CA or 203CB:
- (i) an officer of Customs; or
 - (ii) a maritime officer who is exercising maritime powers under the *Maritime Powers Act 2013* in relation to a ship or aircraft to which section 203CA of this Act applies; or
 - (iii) an officer of police; or
 - (iv) a member of the Defence Force; and

7 Sections 184A to 185B

Repeal the sections.

8 Subsection 187(1)

Omit “(1)”.

9 Subsection 187(2)

Repeal the subsection.

10 Paragraph 189A(1)(a)

Omit all the words from and including “for the purpose of” to and including “or any other Act”, substitute “for the purpose of enabling the safe exercise, by such officers, of powers conferred on them under this Act or any other Act”.

11 Paragraphs 203CA(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the ship is outside the territorial sea of a foreign country; and
- (b) the ship could be boarded under the *Maritime Powers Act 2013*; and
- (c) the ship is exempt from any provision of the Customs Acts under subsection 30A(3) of this Act or the voyage of the ship

is exempt from any such provision under subsection 30A(5)
of this Act.

12 Paragraphs 203CA(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the aircraft has landed in Australia as a result of a maritime officer requiring the person in charge of the aircraft to land the aircraft under subsection 55(7) of the *Maritime Powers Act 2013*; and
- (b) in the case of an Australian aircraft—the requirement is made when the aircraft is over anywhere except a foreign country; and
- (c) in the case of an aircraft that is not an Australian aircraft—the requirement is made when the aircraft is over Australia; and
- (d) the flight of the aircraft is exempt from any provision of the Customs Acts under subsection 30A(5) of this Act.

13 Subsection 203CA(3) (note)

Omit “paragraph 185(2)(e) and section 203C”, substitute “section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*”.

14 Subsection 203CA(4)

Omit “under section 185”.

15 Subparagraph 203CB(1)(a)(i)

Omit “203CA(1)(b) or (2)(b)”, substitute “203CA(1)(c) or (2)(d)”.

16 Subsection 203CB(2) (note)

Omit “paragraph 185(2)(e) and section 203C”, substitute “section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*”.

17 Paragraph 207(1)(a)

Repeal the paragraph, substitute:

- (a) goods are seized:
 - (i) under a seizure warrant; or

(ii) under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); or

(iii) under section 67 of the *Maritime Powers Act 2013*; and

18 Section 208D

Omit “or under subsection 185(2), 185A(6), 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2)”, substitute “, under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2) or under section 67 of the *Maritime Powers Act 2013*”.

19 Paragraph 219L(1A)(a)

Omit “185 or”.

20 Paragraph 219L(1A)(b)

Omit “and”.

21 Paragraph 219L(1A)(c)

Repeal the paragraph.

22 Section 228

Before “The following ships”, insert “(1)”.

23 Paragraph 228(1)

Omit “(1)”, substitute “(a)”.

24 Paragraph 228(2)

Omit “(2)” (first occurring), substitute “(b)”.

25 Paragraph 228(2)

Omit “under subsection 184A(2) or (3)”, substitute “, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (2) or (3)”.

26 Paragraph 228(3)

Omit “(3)”, substitute “(c)”.

27 Paragraph 228(3)

Omit “properly requested under section 184D to land the aircraft”, substitute “required to land the aircraft, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (4), (5) or (6)”.

28 Paragraph 228(4)

Omit “(4)”, substitute “(d)”.

29 Paragraph 228(5)

Omit “(5)”, substitute “(e)”.

30 Paragraph 228(6)

Omit “(6)”, substitute “(f)”.

31 At the end of section 228

Add:

- (2) The circumstances are:
 - (a) the ship is a foreign ship; and
 - (b) the ship is on the landward side of the outer edge of Australia’s territorial sea; and
 - (c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.
 - (3) The circumstances are:
 - (a) the ship is an Australian ship; and
 - (b) the ship is outside the territorial sea of any foreign country; and
 - (c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.
 - (4) The circumstances are:
 - (a) either:
 - (i) the aircraft is an Australian aircraft over anywhere except a foreign country; or
-

- (ii) the aircraft is a foreign aircraft over Australia; and
- (b) the requirement to land is made:
 - (i) in relation to the operation of this Act; and
 - (ii) because the pilot of the aircraft has failed to comply with a requirement made in the exercise of aircraft identification powers.
- (5) The circumstances are:
 - (a) either:
 - (i) the aircraft is an Australian aircraft over anywhere except a foreign country; or
 - (ii) the aircraft is a foreign aircraft over Australia; and
 - (b) an authorising officer reasonably suspects that the aircraft is or has been involved in a contravention, or attempted contravention, of this Act or section 72.13 or Division 307 of the *Criminal Code*.
- (6) The circumstances are:
 - (a) either:
 - (i) the aircraft is an Australian aircraft over anywhere except a foreign country; or
 - (ii) the aircraft is a foreign aircraft over Australia; and
 - (b) an authorising officer reasonably suspects that the aircraft is carrying goods satisfying either or both of the following subparagraphs:
 - (i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;
 - (ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.
- (7) In this section:

terrorist act has the same meaning as in section 183UA.

Schedule 2—Amendment of the Environment Protection and Biodiversity Conservation Act 1999

1 Division 11 of Part 17

Repeal the Division.

Schedule 3—Amendment of the Fisheries Management Act 1991

1 Paragraphs 84(1)(aa), (a), (aaa), (b), (c), (k), (l), (m), (q) and (r)

Repeal the paragraphs.

2 Subsection 84(1BA)

Omit “, (k), (l) or (m) (applying of its own force or because of another provision of this Act)”.

3 Subsections 84(1C) to (4)

Repeal the subsections.

4 Section 84AA

Repeal the section.

5 Subsection 84B(4)

Omit “Subsections 84(4) and (6) apply in relation to the exercise of a power by an international officer as if references in those subsections to the officer’s identity card were references”, substitute “Subsection 84(6) applies in relation to the exercise of a power by an international officer as if the reference in that subsection to the officer’s identity card were a reference”.

6 Sections 87 to 87HA

Repeal the sections.

7 Section 87J (heading)

Omit “relating to boat”.

8 Subsection 87J(1)

Omit “(as it applies of its own force or because of section 87G or 87HA) or under section 87H,”.

9 Subsection 88(1)

Omit “(as it applies of its own force or because of section 87, 87G or 87HA)”.

10 Paragraph 88(1)(e)

Repeal the paragraph, substitute:

- (e) if the property is a boat and there is a liability under section 112 of the *Maritime Powers Act 2013* for costs incurred in chasing the boat—for those costs.

11 Paragraph 88(2)(b)

Omit “officer; and”, substitute “officer.”.

12 Paragraph 88(2)(c)

Repeal the paragraph.

13 Paragraph 102(1)(c)

Omit “an officer exercising powers under section 84 (as it applies of its own force or because of section 87, 87G or 87HA) or a person exercising powers under another”, substitute “a person exercising powers under a”.

14 Paragraphs 106A(2)(b) and (3)(b) and 106AA(1)(b)

After “paragraph 84(1)(ga)”, insert “or under section 67 of the *Maritime Powers Act 2013*”.

15 Subdivision CA of Division 6 of Part 6

Repeal the Subdivision.

16 Paragraphs 108(1)(c) and 168(2)(l)

Omit “(as it applies of its own force or because of section 87, 87G or 87HA)”.

Schedule 4—Amendment of the Migration Act 1958

1 Subsection 5(1) (definition of *foreign boat*)

Repeal the definition.

2 Subsection 5(1)

Insert:

foreign vessel has the same meaning as in the *Maritime Powers Act 2013*.

3 Subsection 5(1)

Insert:

maritime officer has the same meaning as in the *Maritime Powers Act 2013*.

4 Subsection 5(1) (paragraph (b) of the definition of *transitory person*)

After “245F(9)(b)”, insert “of this Act, or paragraph 72(4)(b) of the *Maritime Powers Act 2013*”.

5 Subparagraph 42(2A)(c)(i)

Omit “185(3A) of the *Customs Act 1901*”, substitute “72(4) of the *Maritime Powers Act 2013*”.

6 Paragraphs 43(3)(b) and (c)

Repeal the paragraphs, substitute:

- (b) an Australian resident entering Australia on a foreign vessel as a result of the exercise of powers under section 69 of the *Maritime Powers Act 2013* in relation to a fisheries detention offence; or
- (c) an Australian resident entering Australia on a vessel (environment matters) as a result of an environment officer, maritime officer or other person in command of a Commonwealth ship or a Commonwealth aircraft:

- (i) exercising his or her power under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the vessel; or
 - (ii) making a requirement of the person in charge of the vessel under paragraph 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999*; or
 - (iii) exercising powers under section 69 of the *Maritime Powers Act 2013* in relation to the vessel;
- because the environment officer, maritime officer or person in command had reasonable grounds to suspect that the vessel had been used or otherwise involved in the commission of an environment detention offence.

7 Subsection 43(4) (definition of *master*)

Repeal the definition.

8 Subsection 43(5)

Repeal the subsection.

9 Section 164A (definition of *master*)

Repeal the definition.

10 Subsections 164B(1) and (1A)

Repeal the subsections, substitute:

Non-citizen on foreign vessel outside migration zone

- (1) A non-citizen on a foreign vessel outside the migration zone is granted an enforcement visa when the vessel is detained under section 69 of the *Maritime Powers Act 2013* in relation to a fisheries detention offence.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

11 Subsection 164B(2)

Omit “by a fisheries officer”.

12 Subsections 164B(3) and (4)

Repeal the subsections, substitute:

Non-citizen in prescribed circumstances

- (3) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) when a fisheries officer or a maritime officer exercises under, or for the purposes of, the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984* a prescribed power in prescribed circumstances in relation to the non-citizen. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

Non-citizen on foreign vessel in prescribed circumstances

- (4) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) who is on a foreign vessel when a fisheries officer or a maritime officer exercises under, or for the purposes of, the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984* a prescribed power in prescribed circumstances in relation to the vessel. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

13 Subsection 164BA(1)

Repeal the subsection, substitute:

Non-citizen on vessel (environment matters) outside migration zone

- (1) A non-citizen on a vessel (environment matters) outside the migration zone is granted an enforcement visa when, because an environment officer, maritime officer or other person in command of a Commonwealth ship or a Commonwealth aircraft has reasonable grounds to suspect that the vessel has been used or otherwise involved in the commission of an environment detention offence, the environment officer, maritime officer or person in command:
- (a) exercises his or her power under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the vessel; or

(b) makes a requirement of the person in charge of the vessel under paragraph 403(3)(b) of the *Environment Protection and Biodiversity Conservation Act 1999*; or

(c) exercises powers under section 69 of the *Maritime Powers Act 2013* in relation to the vessel;

whichever occurs first.

Note 1: Under paragraph 403(3)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*, an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may bring a vessel into the migration zone. Under paragraph 403(3)(b) of that Act, an environment officer, or the person in command of a Commonwealth ship or a Commonwealth aircraft, may require the person in charge of a vessel to bring the vessel into the migration zone.

Note 2: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

14 Subsections 164BA(3) and (4)

Repeal the subsections, substitute:

Non-citizen in prescribed circumstances

- (3) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) when an environment officer or a maritime officer exercises under, or for the purposes of, the *Environment Protection and Biodiversity Conservation Act 1999* a prescribed power in prescribed circumstances in relation to the non-citizen. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

Non-citizen on vessel or aircraft in prescribed circumstances

- (4) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) who is on a vessel (environment matters) or a foreign aircraft (environment matters) when an environment officer or maritime officer exercises under, or for the purposes of, the *Environment Protection and Biodiversity Conservation Act 1999* a prescribed power in prescribed circumstances in relation to the vessel or aircraft. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

15 Division 12A of Part 2 (heading)

Repeal the heading, substitute:

Division 12A—Chasing, boarding etc. aircraft

16 Section 245A (definition of *Australian ship*)

Repeal the definition.

17 Section 245A (definition of *Commonwealth ship*)

Repeal the definition.

18 Section 245A (definition of *foreign ship*)

Repeal the definition.

19 Section 245A (definition of *ship*)

Repeal the definition.

20 Section 245A (definition of *territorial sea*)

Repeal the definition.

21 Section 245A (definition of *UNCLOS*)

Repeal the definition (including the note).

22 Sections 245B to 245D

Repeal the sections.

23 Section 245F (heading)

Omit “ships and”.

24 Subsection 245F(1)

Repeal the subsection.

25 Paragraphs 245F(3)(a) to (c)

Omit “ship or” (wherever occurring).

26 Paragraph 245F(3)(d)

Omit “ship or” (first occurring).

27 Subparagraph 245F(3)(d)(i)

Repeal the subparagraph, substitute:

- (i) the aircraft and its flight, cargo, stores, crew and passengers;

28 Subparagraph 245F(3)(d)(ii)

Omit “ship or”.

29 Paragraph 245F(3)(e)

Omit “ship or” (wherever occurring).

30 Paragraph 245F(3)(f)

Repeal the paragraph, substitute:

- (f) arrest without warrant any person found on the aircraft if the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of, an offence, either in or outside Australia, against this Act.

31 Subsection 245F(4)

Repeal the subsection.

32 Subsection 245F(5)

Omit “ship or”.

33 Subsections 245F(8) and (8AA)

Repeal the subsections, substitute:

Power to detain and move aircraft

- (8) An officer may detain the aircraft and bring it, or cause it to be brought, to a port, or to another place, that he or she considers appropriate if the officer reasonably suspects that the aircraft is or has been involved in a contravention, either in or outside Australia, of this Act.

34 Subsection 245F(8A) (heading)

Omit “ships or”.

35 Subsection 245F(8A)

Omit “a ship or”, substitute “an”.

36 Subsection 245F(8A)

Omit “the ship or” (wherever occurring), substitute “the”.

37 Subsection 245F(9) (heading)

Omit “*ships or*”.

38 Subsection 245F(9)

Omit “a ship or”, substitute “an”.

39 Paragraph 245F(9)(a)

Omit “ship or”.

40 Subsection 245F(11) (heading)

Omit “*ships or*”.

41 Subsection 245F(11)

Omit “ship or” (first and second occurring).

42 Subsection 245F(11)

Omit “ship,” (wherever occurring).

43 Paragraph 245F(11)(a)

Omit “ship or”.

44 Subsection 245F(12) (heading)

Omit “*ships or*”.

45 Subsections 245F(12) and (13)

Omit “ship or” (wherever occurring).

46 Subsection 245F(14)

Repeal the subsection.

47 Paragraph 245F(18)(a)

Repeal the paragraph, substitute:

- (a) any person who is in command, or a member of the crew, of the aircraft from which the relevant request under section 245E was made; and

48 Subsection 245F(19)

Omit “ship or” (wherever occurring).

49 Paragraph 245FA(1)(a)

Omit “a ship or”, substitute “an”.

50 Sections 245FB to 245H

Repeal the sections.

51 Subsection 251(1)

Repeal the subsection, substitute:

- (1) An officer may at any time board and search a vessel if the officer reasonably suspects there is on board the vessel:
 - (a) an unlawful non-citizen; or
 - (b) a person seeking to enter the migration zone who would, if in the migration zone, be an unlawful non-citizen.

52 Paragraph 252(1)(a)

Repeal the paragraph, substitute:

- (a) the person is detained in Australia; or

53 Section 261J

Omit “245G,”.

Schedule 5—Amendment of the Torres Strait Fisheries Act 1984

1 Paragraphs 42(1)(a), (aa), (c), (e), (g), (h), (ha), (hb), (o) and (p)

Repeal the paragraphs.

2 Subsection 42(2)

Repeal the subsection, substitute:

- (2) The powers of an officer under subsection (1) may be exercised in Australia, in an external Territory, in an area of Australian jurisdiction or in an area of waters in relation to which the *Fisheries Management Act 1991* applies.

3 Subsection 42(2AAA)

Omit “, (e), (g) or (h)”.

4 Section 42A

Repeal the section.

5 Paragraphs 43(1)(a) and (ca)

Repeal the paragraphs.

6 Subsection 43(1A)

Omit “, (c) and (ca)”, substitute “and (c)”.

7 Paragraphs 52A(2)(b) and (3)(b) and 52AA(1)(b)

After “under paragraph 42(1)(ea)”, insert “or section 67 of the *Maritime Powers Act 2013*”.

Schedule 6—Transitional provisions

1 Exercise of powers begun before commencement

- (1) Neither:
- (a) the amendments made by this Act; nor
 - (b) the *Maritime Powers Act 2013*;
- apply in relation to the continuous exercise of powers begun under a maritime law before the commencement of this Schedule.
- (2) In this item:
- continuous exercise of powers* has the same meaning as in the *Maritime Powers Act 2013*.
- maritime law* means:
- (a) the *Customs Act 1901*; or
 - (b) the *Environment Protection and Biodiversity Conservation Act 1999*; or
 - (c) the *Fisheries Management Act 1991*; or
 - (d) the *Migration Act 1958*; or
 - (e) the *Torres Strait Fisheries Act 1984*.

2 Regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

*[Minister's second reading speech made in—
House of Representatives on 30 May 2012
Senate on 20 August 2012]*

(103/12)

22Maritime Powers (Consequential Amendments) Act 2013No. 16, 2013