



New South Wales

# Marine Safety Act 1998 No 121

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New South Wales

## Marine Safety Act 1998 No 121

Act No 121, 1998

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An Act relating to marine safety and other matters: to repeal the *Maritime Services Act 1935*, the *Navigation Act 1901*, the *Commercial Vessels Act 1979* and certain other marine legislation. [Assented to 26 November 1998]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of act**

This Act is the *Marine Safety Act 1998*

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Objects of Act**

The objects of this Act are as follows:

- (a) to ensure the safe operation of vessels in ports and other waterways.
- (b) to promote the responsible operation of vessels in those waters so as to protect the safety and amenity of other users of those waters and the amenity of occupiers of adjoining land.
- (c) to provide for the investigation of marine accidents and for appropriate action following any such investigation.
- (d) to consolidate marine safety legislation.

### **4 Definitions**

- (1) In this Act:

*Australian fishing vessel* has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

*authorised officer* means:

- (a) a harbour master. or
- (b) a police officer. or
- (c) a person (or a person of a class) appointed as an authorised officer under section 96.

**commercial vessel** means any vessel used or intended to be used for or in connection with any business or commercial activity, and includes (but is not limited to) a vessel used or intended to be used wholly or principally for:

- (a) carrying passengers or cargo for hire or reward, whether within or outside State waters or in the course of overseas or interstate voyages, or
- (b) providing services to vessels for reward.

**crew** of a vessel means the persons (including the master of the vessel) whose duty it is to navigate or work the vessel or to carry out other operations on the vessel.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**harbour master** means a person appointed as harbour master under Part 7 and in relation to a function of a harbour master under the marine legislation. includes a person appointed under Part 7 to exercise that function.

**interstate voyage** has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

**length** means length overall.

**marine legislation** means any of the following Acts (and the regulations and other instruments made under any of those Acts):

this Act.

*Ports Corporatisation and Waterways Management Act 1995.*

*Marine Pollution Act 1987*

**marine pilot** of a vessel means the person who has the conduct of the vessel but who does not belong to the vessel.

**marine safety licence** means a marine safety licence referred to in section 29.

**master** of a vessel means the person having the command or charge of the vessel. but does not include a marine pilot.

***navigable waters*** means all waters (whether or not in the State) that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise.

***navigation aid*** means any device used for the safety of navigation (such as a beacon, buoy or marine mark). but does not include a device on board a vessel.

***operate*** a vessel includes:

- (a) to 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), and
- (b) to pilot the vessel, and
- (c) in the case of the owner of the vessel. to cause or allow the vessel to be operated by someone else.

***overseas voyage*** has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

***owner*** of a vessel is defined in section 7.

***pilotage*** and ***pilotage port*** have the same meanings as in Part 6.

***port*** includes any of the following waters (or any part of those waters):

- (a) any harbour or haven. whether natural or artificial,
- (b) any estuary, channel, river, creek or roadstead.
- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers.

***Port Corporation*** means Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation.

***recreational vessel*** means a vessel other than a commercial vessel.

***registrable vessel*** is defined in section 49.

***State waters*** means any navigable waters within the limits of the State or the coastal waters of the State (within the meaning of Part 10 of the *Interpretation Act 1987*).

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**Note.** Part 10 of the *Interpretation Act 1987* defines **coastal waters of the State** generally as that part of the territorial sea of Australia that is within 3 nautical miles of the coast. The *Marine Pollution Act 1987* defines **State waters** differently for the purposes of that Act (the definition extends to all the territorial sea adjacent to the State and only limited other internal waters of the State).

**Uniform Shipping Laws Code** means the Uniform Shipping Laws Code adopted by the Australian Transport Council and notified in the Commonwealth of Australia Gazette.

**Note.** Section 138 enables the regulations to adopt provisions of the Code, whether in force at a particular time or as in force from time to time.

**vessel** is defined in section 5.

**Waterways Authority** means the Waterways Authority constituted under Part 4 of the *Ports Corporatisation and Waterways Management Act 1995*.

- (2) For the purposes of this Act, a vessel is taken to be proceeding on a voyage from when it gets underway for the voyage until it gets underway for another voyage.
- (3) Notes in the text of this Act do not form part of this Act.

**Note.** Penalties for offences are expressed in penalty units. Under the *Interpretation Act 1987*, the amount of a penalty unit was \$110 on the enactment of this Act.

## 5 Meaning of “vessel”

- (1) In this Act, **vessel** includes water craft of any description used or capable of being used as a means of transportation on water.
- (2) Without limiting the above, a vessel includes:
  - (a) any non-displacement craft, and
  - (b) a seaplane, but only while it is on water.
- (3) However, a vessel does not include anything declared by the regulations not to be a vessel and includes anything used on water that is declared by the regulations to be a vessel.

## 6 Meaning of vessel “connected with this State”

A vessel is **connected with this State** for the purposes of this Act if:

- (a) the vessel is resistered, or is required to be registered, under the marine legislation, or

- (b) the vessel is registered under the *Shipping Registration Act 1981* of the Commonwealth with a home port in this State, or
- (c) the vessel is owned by a person who is ordinarily resident in this State. or
- (d) the vessel is owned by a person whose place of business, or principal place of business, is in this State, or
- (e) the vessel is owned by a person whose principal place of business for managing the vessel's operation is in this State, or
- (f) the vessel is declared by the regulations to be a vessel connected with this State.

#### **7 Meaning of "owner" of vessel**

- (1) In this Act, *owner* of a vessel means (subject to this section) the person who owns the vessel.
- (2) A reference in this Act to the owner of a vessel includes a reference to:
  - (a) a person registered as the vessel's owner in the relevant marine safety licence or other certificate of registry for the vessel, or
  - (b) a person who is the charterer of the vessel.
- (3) A reference in this Act to the owner of a vessel includes a reference to a joint owner of the vessel.
- (4) A reference in this Act to the owner of a vessel includes a reference to any person who, whether on the person's own behalf or on behalf of another:
  - (a) exercises any of the functions of the owner of the vessel. or
  - (b) publicly represents that the person has those functions or accepts the obligation to exercise those functions.
- (5) For the purposes of this Act. a person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired.

## 8 Vessels and waters to which Act applies

- (1) This Act applies to and in respect of the following vessels (and their owners, masters, crew and passengers):
  - (a) all vessels that are in State waters (including vessels proceeding on overseas or interstate voyages),
  - (b) all vessels that are proceeding on voyages other than interstate voyages or overseas voyages (including vessels that have left State waters),
  - (c) all Australian fishing vessels and recreational vessels that are proceeding on interstate voyages (except while they are in the waters of or adjacent to another State or Territory of the Commonwealth),
  - (d) all vessels connected with this State, wherever they may be.
- (2) This section is subject to any express provision of this Act to the contrary.

**Note.** Part 5 (relating to requirements for vessels) applies to a restricted class of vessels and persons, and Part 8 (relating to investigations) applies to a wider class of vessels and persons. The *Australia Act 1986* of the Commonwealth and the United Kingdom provide authority for the provisions of this Act that operate beyond the limits of the State.

## 9 Act does not apply to Defence Force vessels

This Act does not apply to or in respect of a vessel belonging to the Defence Force of Australia or to the naval, military or air forces of any other country.

## **Part 2 Safety of navigation**

### **10 Regulations for prevention of collisions at sea or in other navigable waters**

- (1) The regulations may make provision for or with respect to the prevention of collisions at sea or in other navigable waters (including the use on vessels of lights, shapes and signals).
- (2) The regulations under this section may adopt, with or without modification, international regulations for preventing collisions at sea.
- (3) The master or any other person concerned in the operation of a vessel who contravenes the regulations under this section, or who causes those regulations to be contravened, is guilty of an offence.

Maximum penalty: 50 penalty units.

### **11 Speed limits, no wash zones and other restrictions on the operation of vessels in navigable waters by display of notice**

- (1) The Minister may prohibit or regulate the operation of vessels in navigable waters by a notice displayed in or in the vicinity of those waters.
- (2) The Minister may, by such a notice, impose any restriction considered appropriate for the safety of the public or for the protection of vessels or other property. In particular, the Minister may impose restrictions on:
  - (a) the speed of vessels. or
  - (b) the creation of wash by vessels. or
  - (c) the mooring or anchoring of vessels. or
  - (d) the use of vessels for particular purposes.
- (3) A notice under this section may apply:
  - (a) to vessels generally or to any class of vessels specified in the notice. and
  - (b) at all times or at such times as may be specified in the notice, and
  - (c) in any other circumstances specified in the notice.



- (4) A person who operates a vessel to which a notice under this section applies in contravention of the notice is guilty of an offence.

Maximum penalty: 10 penalty units.

- (5) The regulations may exempt vessels from compliance with a notice under this section.
- (6) The regulations may make provision for or with respect to the admission in evidence and the effect of certificates, in proceedings for offences against this section of the measurement of the speed or other matter relating to the use of vessels by measuring devices.
- (7) Nothing in this section affects any regulation that prohibits or regulates the operation of vessels or any power relating to the navigation or other use of vessels conferred on any person or body by the marine legislation.
- (8) In any proceedings for an offence against this section, proof of the display of a notice in accordance with this section is not required until evidence is given to the contrary.

## **12 Restrictions on the operation of vessels in navigable waters during special events by publication of notice**

- (1) In this section, *special event* means a major race for vessels or other event that may affect the safety of navigation in any particular waters.
- (2) The Minister may prohibit or regulate the operation of vessels in specified navigable waters during a special event by public notice.
- (3) Such a notice is to be published in a newspaper circulating throughout the State and in such other manner as the Minister considers appropriate.
- (4) The Minister may, by such a notice, exclude vessels from specified areas during the event concerned and impose any other restrictions of a kind that may be imposed under section 11.
- (5) An authorised officer may direct a person to cease operating a vessel to which such a notice applies in contravention of the notice.

(6) A person who continues to operate the vessel in contravention of the notice after being directed by an authorised officer to cease doing so is guilty of an offence.

Maximum penalty: 10 penalty units.

(7) Nothing in this section affects any regulation or notice under section 11 that prohibits or regulates the operation of vessels or any power relating to the navigation or other use of vessels conferred on any person or body by the marine legislation.

(8) In any proceedings for an offence against this section, proof of the publication of a notice in accordance with this section is not required until evidence is given to the contrary.

### **13 Reckless, negligent, dangerous navigation**

#### **(1) Reckless or negligent navigation**

A person must not operate a vessel in any navigable waters recklessly or negligently.

Maximum penalty: 50 penalty units.

#### **(2) Dangerous navigation**

A person must not operate a vessel in any navigable waters at such a speed or otherwise in any way that is dangerous to the public.

Maximum penalty: 50 penalty units.

#### **(3) Other dangerous acts**

A person who is on a vessel in navigable waters, or is being towed by such a vessel must not do anything that is dangerous to the public.

Maximum penalty: 50 penalty units.

#### **(4) Definition**

In this section:

*dangerous* to the public includes anything that causes or is likely to cause injury to any person or damage to any property.

### **14 Unreasonable interference by operation or use of vessel**

A person must not:

- (a) operate a vessel in any navigable waters, or
- (b) make any other use of a vessel in any navigable waters.

in a manner that interferes unreasonably with the lawful use of those waters (or adjoining land) by other persons.

Maximum penalty: 50 penalty units.

### **15 Protection of navigation aids**

A person must not, without reasonable excuse, remove, damage, interfere with or obstruct the use of any navigation aid.

Maximum penalty: 50 penalty units.

### **16 Removal of obstructions in navigable waters**

- (1) In this section, *obstruction to navigation* means anything in, over or on navigable waters (including a vessel, whether wrecked or not) that:
- (a) is a danger to the safe navigation of vessels, or
  - (b) is moored, berthed or placed in contravention of the marine legislation.

but not including anything lawfully erected in, over or on navigable waters.

- (2) The Minister may direct the owner of or person responsible for an obstruction to navigation to remove the obstruction within such time as is specified in the notice. Any such owner or person who fails, without reasonable excuse, to comply with the direction is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) The Minister may remove, or authorise the removal of, any obstruction to navigation in such manner as the Minister thinks fit (whether or not the Minister has issued a direction for its removal under this section). The obstruction may be removed by its destruction if it is reasonable to do so in the circumstances.
- (4) The Minister may, subject to and in accordance with the regulations, dispose of anything removed under this section.

- (5) The Minister may recover as a debt in a court of competent jurisdiction the reasonable costs and expenses incurred by the Minister in the exercise of his or her powers under this section from the owner of or person responsible for the obstruction to navigation.

**17 Minister's approval required for aquaculture leases over navigable waters**

- (1) The Minister administering the *Fisheries Management Act 1994* may not grant or renew an aquaculture lease over navigable waters under Part 6 of that Act without the approval of the Minister administering this Act.
- (2) The grounds on which the Minister may refuse to give that approval are that:
- (a) it is in the public interest that the area concerned remain available for the navigation of vessels rather than be used for aquaculture. or
  - (b) sufficient provision has not been made to ensure that structures on the leased area are not, and will not become, a danger to the safe navigation of vessels.
- (3) This section does not apply to:
- (a) the renewal of a lease to which the lessee is entitled under the *Fisheries Management Act 1994*. or
  - (b) the grant or renewal of a lease of a class excluded from this section by notice given to the Minister administering that Act by the Minister administering this Act.

**18 Regulation of organised aquatic activities in navigable waters**

- (1) In this section:
- aquatic activity* means:
- (a) a race or exhibition involving vessels or equipment that is conducted in or on any navigable waters, or
  - (b) any other activity involving vessels or equipment that is conducted in or on any navigable waters and that restricts the availability of those waters for normal use by the public.
- conduct* an aquatic activity includes promote or organise the activity.

- (2) The regulations may prohibit or regulate the conduct of aquatic activities.
- (3) Any such regulation may prohibit the conduct of aquatic activities without a licence or other approval from the Minister.

### **19 Regulations relating to safety of navigation**

- (1) The regulations may make provision for or with respect to the safety of navigation.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the operation of vessels in navigable waters, and
  - (b) vessels or objects that have been abandoned in navigable waters, and
  - (c) the activities of persons that affect navigation (including persons carried on vessels, surfboard riders, divers or other persons in or on navigable waters), and
  - (d) navigation aids, and
  - (e) cables, wires, pipes or other material crossing over or under any navigable waters, and their supporting structures, and
  - (f) the safety of port operations relating to vessels, passengers and cargo.
- (3) The regulations may provide that a person may apply to the Administrative Decisions Tribunal for a review of a decision made in respect of the person under this Part or the regulations under this Part in relation to matters requiring a licence or other approval of the Minister.

**Note.** Part 7A of the *Ports Corporatisation and Waterways Management Act 1995* deals with the licensing or other regulation of the occupation of navigable waters by vessels, floating objects and structures (including the mooring of vessels).

## Part 3 Boating safety—Alcohol and drugs

### 20 Definitions

- (1) In this Part:

*drug* has the same meaning as it has in the *Traffic Act 1909*.

*juvenile* means a person who is not more than 16 years of age.

*major offence* means:

- (a) the crime of murder or manslaughter or an offence against section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*, being a crime or offence by which the death of or bodily harm to another person was caused by or arose out of the operation of a vessel, or
- (b) an offence against this Part.

*operate a vessel includes:*

- (a) being towed by a vessel, whether on a water ski, aquaplane, paraflying device or other device, or
  - (b) act as observer on a vessel, for safety purposes, of any person being towed by the vessel.
- (2) A reference in this Part to this Part includes a reference to Schedule 1.
- (3) A reference in this Part to a major offence includes a reference to any such offence committed before the commencement of this Part.

**Note.** A reference to a major offence includes an offence against Part 2 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* committed before the repeal of that Act by this Act (see clause 3 of Schedule 4).

### 21 Application of Part

- (1) This Part applies to all vessels. However, this Part does not apply to a surfboard or similar device used by a swimmer or surfer to support the swimmer or surfer in the water (other than a sailboard or a device being towed by a vessel).
- (2) This Part applies to a vessel only while the vessel is underway.

- (3) This Part applies to all waters, whether or not they are navigable waters.

## **22 Prescribed concentrations of alcohol**

A reference in this Part to:

- (a) the special range prescribed concentration of alcohol is a reference to 0.02 grams or more, but less than 0.05 grams, of alcohol in 100 millilitres of blood, and
- (b) the low range prescribed concentration of alcohol is a reference to 0.05 grams or more, but less than 0.08 grams, of alcohol in 100 millilitres of blood, and
- (c) the middle range prescribed concentration of alcohol is a reference to a concentration of 0.08 grams or more, but less than 0.15 grams. of alcohol in 100 millilitres of blood. and
- (d) the high range prescribed concentration of alcohol is a reference to a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood.

## **23 Operating vessel under influence of alcohol or other drug**

- (1) A person must not operate a vessel in any waters while under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

- (2) The master of a vessel must not permit a person to operate in any waters a vessel in the charge of the master if the master is aware. or has reasonable cause to believe that the person is under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

- (3) If a person is charged with an offence under this section:
- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information, and

- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
  - (i) a drug described in the information, or
  - (ii) a combination of drugs any one or more of which was or were described in the information.

**24 Operating vessel or supervising juvenile with prescribed concentration of alcohol in blood**

- (1) A person who operates a vessel in any waters while there is present in the person's blood the special range prescribed concentration of alcohol is guilty of an offence if:
  - (a) the person is under 18 years of age, or
  - (b) the person operates the vessel for commercial purposes.
- (2) A person who operates a vessel in any waters while a Concentration of 0.05 grams or more of alcohol in 100 millilitres of blood is present in the person's blood is guilty of an offence.
- (3) A person who:
  - (a) is required by or under this Act to supervise a juvenile operator of a motor vessel. and
  - (b) permits the juvenile to operate the motor vessel in any waters while a concentration of 0.05 grams or more of alcohol in 100 millilitres of blood is present in the blood of the person.

is guilty of an offence.
- (4) A person who is guilty of an offence under this section is liable. if there is present in the person's blood the special range or low range prescribed concentration of alcohol:
  - (a) in the case of a first offence—to a penalty not exceeding 5 penalty units, or
  - (b) in the case of a second or subsequent offence—to a penalty not exceeding 10 penalty units.



- 
- (5) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the middle range prescribed concentration of alcohol, to a penalty not exceeding 10 penalty units, or to imprisonment for a period not exceeding 6 months, or both.
- (6) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the high range prescribed concentration of alcohol:
- (a) in the case of a first offence—to a penalty not exceeding 15 penalty units, or to imprisonment for a period not exceeding 9 months, or both, or
  - (b) in the case of a second or subsequent offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 12 months, or both.
- (7) For the purposes of this section, if a person is guilty of an offence under this section, that offence:
- (a) is a second or subsequent offence under this section if and only if, within the period of 5 years immediately before being convicted of the offence, the person was convicted of a major offence, and
  - (b) in any other case is to be treated as a first offence.

## **25 Double jeopardy**

- (1) A person is not liable to be convicted (in respect of the same act or omission) of both:
- (a) an offence under section 23 of operating a vessel while under the influence of alcohol, and
  - (b) an offence under section 24.
- (2) A person is not liable to be convicted (in respect of the same act or omission) of both:
- (a) an offence under section 23 of operating a vessel while under the influence of alcohol, and
  - (b) an offence under clause 12 of Schedule 1 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine.

## 26 Application of section 556A of Crimes Act 1900

- (1) The provisions of section 556A (Power to permit release of offenders) of the *Crimes Act 1900* do not apply to or in respect of a person who is charged with an alcohol or drug offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge (whether such period commenced before or after the commencement of this section), the provisions of that section are or have been applied to or in respect of the person in respect of a charge for another alcohol or drug offence (whether of the same or a different kind).
- (2) In this section:  
*alcohol or drug offence* means an offence under section 23 or 24 or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

## 27 Cancellation and suspension of marine safety licences

- (1) If a person is convicted of an offence against this Part in relation to the operation of a vessel and, at the time the offence was committed, the person was required by or under this Act to hold a marine safety licence in order to operate the vessel, the court may, by order:
  - (a) cancel or suspend the licence, and
  - (b) disqualify the convicted person from holding or obtaining a marine safety licence for a period specified by the court.
- (2) The holder of a marine safety licence referred to in subsection (1) who is convicted of an offence under this Part (*the convicted person*) is automatically disqualified from holding or obtaining such a licence for a period of:
  - (a) 3 months—if during the period of 5 years before the conviction he or she has not been convicted of any other major offence, or
  - (b) 12 months—if during the period of 5 years before the conviction he or she has been convicted of any other major offence.
- (3) However, the court before which the person is convicted may order that the convicted person be disqualified under subsection (2) for a shorter period specified in the order.

- (4) Any disqualification under this section is in addition to any penalty imposed for the offence.

**28 Breath analysis and other related provisions**

Schedule 1 has effect.

## **Part 4 Marine safety licences**

### **Division 1 General**

#### **29 Types of marine safety licences**

For the purposes of this Act, there are the following types of marine safety licences:

- (a) vessel registration certificate—being a marine safety licence for a vessel that is required by Division 2 of Part 5,
- (b) survey certificate—being a marine safety licence for a commercial vessel that is required by Division 3 of Part 5,
- (c) surveyor's accreditation—being a marine safety licence that is required by a surveyor of vessels for the purpose of giving a certificate under section 55.
- (d) certificate of competency—being a marine safety licence for the master or specified crew of a commercial vessel that is required by Division 4 of Part 5,
- (e) boat driving licence—being a marine safety licence to operate a power-driven recreational vessel that is required by Division 5 of Part 5.
- (f) marine pilot's licence—being a marine safety licence to act as pilot of a vessel in any port that is required by Part 6.
- (g) marine pilotage exemption certificate—being a marine safety licence exempting a vessel from compulsory pilotage under Part 6.
- (h) any other licence or approval required by or under the marine legislation that is declared by the regulations to be a marine safety licence (whether for the purposes of all or only specified provisions of this Act).

### **Division 2 Grant of marine safety licences and related matters**

#### **30 Grant of licences**

- (1) Marine safety licences are to be granted by the Minister.
- (2) The Minister may approve or refuse applications for marine safety licences in accordance with this Act and the regulations.

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**31 Conditions of licences**

- (1) Marine safety licences may be granted unconditionally or subject to conditions.
- (2) Any such condition may relate to any matter concerning marine safety, including insurance coverage, or indemnities, for damage or injury caused in connection with the activity to which the licence relates.
- (3) After granting a marine safety licence, the Minister may, by notice in writing to the holder of the licence:
  - (a) impose conditions or further conditions on the licence, or
  - (b) vary or revoke any of the conditions to which the licence is subject.
- (4) A marine safety licence is also subject to such conditions as are prescribed by the regulations. Any such condition cannot be varied or revoked by the Minister under this section.

A condition under this section may restrict or limit an activity authorised by the licence.

**Note.** A condition of the registration of a commercial vessel may exempt the vessel from the requirement for a survey certificate (see section 53 (3) (b)) or from the requirement for its master or crew to hold a certificate of competency (see section 57 (2) (c)).

**32 Offence to contravene conditions of licence**

The holder of a marine safety licence must not, without lawful excuse, contravene any condition to which the licence is subject.

Maximum penalty: 50 penalty units.

**33 Duration of licence**

- (1) A marine safety licence remains in force (unless sooner cancelled) for the period specified in the licence or (if no such period is specified) until cancelled.
- (2) A marine safety licence is not in force during any period it is suspended.

**Note.** See clause 4 of Schedule 4 with respect to duration of certain former licences.

**34 Fees for licences**

- (1) The fees payable in respect of applications for licences are to be determined by the Minister.
- (2) Any such fee is not to exceed the maximum amount prescribed by the regulations.

**35 Offences relating to licences**

- (1) A person must not pretend to be the holder of a marine safety licence.
- (2) A person must not, for the purpose of obtaining a marine safety licence, provide any information or produce any document that the person knows is false or misleading in a material particular.  
  
Maximum penalty: 50 penalty units.

**36 Special provision relating to marine pilot's licence or marine pilotage exemption certificate**

A marine pilot's licence or marine pilotage exemption certificate must state, by way of condition, the ports or parts of ports (including berths) to which it applies.

**37 Regulations relating to licences**

- (1) The regulations may make provision for or with respect to marine safety licences.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the classes of a particular type of licence.
  - (b) restrictions on the authority conferred by a particular type of licence or class of licence, whether by reference to the length of the vessel concerned or otherwise.
  - (c) applications for licences.
  - (d) the eligibility of applicants (including age, qualifications, knowledge, experience, training and health).
  - (e) the testing or examination of applicants or the holders of licences to determine whether they are or continue to be eligible to hold a licence.

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- (f) the continuing education and training of holders of licences,
  - (g) the grant of further licences after the expiry of licences,
  - (h) the granting of different types of licences in the same document,
  - (i) the replacement of licences that are lost, destroyed or defaced,
  - (i) the return of licences that require alteration,
  - (k) fees payable in connection with licences and applications for licences.

### **Division 3 Suspension or cancellation of marine safety licences**

#### **38 Suspension or cancellation of licences by Minister**

- (1) The Minister may suspend or cancel a marine safety licence:
  - (a) in accordance with section 111, or
  - (b) if the person concerned is not qualified, or is no longer qualified to hold the licence, or
  - (c) in such other circumstances as are prescribed by the regulations.
- (2) The Minister may at any time remove the suspension of a marine safety licence (except a suspension imposed by a court).

#### **39 Suspension or cancellation of licences by court in connection with offence**

- (1) A court that convicts the holder of a marine safety licence of a marine safety offence in connection with activities to which the licence relates may, by order:
  - (a) cancel or suspend the licence, and
  - (b) disqualify the convicted person from holding or obtaining such a licence for a period specified by the court.
- (2) Any disqualification under this section is in addition to any penalty imposed for the offence.

- (3) In this section, a *marine safety offence* means any offence relating to the operation of a vessel that causes the death or injury of a person or damage to property, or that causes a risk of any such death, injury or damage.

**Note.** A licence may also be suspended or cancelled in connection with an alcohol or drug related boating offence—see section 27.

#### **40 Return of suspended or cancelled licence**

The holder of a marine safety licence suspended or cancelled under this Act must deliver the licence to the Minister as soon as practicable after the licence is suspended or cancelled.

Maximum penalty: 10 penalty units.

### **Division 4 Review by Administrative Decisions Tribunal**

#### **41 Definition of “Tribunal”**

In this Division *Tribunal* means the Administrative Decisions Tribunal.

#### **42 Rights of review**

A person who is dissatisfied with any of the following decisions under this Act may apply to the Tribunal for a review of the decision:

- (a) the refusal to grant a marine safety licence to the person.
- (b) the imposition of conditions on the person’s marine safety licence (otherwise than by regulation).
- (c) the suspension or cancellation of the person's marine safety licence (otherwise than by a court).

#### **43 Failure to make decision**

For the purposes of this Division, an application for the grant of a marine safety licence is taken to have been refused if the licence is not granted within 60 days (or such other period as is prescribed by the regulations) after the application was duly made.



## **Part 5 Requirements for vessels**

### **Division 1 Unsafe vessels**

#### **44 Definition of “unsafe vessel”**

A vessel is an *unsafe vessel* for the purposes of this Division if, because of:

- (a) the condition or equipment of the vessel, or
- (b) the manner or place in which cargo or equipment on the vessel is stowed or secured, or
- (c) the nature of the cargo, or
- (d) the overloading of the vessel with persons or cargo (including the submergence of the vessel’s load line), or
- (e) the number or qualifications of its crew. or
- (f) any other reason.

the operation of the vessel is a danger to human life.

#### **45 Owner or master not to operate unsafe vessel**

- (1) The owner of a vessel must not operate the vessel if the owner knows that it is an unsafe vessel.

Maximum penalty: 100 penalty units or 2 years imprisonment. or both.

- (2) The master of a vessel must not operate a vessel if the master knows that it is an unsafe vessel.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (3) The fact that an unsafe vessel has been detained under this Division does not prevent a prosecution for an offence against this section.

#### **46 Detention of unsafe vessels**

- (1) The Minister may order a vessel to be provisionally detained if it appears to the Minister to be an unsafe vessel. The vessel may not be provisionally detained unless it is in State waters or in any other part of the State.

- (2) When a vessel has been ordered to be provisionally detained the following provisions apply:
- (a) The Minister must, as soon as practicable, cause to be served on the master or owner of the vessel a notice of the detention and a written statement of the reasons for the detention.
  - (b) The Minister is required to appoint an investigator to investigate the vessel in accordance with Part 8 and report to the Minister.
  - (c) The Minister may, on receipt of the report:
    - (i) order its release, or
    - (ii) if of the opinion that it is an unsafe vessel, order it to be finally detained either absolutely or until the performance of such conditions as the Minister considers necessary to ensure that the vessel is not an unsafe vessel.
  - (d) The Minister may at any time (and without any report) order the release of the vessel (with or without conditions) if satisfied that the vessel is not an unsafe vessel.
  - (e) Before an order for final detention is made, the Minister must cause a copy of the report to be served on the master or owner of the vessel.
  - (f) The Minister must cause a copy of an order for final detention to be served on the owner and master of the vessel (if their identity and whereabouts are known to the Minister).
- (3) When any order for the final detention of a vessel is made, the vessel must not be released until the Minister is satisfied that its further detention is no longer necessary, and orders its release.

**Note.** Section 134 provides that an instrument required by this section to be served on the owner or master of a vessel may be served instead on the agent of the vessel.

#### **47 Operating detained vessel**

- (1) The owner of a vessel must not cause or allow the vessel to be taken on a voyage if the owner knows that the vessel has been detained under this Division and has not been duly released.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (2) The master of a vessel must not take the vessel on a voyage if the master knows that the vessel has been detained under this Division and has not been duly released.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (3) An agent for a vessel that has been detained under this Division and has not been duly released must not assist the owner or master of the vessel to contravene this section.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (4) A person must not obstruct or fail to comply with any reasonable requirement of a person appointed by the Minister to take charge of a vessel detained under this Division in connection with the exercise of that person's functions.

Maximum penalty: 20 penalty units.

#### **48 Costs of detention**

If a vessel is detained under this Division without reasonable cause, the State or the Minister is liable to pay the owner of the vessel compensation for any loss or damage resulting from the detention.

### **Division 2 Vessel registration**

#### **49 Vessels requiring registration**

- (1) All commercial and recreational vessels that operate in State waters are required to be registered under this Act unless exempt from registration.
- (2) A vessel that is required to be registered under this Act is a *registrable vessel* for the purposes of this Act.

#### **50 Vessels exempt from registration**

- (1) A vessel (other than a recreational vessel or an Australian fishing vessel) is exempt from registration under this Act if the vessel is in State waters and is proceeding on an interstate voyage or an overseas voyage. An Australian fishing vessel is exempt from registration under this Act if it is in State waters and is proceeding on an overseas voyage.

- (2) A vessel is exempt from registration under this Act if the vessel:
  - (a) is not ordinarily operated in State waters, and
  - (b) has been in State waters for less than 3 months, and
  - (c) is registered under the law of another State or a Territory, or of another country, and is operated in accordance with that law.
- (3) A vessel is exempt from registration under this Act if it is of a class exempted by the regulations.
- (4) A vessel is exempt from registration under this Act if the Minister exempts it from registration by order in writing given to the owner or master of the vessel.

#### **51 Offence to operate unregistered vessel**

- (1) The owner of a registrable vessel must not operate the vessel in State waters unless the vessel is registered under this Act and the owner is the holder of the vessel registration certificate.
- (2) The master of a registrable vessel must not operate the vessel in State waters if the vessel is not registered under this Act or is being operated in contravention of any conditions of its vessel registration certificate. It is a defence to a prosecution under this subsection if the master establishes that he or she did not have any reasonable cause to believe that the vessel was not registered or was being so operated.

Maximum penalty: 50 penalty units.

**Note:** The registration of a vessel is a marine safety licence—Part 4 deals with the grant of, and other matters relating to, any such licence. A contravention of the conditions of such a licence by the owner is an offence—see section 32.

#### **52 Additional grounds for refusal, suspension or cancellation of registration**

In addition to any other ground on which the Minister may refuse to register a vessel or may suspend or cancel its registration, the Minister may do so on the following grounds:

- (a) the Minister may do so on environmental grounds, that is, the vessel causes or will cause unreasonable noise, air or other pollution because of its design, construction or equipment.

- (b) the Minister may do so on aesthetic grounds, that is, the vessel is or will be an eyesore in the port or other area in which it operates or is moored or in which it is proposed to operate or be moored.

### **Division 3 Survey certificates for commercial vessels**

#### **53 Offence to operate commercial vessel without survey certificate**

- (1) The owner of a registrable vessel that is a commercial vessel must not operate the vessel in State waters unless the vessel has a survey certificate under this Act.

Maximum penalty: 100 penalty units.

- (2) The master of a registrable vessel that is a commercial vessel must not operate the vessel in State waters if the vessel does not have a survey certificate under this Act or is being operated in contravention of any conditions of its survey certificate. It is a defence to a prosecution under this subsection if the master establishes that he or she did not have any reasonable cause to believe that the vessel did not have such a survey certificate or was being so operated.

Maximum penalty: 100 penalty units.

- (3) A survey certificate is not required for a commercial vessel if:
- (a) the vessel is of a class exempted by the regulations, or
  - (b) the Minister exempts the vessel by order in writing given to the owner or master of the vessel or by a condition of its registration under this Act.

**Note.** A survey certificate for a vessel is a marine safety licence—Part 4 deals with the grant of, and other matters relating to, any such licence. A contravention of the conditions of such a licence by the owner is an offence—see section 32.

#### **54 Grant of survey certificate and survey schedule for commercial vessels**

- (1) A survey certificate is not to be granted for a vessel unless the Minister is satisfied that the vessel complies with relevant requirements as to design, construction and equipment and that the vessel is safe to operate.

- (2) Without limiting subsection (1), the Minister may refuse to grant a survey certificate for a vessel if the Minister decides to refuse any application for the registration of the vessel.
- (3) The Minister is to issue a survey schedule with a survey certificate and require the vessel, as a condition of the survey certificate, to be inspected in accordance with that schedule to ensure that it continues to comply with relevant requirements and to be safe to operate.

#### **55 Accredited surveyors of commercial vessels**

- (1) The Minister may be satisfied that a vessel complies with relevant requirements as to design, construction and equipment and that the vessel is safe to operate by relying on a certificate to that effect from an appropriately accredited surveyor under this Act.
- (2) The Minister, the State and any person acting on behalf of the Minister or the State do not incur any liability as a consequence of the Minister satisfying himself or herself of a matter by relying on a certificate referred to in this section.

**Note.** A surveyor's accreditation is a marine safety licence—Part 4 deals with the grant of, and other matters relating to, any such licence.

#### **56 Regulations relating to commercial vessels—construction, survey and other matters**

- (1) The regulations may make provision for or with respect to the construction, design, equipment, deck or load lines, survey, identification and inspection of, and any other matter relating to, commercial vessels operating in State waters.
- (2) Any such regulation extends to a commercial vessel while it is operating outside State waters if it is proceeding on a voyage that is not an overseas or interstate voyage.

### **Division 4 Certificates of competency for master and specified crew of commercial vessels and safety manning**

#### **57 Vessels to which this Division applies**

- (1) This Division applies to registrable vessels that are commercial vessels operating in State waters. This Division extends to such a vessel while it is operating outside State waters if it is proceeding on a voyage that is not an overseas or interstate voyage.

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- (2) This Division does not apply to:
- (a) vessels while hired or used for recreational or sporting purposes and not hired or used for any commercial purpose, or
  - (b) vessels exempted by the regulations, or
  - (c) vessels exempted by the Minister by order in writing given to the owner or master of the vessel or by a condition of its registration under this Act.

### **58 Persons required to hold certificates of Competency**

The following persons are required to hold an appropriate certificate of competency:

- (a) the master of a commercial vessel to which this Division applies,
- (b) any member of the crew of such a vessel who is required to do so by the regulations.

### **59 Offence for failure to hold appropriate certificate of competency**

- (1) A person must not operate a commercial vessel to which this Division applies as its master if the person is required to hold a certificate of competency and the person does not hold an appropriate certificate under this Act.
- (2) A person must not act as a crew member of such a commercial vessel if the person is required to hold a certificate of competency and the person does not hold an appropriate certificate under this Act.
- (3) The owner of a vessel must not operate the vessel if this section is contravened by its operation.
- (4) The master of a vessel must not operate the vessel if this section is contravened by its operation. It is a defence to a prosecution under this subsection if the master establishes that he or she did not have any reasonable cause to believe that the vessel was being so operated.

Maximum penalty: 100 penalty units.

**Note.** A certificate of competency is a marine safety licence—Part 4 deals with the grant of, and other matters relating to, any such licence.

#### **60 Minimum complement of vessels**

- (1) The regulations may make provision for or with respect to the minimum number of duly qualified and other crew of specified designations to be carried in a commercial vessel to which this Division applies.
- (2) Any such regulation may provide for determinations to be made by a safety crewing committee constituted in accordance with the regulations.
- (3) For the purposes of this section, the master of a vessel is taken to be a member of the crew of the vessel.

#### **61 Detention of vessels operated contrary to this Division**

A vessel that is operated in contravention of this Division is taken to be an unsafe vessel for the purposes of section 46 (Detention of unsafe vessels) and may be detained under that section.

### **Division 5 Boat driving licences for power-driven recreational vessels**

#### **62 Vessels to which Division applies**

- (1) This Division applies to any power-driven recreational vessels operating in or from State waters, other than vessels exempted by the regulations.
- (2) In this Division *recreational vessel* includes a commercial vessel while hired or used for recreational or sporting purposes and not hired or used for any commercial purpose.

#### **63 Offence to operate recreational vessel without boat driving licence**

A person must not operate a recreational vessel to which this Division applies as its master if the person does not hold a boat driving licence under this Act.

Maximum penalty: 15 penalty units,

**Note.** A boat driving licence is a marine safety licence—Part 4 deals with the grant of, and other matters relating to, any such licence.



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**64 Exemption from requirement to hold boat driving licence**

- (1) A person is exempt from the requirement to hold a boat driving licence if the person:
  - (a) is not ordinarily resident in this State, and
  - (b) has been operating power-driven recreational vessels in State waters for less than 3 months, and
  - (c) is licensed under the law of another State or a Territory and is operating the vessel in accordance with the conditions of that licence.
- (2) A person is exempt from the requirement to hold a boat driving licence if the person:
  - (a) is the holder of a certificate of competency as a master, first mate, second mate or coxswain (or other crew member prescribed by the regulations) under this Act, or
  - (b) is exempted by the regulations, or
  - (c) is exempted by the Minister by order in writing given to the person.

**Division 6 Miscellaneous provisions relating to vessels****65 Recognised marine safety licences**

- (1) This section applies to a marine safety licence that is a vessel registration certificate, a survey certificate or a certificate of competency required to be held by this Part.
- (2) A marine safety licence under this Act may take the form of the grant of recognition for a marine safety licence (or similar licence) granted under the law of the Commonwealth, of another State or a Territory or of another country.
- (3) In that case:
  - (a) a reference in this Act to the grant of the relevant marine safety licence is a reference to the grant of recognition of the licence, and
  - (b) a reference in this Act to the cancellation or suspension of the relevant marine safety licence is a reference to the withdrawal of recognition indefinitely or for a period, and

- (c) a reference in this Act to the disqualification of the holder of the relevant marine safety licence includes a reference to the disqualification of the person from having a licence recognised.

**66 Mutual recognition of marine safety licences**

- (1) The regulations may provide for automatic recognition for any marine safety licence to which section 65 applies.
- (2) Any such recognition is subject to compliance with the conditions of the licence and of any law of the jurisdiction in which the licence was issued that relates to authority conferred by the licence.

**67 Regulation of marine safety equipment or facilities for recreational or other vessels**

- (1) The regulations may require the installation or carriage on recreational or other vessels of marine safety equipment or facilities.
- (2) The requirements of any such regulation may extend to the wearing of safety equipment by water skiers and others engaged in similar aquatic activities.

**68 Regulation of design and construction of recreational vessels**

The regulations may make provision for or with respect to the design and construction of recreational vessels.

**69 Regulation of passengers**

The regulations may make provision for or with respect to:

- (a) the maximum number of passengers or other persons to be carried on vessels, or
- (b) the conduct of passengers on vessels, including the removal of passengers from vessels.

**70 Vessel identification etc**

The regulations may require identifying and other information to be displayed on vessels (including the display of particulars of registration of vessels or the maximum carrying capacity of vessels).

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## Part 6 Pilotage

### Division 1 Preliminary

#### 71 Definitions

(1) In this Part:

*pilotage* means the conduct of a vessel by a pilot as follows:

- (a) inward pilotage, that is, the pilotage of a vessel entering into a pilotage port.
- (b) outward pilotage, that is, the pilotage of a vessel leaving a pilotage port.
- (c) harbour pilotage, that is, the pilotage of a vessel being moved within a pilotage port.

*pilotage port* means (subject to subsection (2)) any of the following ports:

- (a) Sydney Harbour,
- (b) Botany Bay,
- (c) Newcastle,
- (d) Port Kembla,
- (e) Yamba,
- (f) Eden.

*pilotage service provider* means:

- (a) in relation to pilotage services provided by a Port Corporation under an operating licence under Division 3 of Part 2 of the *Ports Corporatisation and Waterways Management Act 1995*—the Port Corporation, or
- (b) in relation to pilotage services provided by a contractor under a contract under section 26A of the *Ports Corporatisation and Waterways Management Act 1995*—the contractor, or
- (c) in relation to any other pilotage services—the Minister.

- (2) The regulations may provide that any other port is a pilotage port for the purposes of this Part or that a port is no longer such a port.

## **Division 2 Prohibition against unauthorised marine pilots**

### **72 Marine pilots in any port to be licensed**

A person must not act as the marine pilot of a vessel in any port unless the person is the holder of a marine pilot's licence under this Act and the licence applies to that port.

Maximum penalty: 100 penalty units.

**Note.** A marine pilot's licence is a marine safety licence—Part 4 deals with the grant and other matters relating to any such licence.

### **73 Marine pilots in pilotage ports to be provided by pilotage service provider**

A person must not act as the marine pilot of a vessel in a pilotage port unless the person has been assigned by the pilotage service provider to act as a marine pilot in that pilotage port.

Maximum penalty: 100 penalty units.

## **Division 3 Pilotage**

### **74 Pilotage compulsory in pilotage ports**

- (1) Pilotage is compulsory in every pilotage port.
- (2) The master of a vessel must not enter, leave or move within a pilotage port with the vessel before taking on board the marine pilot made available by the pilotage service provider to conduct the vessel on its movement into the port, out of the port or within the port.

Maximum penalty: 100 penalty units.

- (3) This section continues to apply even though a marine pilot has deferred pilotage under this Division.

**Note.** Pilotage charges are imposed by Part 5 of the *Ports Corporatisation and Waterways Management Act 1995*.

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**75 Vessels exempted from compulsory pilotage**

- (1) Pilotage is not compulsory in a pilotage port, and section 74 does not apply, in respect of the following vessels:
  - (a) a vessel whose master is the holder of a marine pilotage exemption certificate under this Act that applies to that port and vessel,
  - (b) a recreational vessel,
  - (c) a vessel less than 30 metres in length,
  - (d) a seaplane,
  - (e) a vessel of any class declared by the regulations to be an exempt vessel for the purposes of this Part,
  - (f) a particular vessel declared to be an exempt vessel for the purposes of this Part by order of the Minister given to the owner or master of the vessel.
- (2) Despite subsection (1), pilotage is compulsory, and section 74 applies, in respect of a vessel (whether or not the master is the holder of a marine pilotage exemption certificate under this Act) if pilotage is declared to be compulsory by the regulations or by order of the Minister given to the owner or master of the vessel.

**Note.** Part 4 deals with the licensing of pilots and the issue of pilotage exemption certificates.

**76 Deferral of pilotage generally**

- (1) When a vessel is unable, or will in the opinion of the master of the vessel be unable, to leave its berth or place of anchorage in a pilotage port within 1 hour after the time stated for so leaving in the application by the owner or master for a marine pilot, the marine pilot attending may defer pilotage and cease attendance.
- (2) When a vessel is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within 1 hour after the time stated for so entering in the application by the owner or master for a marine pilot, the marine pilot attending may defer pilotage and cease attendance.

### **77 Deferment of pilotage for safety reasons**

- (1) If a marine pilot made available for pilotage considers that a vessel should not enter a pilotage port or should not leave its berth or place of anchorage for any reason related to marine safety, the marine pilot may direct the master of the vessel not to enter the pilotage port or not to leave the berth or place of anchorage pending the decision of the harbour master of the port.
- (2) The master of a vessel must comply with any such direction.  
Maximum penalty: 100 penalty units.
- (3) A marine pilot who gives any such direction may defer pilotage and cease attendance.

### **78 Duties of master in connection with pilotage**

- (1) Before pilotage of a vessel begins, the master of the vessel must:
  - (a) test the operation of the navigation, propulsion and steering systems of the vessel (including any parts of such systems as the regulations require) and record the results of those tests, and
  - (b) inform the marine pilot of anything of which the master is aware that is likely to affect the safe operation of the vessel.
- (2) The master of a vessel under pilotage must:
  - (a) ensure that any order given with the master's authority by the marine pilot is carried out, and
  - (b) give the marine pilot such information as the marine pilot may require for the safe navigation of the vessel.
- (3) The master of a vessel must not give to a marine pilot who requires information for the navigation of the vessel any information that the master knows is false or misleading.
- (4) The obligation of a master under subsection (1) (a) extends to a vessel that is exempt from pilotage because the master is the holder of a marine pilotage exemption certificate under this Act.  
Maximum penalty: 100 penalty units.

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**79 Liability of master and owner of vessel under pilotage**

- (1) A person who is made available as a marine pilot by the pilotage service provider and who has the conduct of a vessel is subject to the authority of the master of the vessel. The master is not relieved from responsibility for the conduct and navigation of the vessel merely because the vessel is under pilotage.
- (2) The master and the owner of a vessel being navigated under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the vessel or by any fault of navigation of the vessel in the same manner as if pilotage were not compulsory.

**80 Immunity of State, marine pilots, pilotage service provider and others**

- (1) Neither the State, nor the Minister, nor a pilotage service provider is liable for any loss or damage that is attributable to the negligence of any person made available as a marine pilot by the pilotage service provider while the person is acting as a marine pilot.
- (2) A person made available as a marine pilot by the pilotage service provider is not personally liable in pecuniary damages for any loss or damage attributable to the person's negligence while the person is acting as a marine pilot.

**81 Offence for marine pilot to endanger vessel**

A marine pilot of a vessel who, by any wilful act or omission, endangers the vessel or its crew is guilty of an offence.

Maximum penalty: 100 penalty units.

**82 Provisions to apply when vessel under pilotage at request of owner**

If a vessel (not required to be under pilotage) is under pilotage at the request of its owner, this Division applies to that vessel and its master and owner for the purposes of that pilotage.

### **83 Regulations**

The regulations may make provision for or with respect to pilotage and, in particular, for or with respect to:

- (a) the administration of the pilotage service of a pilotage service provider and the duties of marine pilots and other officers in that service, and
- (b) the specification of when inward, outward and harbour pilotage begins and ends, and
- (c) the duties of masters of vessels in connection with pilotage (including the duties of masters of vessels who are exempt from compulsory pilotage in connection with the movement of the vessels), and
- (d) the records and reports in connection with pilotage to be made and furnished by masters of vessels and marine pilots.



## Part 7 Harbour masters

### 84 Definition of “port”

In this Part, *port* includes any particular area of navigable waters that the Minister considers requires a harbour master for the purposes of marine safety.

### 85 Appointment of harbour masters

- (1) The Minister may appoint a Departmental officer to be the harbour master for any port.
- (2) The Minister may appoint a member of the staff of a Port Corporation to be the harbour master for any port.
- (3) Two or more persons cannot be appointed as harbour masters for the same port.
- (4) The Minister may revoke the appointment of a harbour master at any time.
- (5) A person ceases to be a harbour master on ceasing to be a Departmental officer or a member of the staff of a Port Corporation, as the case requires.
- (6) In this section *Departmental officer* means:
  - (a) a member of the staff of any Department administered by the Minister, or
  - (b) a member of the staff of the Waterways Authority.

### 86 Appointment of persons to exercise functions of harbour masters

- (1) A harbour master may appoint any person to exercise, in relation to the port for which he or she is the harbour master, the harbour master's functions under the marine legislation. The power to make an appointment under this section is subject to any directions given to the harbour master by the Minister.
- (2) An appointment under this section may be general or may apply only to the exercise of such functions as are specified in the instrument of appointment.

- (3) A person appointed under this section has all the functions specified in the instrument of appointment.
- (4) The appointment under this section of a person to exercise any of the functions of a harbour master does not prevent that harbour master from exercising those functions.
- (5) The Minister may also appoint a person to exercise the functions of a harbour master under the marine legislation in relation to a port (whether or not a harbour master has been appointed for the port).

#### **87 General functions of harbour master**

- (1) A harbour master has, in relation to the port for which he or she is the harbour master, such functions as are conferred by the marine legislation.
- (2) The functions of a harbour master may be limited by regulation or by the Minister (in and by the instrument of appointment or by a subsequent instrument given to the harbour master).
- (3) The exercise of the functions of a harbour master are subject to any directions given from time to time to the harbour master by the Minister.

#### **88 General powers of harbour master in relation to vessels**

- (1) The harbour master of any port may direct and control the following:
  - (a) the time and manner in which any vessel may enter or leave the port.
  - (b) the navigation and other movements of any vessel within the port or any part of the port.
  - (c) the position where and the manner in which any vessel may anchor or be secured within the port.
  - (d) the time and manner of the taking in or discharging by any vessel within the port of cargo, stores, fuel, fresh water or water ballast.
  - (e) the securing or removal of any vessel within the port in, from or to any position as the harbour master thinks fit.

- (2) The harbour master of any port may, as a condition of allowing a vessel to be anchored or secured within a pilotage port, direct that a marine pilot remain on board the vessel while it is so berthed or anchored (whether or not pilotage is compulsory).
- (3) A harbour master must not give any direction under this section that would result in a contravention of any law relating to the area or vessel concerned or that would impede the proper administration of the customs or quarantine services within the port.

**89 Powers of harbour master to direct dangerous vessels not to enter or move within, or to leave, port or part of port**

- (1) The harbour master of any port may give directions:
  - (a) prohibiting the entry into, or movement out of, the port or any part of the port, or
  - (b) requiring the removal from the port or any part of the port. of any vessel that the harbour master has reasonable cause to believe is in imminent danger of sinking in the port and causing an obstruction to navigation or is in imminent danger of causing serious damage to the marine environment or property in the port.
- (2) A harbour master is not to give a direction under this section that would endanger the life of any person on the vessel.
- (3) A direction under this section may be revoked by order of the Minister or the Supreme Court.

**90 Harbour master may carry out direction**

- (1) If:
  - (a) there is no person on board any vessel to whom a harbour master may give a direction under this Part and there are reasonable grounds for the harbour master to act urgently without giving the direction, or
  - (b) a direction under this Part is not complied with,the harbour master may cause the vessel to be dealt with as required by the harbour master.

- (2) For that purpose, the harbour master (or a person authorised by the harbour master) may board a vessel and move, secure or otherwise operate the vessel.
- (3) The Minister may recover from the master or owner of a vessel referred to in subsection (1) as a debt in any court of competent jurisdiction the reasonable charges and expenses incurred in the exercise of the harbour master's functions under that subsection.

**91 Offence for failing to comply with direction, or obstructing, harbour master**

- (1) The master of a vessel who, without reasonable excuse, refuses or fails to comply with any direction given under this Part to the master by a harbour master is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person who, without reasonable excuse, obstructs a harbour master (or any person acting under the direction of a harbour master) exercising any function under this Part is guilty of an offence.

Maximum penalty (subsection (2)): 50 penalty units.

**92 Identity cards**

- (1) The Minister is required to give an identity card to each harbour master the Minister appoints.
- (2) The person who appoints another person to exercise the functions of a harbour master is required to give an identity card to that other person.
- (3) An identity card is to be in a form approved by the Minister.
- (4) A harbour master (including a person exercising the functions of a harbour master) is required to produce his or her identity card if requested to do so by an affected person in the course of exercising functions under the marine legislation. This subsection does not apply to a direction given by radio or other communication device.
- (5) A person who has been issued with an identity card must return it to the Minister, or the person who provided it, on demand.

Maximum penalty (subsection (5)): 10 penalty units.

### **93 Protection from liability**

- (1) A harbour master, and any other person exercising the functions of a harbour master, are not personally liable for any act or omission done in good faith for the purposes of the marine legislation.
- (2) If subsection (1) prevents liability attaching to a harbour master, the liability attaches instead to the State.
- (3) In this section, *harbour master* includes a person exercising the functions of a harbour master or a person acting under the direction of a harbour master.

## Part 8 Marine investigation and enforcement

### Division 1 Preliminary

#### 94 Definitions

(1) In this Part:

*incompetence* of the holder of a marine safety licence includes the inefficient performance of any lawful duty required of the holder of that licence.

*marine accident* means any of the following events involving a vessel operating in navigable waters:

- (a) the loss of life of, or injury to, any person on board the vessel.
- (b) the loss of a person from the vessel.
- (c) the loss of life or injury to a person that is caused by the vessel.
- (d) the loss, or presumed loss, of the vessel (including the sinking or abandonment of the vessel),
- (e) the capsizing, grounding or flooding of the vessel.
- (f) the collision of the vessel with another vessel or with any object.
- (g) the vessel being disabled at sea (in any case in which it requires assistance).
- (h) any fire on board the vessel.
- (i) any damage being caused to the vessel (including any structural failure).
- (j) any damage to the environment caused by the vessel or by any substance on, or discharged from, the vessel.
- (k) any incident that causes danger of any of the above.

but does not include anything excluded from this definition by the regulations.

*misconduct* by the holder of a marine safety licence includes:

- (a) carelessness in carrying out any lawful duty required of that holder, or
  - (b) carrying out any duty while under the influence of alcohol or any other drug, or
  - (c) any other act or omission that indicates that the person is not a fit and proper person to act in the capacity required by the licence.
- (2) In this Part, a reference to the holder of a marine safety licence includes a reference to a person whose licence is suspended or cancelled or has otherwise ceased to have effect.

#### **95 Application**

This Part extends, in the case of the holder of a marine safety licence, to the investigation of a marine accident or any incompetence or misconduct by the holder, even though it occurred anywhere outside the State.

#### **96 Appointment of authorised officers (other than harbour masters and police officers)**

- (1) The Minister may appoint, as an authorised officer for the purposes of the marine legislation, any person (including a class of persons) who is a member of staff of the Waterways Authority, a Port Corporation, a government department or other public or local authority.
- (2) The authorisation of such a person as an authorised officer can be given generally, or subject to conditions and restrictions or only for limited purposes. If the authorisation is subject to conditions or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the condition or restriction or for other purposes.

**Note.** An *authorised officer* is defined in section 4 as a harbour master, a police officer or a person appointed under this section.

#### **97 Identity cards for authorised officers**

- (1) The Minister is required to give an identity card to each authorised officer appointed under section 96 (including an investigator appointed under Division 3).

- (2) An identity card is to be in a form approved by the Minister.
- (3) An authorised officer when exercising the functions of the officer is required to produce his or her identity card if requested to do so by an affected person. This subsection does not apply if the officer gives a direction by radio or other communication device.
- (4) A person who has been issued with an identity card must return it to the Minister on demand.

Maximum penalty: 10 penalty units.

- (5) Until an authorised officer is given an identity card, the officer's instrument of appointment is taken to be an identity card for the purposes of subsection (3).

## **Division 2 Duties of masters and owners in case of marine accidents**

### **98 Requirements of masters in case of accident involving vessels**

- (1) The master of a vessel involved in a marine accident involving 2 or more vessels or the death of or injury to any person:
  - (a) must stop the vessel, and
  - (b) must give any necessary assistance that the master is able to give to any person injured or vessel damaged in the accident.
- (2) The master of a vessel involved in a marine accident, if required to do so by any person having reasonable grounds for so requiring:
  - (a) must produce any marine safety licence required under this Act to be held by the master, and
  - (b) must give particulars of his or her name and place of residence, the name and address of the owner of the vessel, the name of the vessel and any distinguishing number that is, or is required to be, displayed on the vessel by law.



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- (3) The master of a vessel involved in a marine accident, if required so to do by any authorised officer, must give such particulars of the marine accident as the officer requires and the master is able to give.

**Note.** A failure to comply with the requirements of this section or of any other provision of this Division does not constitute an offence if there was a reasonable excuse for that failure—see section 102.

### 99 Duty to report marine accidents to Minister

- (1) When a marine accident occurs in connection with a vessel, the master of that vessel (and the owner of the vessel if aware of the accident) must send a report to the Minister containing particulars of the accident as soon as practicable by the quickest means available.
- (2) A report is not required to be sent:
- (a) if a report of the marine accident has already been sent by the owner or master, or
  - (b) in any other case prescribed by the regulations.
- (3) After receiving a report of a marine accident, the Minister may require further information from the owner or master of a vessel involved in the accident to determine whether an investigation should be ordered into the marine accident.

### 100 Marine accident particulars

The particulars of a marine accident required to be furnished or reported under this Division are as follows:

- (a) the time, place and nature of the marine accident.
- (b) the name and distinguishing number (if any) of each vessel involved in the marine accident.
- (c) the name and address of each person who was involved in or was a material witness to the marine accident.
- (d) any loss of life or the estimated extent of any injury or damage resulting from the marine accident.

### 101 Preservation of evidence

The owner or master of a vessel involved in a marine accident (or other person concerned in the accident) must take all reasonable measures to preserve any evidence relating to the marine accident (including nautical charts, log books and other documents) if he or she has reason to believe that the evidence may be required for an investigation into the marine accident.

**Note.** The *Interpretation Act 1987* provides that documents include computer and other electronic records.

### 102 Offence

A person who:

- (a) without reasonable excuse fails to comply with any provision or requirement of this Division, or
- (b) furnishes any particulars or information under this Division that the person knows to be false or misleading.

is guilty of an offence.

Maximum penalty: 50 penalty units.

## Division 3 investigation of marine accidents and other marine safety matters

### 103 Ordering of investigation

The Minister may order an investigation into any of the following:

- (a) a marine accident that has been reported under Division 2 or that the Minister believes may have occurred.
- (b) any situation that has the potential to cause marine accidents.
- (c) any alleged incompetence or misconduct of the holder of a marine safety licence.
- (d) a vessel that has been provisionally detained as an unsafe vessel.
- (e) any incident in connection with a port facility that has caused, or has the potential to cause, a danger to life or serious damage to property.

#### **104 Principal purposes of investigation**

The principal purposes of an investigation under this Division are:

- (a) to determine the circumstances of or concerning the marine accident or other incident as they affect marine safety, and
- (b) to make recommendations to prevent the recurrence of any similar marine accident or other incident.

#### **105 Appointment of investigator**

- (1) The Minister may appoint as the investigator for the purposes of an investigation:
  - (a) an authorised officer, or
  - (b) any other person possessing qualifications or experience relevant to the investigation.
- (2) The Minister may appoint 2 or more persons as joint investigators for the purposes of an investigation.
- (3) An investigator is subject to the control and direction of the Minister, except in relation to the contents of any report made by the investigator.

#### **106 Powers of investigator**

For the purpose of conducting an investigation, an investigator is an authorised officer and has all the powers and other functions of an authorised officer under this Part.

#### **107 Conduct of investigations**

- (1) An investigator is to conduct the investigation in such manner as the investigator considers appropriate having regard to the principal purposes of the investigation.
- (2) An investigation may extend to all relevant events and circumstances preceding the marine accident or other incident.
- (3) At any time during the course of an investigation the Minister may determine that the investigation be discontinued and that a report be prepared and submitted by the investigator.

- (4) For the purposes of an investigation, the investigator may rely on any evidence relating to the matter under investigation given in any criminal or civil proceedings or in any coronial or other judicial inquiry.

#### **108 Report to Minister of investigation**

- (1) On the completion of the investigation, the investigator must prepare and submit a report to the Minister.
- (2) The report must include:
  - (a) findings as to the facts of the marine accident or other incident, and where the facts cannot be established with certainty, an opinion as to the most probable facts, and
  - (b) in the case of a marine accident, the cause or most probable cause of the accident, and
  - (c) any observations and recommendations to prevent the recurrence of similar marine accidents or incidents that the investigator considers should be made.
- (3) The investigator may, at any time during an investigation, prepare an interim report and submit it to the Minister.

#### **109 Representations by persons affected by report**

- (1) If a report, or any part of a report, relates to a person's affairs to a material extent, the investigator must, if it is reasonable to do so, serve that person with a copy of the report or the relevant part of that report.
- (2) Any such person may, within 14 days after receiving it, make written representations relating to the report or the relevant part of the report to the investigator.
- (3) The investigator is to consider any such representations.
- (4) The investigator:
  - (a) may make further investigations and:
    - (i) amend the report, or
    - (ii) make no change to the report, and
  - (b) is to notify the person who made the representations of the result of the person's representations, and

- (c) is to submit a final report to the Minister (setting out the substance of the representations and the conclusions and action taken by the investigator with respect to them).

#### **110 Suspension of marine safety licence pending investigation**

- (1) If the Minister has ordered an investigation under this Division that involves any alleged incompetence or misconduct of the holder of a marine safety licence, the Minister may suspend the licence pending the investigation and determination of the matter if the Minister has reason to believe that it would be dangerous for the holder of the licence to continue the activities authorised by the licence.
- (2) A suspension under this section may not exceed 14 days.
- (3) The Minister may only extend the suspension beyond that period if authorised to do so by order of a Magistrate. A Magistrate may, on application by the Minister, make such an order if satisfied there is reasonable cause to do so.

#### **111 Action by Minister following report of investigation**

- (1) The Minister may take any action that is available to the Minister in connection with a report submitted by an investigator.
- (2) In particular, the Minister may do any of the following:
  - (a) take no action.
  - (b) take action to improve marine safety procedures.
  - (c) reprimand the holder of a marine safety licence for any incompetence or misconduct,
  - (d) suspend or cancel a marine safety licence, or impose conditions on any such licence, for any incompetence or misconduct of the holder,
  - (e) downgrade a marine safety licence for any incompetence or misconduct of the holder (that is, replace the licence held by the holder with a licence of a lower class),
  - (f) inform any other marine safety authority that has granted any similar licence to the person concerned of the report and action taken by the Minister on the report,
  - (g) recommend to the Director of Public Prosecutions or other law enforcement agency that criminal or other legal proceedings be taken against a person.

- (3) Before taking action under this section, the Minister may conduct a further investigation of the matter or refer the matter to the same or a different investigator for further investigation and report under this Division.
- (4) Any action taken under this section may extend to more than one marine safety licence held by a person.
- (5) The Minister must give written notice to the holder of a marine safety licence of any action taken under this section against that holder, together with a copy of the final investigation report.

#### **112 Public release of report**

- (1) The investigator may, at any time during the course of an investigation, make recommendations to the Minister. The Minister may cause them to be made public if the Minister considers that it is in the interests of marine safety to do so.
- (2) The Minister may publicly release a report (or parts of any report) made to the Minister by an investigator.
- (3) The Minister is not to publicly release a report or any part of it if it might prejudice the rights of any person in any criminal proceedings instituted in connection with the matter.

#### **113 Protection from liability**

Civil proceedings may not be brought against the State, the Minister, an investigator or any person who has supplied any information to the Minister or to an investigator in connection with an investigation under this Division in respect of any matter contained in that information that is or is alleged to be defamatory or a breach of confidence.

### **Division 4 Investigative powers of authorised officers**

#### **114 Application of Division**

- (1) This Division applies to the following investigations:
  - (a) investigations to determine whether the marine legislation has been or may be contravened.
  - (b) investigations under Division 3.

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- (2) A power conferred by this Division in respect of a vessel (other than a power to detain the vessel) may be exercised for the purpose of conducting random investigations of compliance with marine safety requirements.
  - (3) This Division does not limit any function exercisable under the *Marine Pollution Act 1987* in connection with an investigation to which this Division applies.

#### **115 Power to stop and board vessels**

- (1) For the purpose of conducting an investigation, an authorised officer may at any reasonable time:
  - (a) stop any vessel, and
  - (b) board any vessel, and
  - (c) enter any land for the purpose of boarding any vessel (other than land used for residential purposes). and
  - (d) take along any assistants or equipment required to assist the investigation.
- (2) For the purpose of boarding the vessel, the authorised officer may direct the person operating the vessel to manoeuvre it in a specified manner or to a specified place or to secure it in a specified manner.

#### **116 Other powers of entry**

- (1) For the purpose of conducting an investigation, an authorised officer may, at any reasonable time in the daytime or at any time when work is carried on there, enter any premises (other than premises used for residential purposes).
- (2) The authorised officer is to give the occupier of premises reasonable notice of an intention to enter premises under this section unless:
  - (a) the entry is made with the consent of the occupier, or
  - (b) the entry is made to a part of the premises that is open to the public, or
  - (c) the entry is required urgently, or

(d) the giving of notice would defeat the purpose for which it is intended to exercise the power of entry.

(3) In this section, *premises* includes any vehicle.

### 117 General investigative powers

For the purposes of conducting an investigation, the authorised officer may do any of the following on any vessel boarded or premises entered under this Division (or in connection with any vessel stopped but not boarded under this Division):

- (a) search the vessel or premises,
- (b) make inquiries of any person,
- (c) take measurements and photographs and make recordings or gather information or evidence,
- (d) examine or test any equipment or substance,
- (e) take possession of any equipment or substance and detain it:
  - (i) for examination and testing, or
  - (ii) to ensure that it is available for use in evidence in any proceedings for an offence.
- (f) require the production of any relevant document, and take possession or copies of, or examine, the document or any entry in that document,
- (g) require any person to give the investigator any facilities and assistance within that person's control that are necessary to facilitate the conduct of the investigation.

### 118 Detention of vessel for purposes of investigation

- (1) An authorised officer may detain a vessel for the purposes of an investigation, but only for so long as is necessary for the purposes of the investigation.
- (2) An authorised officer may not detain a vessel for more than 48 hours unless authorised to do so by order of a Magistrate. A Magistrate may, on application by an authorised officer, make such an order if satisfied there is reasonable cause for doing so.



- (3) The authorised officer may give the master or owner (or any other person) any directions required for the purpose of detaining the vessel.

#### **119 Production of marine safety licences**

- (1) The holder of a boat driving licence is required to carry the licence when doing anything for which the licence is required.
- (2) An authorised officer may require the holder of a marine safety licence who is doing anything for which the licence is required to produce the holder's licence.
- (3) The holder of a marine safety licence (other than a boat driving licence) is not required to produce the licence at the time the requirement is made if the holder does not have the licence in his or her possession at the time. In that case, the holder is required to produce the licence to an authorised officer within 24 hours or within any longer period approved by an authorised officer.
- (4) An authorised officer may seize any marine safety licence that has been cancelled or otherwise ceased to have effect or that the officer has reason to believe is false.

#### **120 Identification of person suspected of committing offence**

An authorised officer may require a person whom the authorised officer has reason to suspect has committed an offence against the marine legislation to state his or her full name and residential address.

#### **121 Identification of owner and master of vessel**

- (1) An authorised officer may require information about the owner or master of a vessel under this section for the purpose of an investigation.
- (2) A person must, if an authorised officer requires the person to do so, supply all the information the person has regarding the identity and address of the owner or the master of a vessel.

#### **122 Power to require persons to attend to answer questions or produce documents or other things**

- (1) An authorised officer may, by notice in writing, require either or both of the following:

- (a) the attendance of any person at any place to answer questions at an inquiry for the purposes of an investigation,
  - (b) the production of any documents or other things required by the authorised officer for the purposes of the investigation.
- (2) At any such inquiry, the authorised officer:
- (a) is not bound by the rules of evidence, and
  - (b) may conduct the inquiry without regard to legal forms, and
  - (c) may inform himself or herself in such manner as the officer thinks fit.
- (3) At any such inquiry, the authorised officer may administer an oath or require any statement to be verified by statutory declaration.
- (4) A person is not required under this section to travel more than 16 kilometres from the person's residence at the time of receiving the notice, unless such reasonable allowances for expenses incidental to attendance to give evidence is tendered to the person on the scale allowed for a witness attending on subpoena to give evidence before the District Court.

### **123 Limitation on self-incrimination**

- (1) A person who is required under this Division to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that the answer to the question or the production of the thing might tend to incriminate the person or make the person liable to a penalty.
- (2) The answer to the question or production of the thing, or any information obtained as a direct consequence of the answer or production is not admissible in evidence against the person in any criminal proceedings except proceedings for an offence against section 125.

### **124 General provisions relating to functions under this Division**

- (1) In the exercise of a function under this Division, an authorised officer is to do as little damage as possible.

- (2) A requirement that an authorised officer may make under this Division may specify a reasonable time within which it is to be complied with. If no such time is specified, the requirement is to be complied with as soon as practicable after it is made.

### **125 Offences**

- (1) A person must not, without reasonable excuse, prevent or obstruct any person exercising a function under this Division.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this Division.
- (3) A person must not give any information or make a statement pursuant to any requirement made under this Division that the person knows is false or misleading.

Maximum penalty: 50 penalty units.

## **Part 9 Legal proceedings**

### **126 Penalty notices**

- (1) A law enforcement officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against the marine legislation, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

- (9) In this section, *law enforcement officer* means a police officer or, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

### **127 Summary proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Note.** All penalties recovered for offences against the marine legislation in prosecutions brought by members of staff of the Waterways Authority are payable into the Waterways Fund under the *Ports Corporatisation and Waterways Management Act 1995*—see section 42 (2) (b) of that Act.

### **128 Time within which Proceedings may be commenced**

Despite the *Justices Act 1902* or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

### **129 Persons who may bring proceedings**

Proceedings for an offence against the marine legislation may be brought by any person, including a police officer or an authorised officer.

### **130 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **131 Proof of lawful or reasonable excuse**

If an act or omission is, by the marine legislation, made an offence when done or omitted without lawful or reasonable excuse, proof of the lawful or reasonable excuse lies on the accused.

### **132 Act presumed to apply to vessels**

If the application of a provision of the marine legislation to a vessel is in question in any proceedings under the marine legislation, that provision is taken (in the absence of evidence to the contrary) to apply to the vessel.

### **133 Proof of certain matters not required**

- (1) A certificate signed or purporting to be signed by the Minister or an officer prescribed by the regulations and stating that:
- (a) a person named in the certificate was or was not at a specified time the holder of a marine safety licence or exemption under the marine legislation of a specified kind, or
  - (b) any such licence or exemption held by a specified person was or was not subject to a specified condition,
- is admissible in any legal proceedings and is evidence of the matters stated in the certificate.
- (2) In any legal proceedings under the marine legislation, proof is not required (until evidence is given to the contrary) of the following:
- (a) any order of the Minister.
  - (b) the fact that a vessel is subject to a provision of the marine legislation in question.
  - (c) the fact that the defendant is, or at any relevant time was, the master of any vessel in question.

- (d) the fact that the defendant is, or at any relevant time was, the owner or agent of any vessel in question,
  - (e) the fact that, at any relevant time, any vessel was not used solely for recreational or sporting purposes or was used for commercial purposes,
  - (f) the fact that any vessel was, at any relevant time, of such a tonnage or length that any provision of the marine legislation applied to it,
  - (g) the appointment of any person under the marine legislation,
  - (h) the particular or general appointment of a member of staff of the Waterways Authority to take proceedings against a person for an offence against the marine legislation,
  - (i) the particular or general appointment of a person to recover any amount payable to the Minister or the Waterways Authority,
  - (j) the fact that the defendant is, or at any relevant time was, the owner or occupier of, or in possession, control or charge of, any land or other thing in question,
  - (k) the fact that any land in question is, or at any relevant time was, vested in the Crown, any Minister, the Marine Ministerial Holding Corporation or any statutory body.
- (3) In any legal proceedings under the marine legislation. evidence that:
- (a) a message or signal was transmitted, given or made by an authorised officer or a delegate of the Minister in the course of his or her duties, and
  - (b) the vessel to which the message or signal was transmitted, given or made was so located as to be able to receive the message or signal.

is evidence that the message or signal was received by the master of the vessel concerned.

#### **134 Service of instruments (except in proceedings for offences)**

- (1) Any notice or other instrument issued, made or given for the purposes of the marine legislation may be served:

- (a) by delivering it personally to the person to whom it is addressed, or
  - (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person for him or her, or
  - (c) by posting it to the person addressed to the place last shown in the records of the Minister as his or her place of residence or business, or
  - (d) in any manner in which any summons or other process in any proceedings for an offence under the marine legislation may be served, or
  - (e) if it is to be served on a person on board a vessel—by transmitting its contents to the master of the vessel in any manner or by any other manner authorised by this section.
- (2) For the purposes of this section, a person's place of residence or business includes a vessel on which the person resides or works.
- (3) This section does not apply to the service of any summons or other process in any proceedings for an offence under the marine legislation or to the service of any notice or other instrument for which provision is specifically made in the marine legislation.

### **135 Service of summons and other process in legal proceedings**

- (1) Any summons or other process to be served on the owner or master of a vessel in any proceedings for an offence under the marine legislation may be sufficiently served by serving it on the agent of the vessel in any manner in which it might otherwise have been served on the owner or master.
- (2) A summons or other process so served on the agent of the vessel is taken to have been served on the owner or master of the vessel.
- (3) In this section, *agent* of a vessel includes:
- (a) the agent for the berthing or working of the vessel while it is in port, or
  - (b) if the vessel has left port—that agent or, if there was another agent for the vessel when it left port, that other agent.



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## Part 10 Miscellaneous

### 136 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 137 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

### 138 Adoption of USL Code, standards, treaties and other documents

- (1) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body).
- (2) Without limiting subsection (1), a regulation may adopt, wholly or in part and with or without modification:
  - (a) the *Uniform Shipping Laws Code*, or any other code published in the Gazette by the Minister, or
  - (b) any Australian Standard or any standard of another country, or
  - (c) any treaty, convention or international agreement.

### 139 Exemptions

- (1) The regulations may exempt, or provide for the exemption of, any person or vessel from any requirement of the regulations.

- (2) If this Act confers a power to make regulations to exempt any person or vessel from a requirement of this Act or the regulations, the power extends to making a regulation authorising the Minister or other person to grant the exemption.
- (3) An exemption granted by the regulations or by an order of the Minister or other person may be made subject to any condition specified in the regulation or order.
- (4) The exemption does not apply during any period that any such relevant condition is not complied with.

**Note.** Sections 11, 50, 53, 57 and 75 make provision for the granting of exemptions. Schedule 4 contains provisions for the preservation of exemptions granted under the Acts repealed by this Act.

#### **140 Children employed on vessels—ILO Convention No 58**

- (1) This section applies to the employment of children on vessels at sea (other than vessels on which only members of the same family are employed).
- (2) A person must not employ a child under the age of 15 years on such a vessel.
- (3) The master of such a vessel must record the names and dates of birth of all children under the age of 16 years who are employed on the vessel. That record must be maintained on a separate register, or in the vessel's articles.

Maximum penalty: 20 penalty units.

**Note.** This section continues the provisions of sections 13 (a) and 28A of the former *Seamen's Act 1898* which gave effect to ILO Convention No 58 (Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea).

#### **141 Repeals**

Schedule 2 has effect.

#### **142 Amendment of other Acts**

Schedule 3 has effect.

#### **143 Savings, transitional and other provisions**

Schedule 4 has effect.

#### **144 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Alcohol and drugs—breath analysis and related matters**

(Section 28)

### **Part 1 Preliminary**

#### **1 Definitions**

- (1) Words in this Schedule have the same meanings as in Part 3 of this Act.
- (2) In this Schedule:

*analyst, breath analysing instrument, breath analysis and breath test* have the same meanings as in the *Traffic Act 1909*.

*hospital* means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 4F of the *Traffic Act 1909* or that is prescribed by the regulations under this Act.

#### **2 Other interpretative provisions**

- (1) A reference in this Schedule to a police officer authorised by the Commissioner of Police to operate breath analysing instruments includes a reference to a police officer so authorised under the *Traffic Act 1909*.
- (2) For the purposes of this Schedule, a thing is regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of a medical practitioner or analyst.
- (3) For the purposes of this Schedule, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

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## **Part 2 Provisions relating to breath analysis and related matters**

### **Division 1 Testing for alcohol and other drugs**

#### **3 Breath testing**

- (1) An authorised officer may require a person to undergo a breath test in accordance with the directions of the officer if the officer has reasonable cause to believe:
  - (a) the person is or was operating a vessel, or is or was in charge of a motor vessel operated by a juvenile, while there is or was alcohol in the person's blood, or
  - (b) the person was operating a vessel concerned in an accident which has resulted in the death of, or injury to, any person, or
  - (c) the person was operating a vessel concerned in an accident which has resulted in damage to a vessel that affects the seaworthiness of the vessel or the safety of persons on board the vessel, or has resulted in damage to other property apparently in excess of \$1,000 (or, if another amount is prescribed, the prescribed amount).
- (2) An authorised officer may only require a person who is or was operating a vessel to undergo a breath test if there is reasonable cause as referred to in this clause.

#### **4 Breath analysis following breath testing**

- (1) An authorised officer may require a person to submit to a breath analysis in accordance with the directions of the officer if:
  - (a) it appears to the officer as a result of a breath test or assessment under this Part that 0.02 grams or more of alcohol in 100 millilitres of blood may be present in the person's blood, or
  - (b) the person when required by the officer to undergo a breath test refuses or fails to do so in accordance with the direction of the officer.

- (2) If an authorised officer is entitled to require a person to submit to a breath analysis under this clause, the officer may:
  - (a) arrest the person without warrant, and
  - (b) take the person with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the person for the purposes of the breath analysis.
- (3) A breath analysis is to be carried out by a police officer, authorised by the Commissioner of Police to operate breath analysing instruments, at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysis instrument is to deliver to the person a statement in writing signed by the officer specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the person's blood and expressed in grams of alcohol in 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A person who is required to submit to a breath analysis may request the authorised officer making the requisition to arrange for the taking (in the presence of an authorised officer) of a sample of the person's blood for analysis. at the person's own expense, by:
  - (a) a medical practitioner nominated by the person, or
  - (b) a medical practitioner nominated by the authorised officer at the person's request.
- (6) The making of any such request or the taking of a sample of a person's blood does not absolve the person from the obligation imposed on the person to submit to a breath analysis in accordance with this clause.
- (7) A medical practitioner by whom a sample of a person's blood is taken in accordance with an arrangement referred to in subclause (5) is to divide the sample into 2 approximately equal portions.

- (8) Of the 2 portions:
- (a) one is to be handed to the person from whom it was taken, and
  - (b) one, enclosed in a suitable sealed container, is to be handed to the authorised officer present at the time the sample was taken.

**5 Blood or urine samples taken at hospitals from persons involved in accidents**

- (1) An authorised officer may require a person who is 15 or more years of age who attends or is admitted to a hospital for examination or treatment because the person has been involved in an accident while operating a vessel to provide as soon as practicable a sample of the person's blood or urine in accordance with the directions of a medical practitioner who attends the person at the hospital.

**Note.** Clause 2 (3) enables both blood and urine samples to be taken.

- (2) The blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures if there is no medical practitioner present to attend the person at the hospital.
- (3) Any such medical practitioner or nurse is to take the sample if informed by the authorised officer that the sample is required to be taken by the practitioner or nurse under this Schedule.
- (4) A requirement under subclause (1) need not be made directly to the person concerned but may be made through a medical practitioner or any such nurse who attends the person at the hospital.
- (5) Any such medical practitioner or nurse may take such a sample without a requirement by an authorised officer under subclause (1) if the medical practitioner or nurse believes that an authorised officer is authorised by the clause to make the requirement.

**6 Blood or urine samples taken for detecting drugs**

- (1) If:
- (a) a person has undergone a breath test in accordance with this Part, and

- (b) the result of the test does not permit the person to be required to submit to a breath analysis,

an authorised officer may require the person to submit to an assessment of the person's sobriety in accordance with the directions of the officer.

- (2) A person must not be required to submit to the assessment unless the authorised officer has a reasonable belief that, by the way in which the person was acting, the person might be under the influence of a drug.
- (3) If:
  - (a) the person refuses to submit to the assessment, or
  - (b) after the assessment has been made, an authorised officer has a reasonable belief that the person is under the influence of a drug.

the officer may require the person to provide a sample of the person's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the person.

- (4) Any such medical practitioner is to take the sample if informed by the authorised officer that the sample is required to be taken by the practitioner under this Schedule.
- (5) If an authorised officer is entitled to require a person to provide a sample of blood or urine under this clause, the officer may:
  - (a) arrest the person without warrant, and
  - (b) take the person with such force as may be necessary to a hospital and there detain the person for the purpose of obtaining the sample.

#### **7 Restrictions on requiring breath test, assessment, breath analysis or sample**

An authorised officer must not require a person to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the person has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the person at the hospital (or, if no medical practitioner is



present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the person, or

- (b) if it appears to the officer that it would (because of injuries sustained by the person) be dangerous to the person's medical condition if the person complied with the requisition, or
- (c) at any time after the expiration of 2 hours (in the case of breath tests, assessments or analyses) or 12 hours (in the case of the provision of blood or urine samples) from the time the person operated the vessel concerned, or
- (d) at the person's home.

**8 Action by medical practitioner or nurse with respect to samples of blood or urine**

- (1) A medical practitioner or nurse who takes a sample of blood or urine when required under this Part to do so must:
  - (a) divide the sample into 2 approximately equal portions, and
  - (b) place each portion into a container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the 2 sealed containers:
  - (a) one must be handed by the medical practitioner or nurse to the person from whom the sample was taken or to some other person on behalf of the person, and
  - (b) the other must be handed by the medical practitioner or nurse to the authorised officer present when the sample was taken or dealt with as otherwise provided by the regulations.

## **9 Analysis of samples of blood or urine**

- (1) An authorised officer may arrange for a portion of a sample of a person's blood or urine taken in accordance with this Part to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.
- (2) If the blood or urine sample was obtained under clause 5, an authorised officer may not make arrangements under this section for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the authorised officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:
  - (a) no authorised officer attended the scene of the accident that led to the taking of the sample, or
  - (b) although an authorised officer or authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with this Schedule, to a breath test or assessment of the person's sobriety.
- (3) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this clause may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains alcohol or any other drug.

## **10 Destruction of blood or urine samples**

- (1) A person must not wilfully destroy a portion of a sample of blood or urine taken under clause 4, 5 or 6.  
Maximum penalty: 20 penalty units.
- (2) A person is not guilty of an offence under this clause if the portion is destroyed:
  - (a) by an analyst in the course of or on completion of an analysis of the portion, or

- (b) in the case of a portion referred to in clause 8 (2) (a)—by or at the direction of the person from whom the sample was taken or after the expiration of one month commencing on the day on which the sample was taken, or
- (c) in the case of a portion referred to in clause 8 (2) (b)—by or at the direction of an authorised officer if the portion is not required for analysis.

#### **11 Medical practitioners and nurses—protection from liability**

- (1) No civil or criminal liability is incurred by a medical practitioner or nurse in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:
  - (a) believed on reasonable grounds that the practitioner or nurse was required under this Schedule to take the sample of blood or urine from the person, or
  - (b) was informed by an authorised officer that the person was a person from whom the practitioner or nurse was required under this Schedule to take the sample of blood or urine.
- (2) The protection from liability conferred by this clause extends to any person acting under the supervision or direction of the medical practitioner or nurse.

### **Division 2 Offences relating to testing for alcohol or other drugs**

#### **12 Refusal to be tested**

- (1) Any person who, when required under this Part to do so, refuses or fails:
  - (a) to undergo a breath test, or
  - (b) to submit to an assessment.

in accordance with this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) Any person who, when required under this Part to do so, refuses or fails:
- (a) to submit to a breath analysis, or
  - (b) to provide a sample of blood or urine,
- in accordance with this Part is guilty of an offence.
- Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.
- (3) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

### **13 Interfering with results of test**

A person who does anything to introduce, or alter the concentration of, alcohol or any other drug in the person's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Part is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the person.

Maximum penalty: 15 penalty units or imprisonment for 9 months, or both.

### **14 Taking of samples by medical practitioner**

- (1) Any medical practitioner who, when required under this Part to take a sample of blood or urine from a person:
- (a) refuses or fails to take the sample, or
  - (b) does not comply with the requirements of clause 8 with respect to any sample taken.
- is guilty of an offence.
- Maximum penalty: 5 penalty units.
- (2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner satisfies the court that:

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
  - (b) the practitioner was, because of the behaviour of the person, unable to take the sample, or
  - (c) there was other reasonable cause for the practitioner not to take the sample.
- (3) A person who hinders or obstructs a medical practitioner who is attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

### **Division 3 Certificate evidence in proceedings**

#### **15 Certificate evidence of concentration of alcohol in blood determined by breath analysis**

- (1) In proceedings for an offence under section 24, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by a police officer authorised by the Commissioner of Police to operate breath analysing instruments.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person at the time the person operated the vessel concerned if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than the concentration giving rise to the offence.
- (3) In proceedings for an offence under section 24, a certificate purporting to be signed by a police officer and certifying that:
  - (a) the police officer is duly authorised by the Commissioner of Police to operate breath analysing instruments, and
  - (b) the person named in the certificate submitted to a breath analysis, and

- (c) the apparatus used by the authorised officer to make the breath analysis was a breath analysing instrument within the meaning of the *Traffic Act 1909*, and
- (d) the analysis was made on the day and completed at the time stated in the certificate, and
- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grams of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and
- (f) a statement in writing required by clause 4 (4) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (4) In proceedings for an offence under section 24, a certificate purporting to be signed by the Commissioner of Police that the authorised officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.
- (5) In any proceedings for an offence under section 24, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

**16 Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood**

- (1) In proceedings for an offence under section 24, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Part of a portion of a sample of the person's blood.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person operated the vessel concerned, if that sample of blood was taken within 2 hours after that time, unless the

defendant proves that the concentration of alcohol in the defendant's blood at that time was less than the concentration giving rise to the offence.

- (3) In proceedings for an offence under section 24, a certificate purporting to be signed by a medical practitioner and certifying any one or more of the following matters:
- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital,
  - (b) that the practitioner took a sample of the person's blood in accordance with this Part on the day and at the time stated in the certificate,
  - (c) that the practitioner dealt with the sample in accordance with clause 8,
  - (d) that the practitioner used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container was sealed, marked or labelled, in a specified manner.

is prima facie evidence of the particulars certified in and by the certificate.

- (4) In proceedings for an offence under section 24, a certificate purporting to be signed by an authorised officer certifying any one or more of the following matters:
- (a) that the authorised officer received a portion of a sample of a specified person's blood taken in accordance with this Part.
  - (b) that the authorised officer arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood.
  - (c) that the container was sealed, marked or labelled, in a specified manner.

is prima facie evidence of the particulars certified in and by the certificate.

- (5) In proceedings for an offence under section 24, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Part,
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner.
- (c) that, on receipt by the analyst of the container, the seal was unbroken,
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample,
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grams of alcohol in 100 millilitres of blood was present in that sample,
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Traffic Act 1909*,

is prima facie evidence:

- (g) of the particulars certified in and by the certificate, and
- (h) that the sample was a portion of the sample of the blood of that specified person, and
- (i) that the portion had not been tampered with before it was received by the analyst.

#### **17 Certificate evidence of presence of drugs**

- (1) In proceedings for an offence under section 23 (Operating vessel under influence of alcohol or other drug):
  - (a) evidence may be given of:
    - (i) the presence of a drug, or
    - (ii) the presence of a particular concentration of a drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Part of a portion of a sample of the person's blood or urine, and
  - (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined is taken to have been present in the blood or urine of that person at the time the person operated the vessel concerned.



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if the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

- (2) In proceedings for an offence under section 23, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:
- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital.
  - (b) that the practitioner took a sample of the person's blood or urine in accordance with this Part on the day and at the time stated in the certificate.
  - (c) that the practitioner dealt with the sample in accordance with clause 8,

is prima facie evidence of the particulars certified in and by the certificate.

- (3) In proceedings for an offence under section 23, a certificate purporting to be signed by an authorised officer certifying any one or more of the following matters:
- (a) that the authorised officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Part.
  - (b) that the authorised officer arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample.
  - (c) that the container was sealed, and marked or labelled, in a specified manner.

is prima facie evidence of the particulars certified in and by the certificate.

- (4) In proceedings for an offence under section 23, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Part.

- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner.
- (c) that, on receipt by the analyst of the container, the seal was unbroken,
- (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample,
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration.
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Traffic Act 1909*.

is prima facie evidence:

- (g) of the particulars certified in and by the certificate, and
  - (h) that the portion was a portion of the sample of the blood or urine of that specified person, and
  - (i) that the portion had not been tampered with before it was received by the analyst.
- (5) Nothing in this section enables evidence to be given of or in relation to:
- (a) the presence of a drug other than alcohol, or
  - (b) the presence of a particular concentration of a drug other than alcohol.

in the blood or urine of a person charged with an offence under section 23, as determined by an analysis of a sample obtained under clause 5, unless the court is satisfied that the analysis was not arranged in contravention of clause 9 (2).

### **18 Certificate evidence may specify minimum concentrations**

If, in any proceedings in which evidence is permitted to be given of the results of an analysis of a sample of a person's blood or urine, evidence is given by a certificate under this Part to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration:

- (a) the certificate is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration, and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Part.

## **Division 4      Miscellaneous**

### **19   Contracts of insurance**

- (1) In this clause, the following are *prescribed facts*:
  - (a) the fact that a person has undergone a breath test or submitted to a breath test or breath analysis.
  - (b) the result of a breath test or breath analysis of a person,
  - (c) the result of an analysis of blood or urine of a person,
  - (d) the fact that a person has been convicted of an offence under section 24.
- (2) A prescribed fact is not, for the purposes of any contract of insurance, admissible as evidence of the fact that the person concerned was at any time under the influence of, or in any way affected by, alcohol or any other drug or incapable of operating a vessel, but nothing in this subclause precludes the admission of any other evidence to show any such fact.
- (3) The provisions of this clause have effect despite anything contained in any contract of insurance, and a covenant, term, condition or provision purporting to exclude, limit, modify or restrict the operation of this clause is void.
- (4) Any covenant, term, condition or provision contained in any contract of insurance purporting to exclude or limit the liability of an insurer in the event of the operator of a vessel being convicted of an offence under section 24 is void.

## **20 Blood or urine samples taken in another State or Territory**

- (1) A medical practitioner who, in another State or in a Territory, takes a sample of blood or urine:
- (a) from a person attended by the medical practitioner in consequence of an accident in State waters, and
  - (b) in accordance with the provisions of a law of that other State or Territory that substantially corresponds to the provisions of clauses 5, 8 and 9,

may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains any other drug.

- (2) In proceedings for an offence under section 23 or 24, a certificate purporting to be signed by a person who, in another State or in a Territory:
- (a) took a blood or urine sample, or
  - (b) analysed a blood or urine sample.

in accordance with the provisions of a law of that State or Territory that substantially corresponds to the provisions of clauses 5, 8 and 9 is prima facie evidence of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under clause 9.

## **21 Regulations relating to samples**

The regulations may make provision for or with respect to the following:

- (a) the methods and conditions to be observed by medical practitioners in taking samples of blood or urine under this Part.
- (b) the storage of samples so taken.
- (c) the delivery or transmission of portions of samples so taken to the persons from whom they are taken, to authorised officers or to analysts.
- (d) the destruction of portions of samples so taken.

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## Part 3 Powers of authorised officers

### 22 Powers of authorised officers

- (1) An authorised officer may for the purposes of Part 3 of this Act and this Schedule exercise the following powers:
- (a) direct or signal a person who is operating a vessel to manoeuvre the vessel in a specified manner or to a specified place,
  - (b) direct or signal a person to stop the vessel and secure it in a specified manner,
  - (c) board a vessel for the purpose of investigating an offence the authorised officer reasonably suspects to have been committed while the vessel was underway,
  - (d) require any person whom the authorised officer reasonably suspects of having committed an offence against this Schedule or the regulations or who, in the opinion of the authorised officer, is in a position to give evidence relating to the commission of an offence, to state his or her full name and residential address.
- (2) A person who:
- (a) fails or refuses to comply with a requirement under this clause, or
  - (b) hinders an authorised officer acting in the exercise of the officer's powers under this clause, or
  - (c) when required to state his or her name and residential address, states a false name or address.

is guilty of an offence.

Maximum penalty: 10 penalty units.

- (3) A person is not guilty of an offence of failing or refusing to comply with a requirement under subclause (1) (c) or (d) unless it is established that the authorised officer:
- (a) warned the person that a failure or refusal to comply with the requirement is an offence, and
  - (b) identified himself or herself as an authorised officer.

Maximum penalty: 10 penalty units.

### **23 identification of offender**

- (1) If a person is reasonably suspected by an authorised officer to have committed an offence against Part 3 of this Act or this Schedule, the owner of the vessel concerned or person in charge of the vessel at the time of the alleged offence may be required to give information as to the full name and residential address of the person suspected of committing the offence and any other person may be required to give any information that may lead to the identification of the person.
- (2) The owner or person in charge may be required to give the information in the form of a written statement signed by the owner or person in charge.
- (3) A person who fails to comply with a requirement under this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

- (4) A person is not guilty of an offence under this clause if it is established that the person did not know and could not with reasonable diligence have established the name and address of the person.
- (5) A written statement purporting to be furnished under this clause and to contain particulars of the name and residential address of a person at the time of commission of an alleged offence against Part 3 of this Act or this Schedule is evidence in proceedings against the person that he or she was the operator of the vessel at the time of commission of the alleged offence without proof of signature if the person does not appear before the court.

## **Schedule 2 Repeals**

(Section 141)

### **Part 1 Acts**

*Commercial Vessels Act 1979 No 41*

*Marine (Boating Safety—Alcohol and Drugs) Act 1991 No 80*

*Marine Pilotage Licensing Act 1971 No 56*

*Maritime Services Act 1935 No 47*

*Maritime Services (Amendment) Act 1981 No 76*

*Maritime Services (Amendment) Act 1984 No 101*

*Navigation Act 1901 No 60*

### **Part 2 Regulations**

#### **Commercial Vessels Act 1979**

*Commercial Vessels (Certificates of Competency and Safety Manning) Regulation 1986*

*Commercial Vessels (Emergency Procedures and Safety of Navigation) Regulation 1986*

*Commercial Vessels (Equipment) Regulation 1986*

*Commercial Vessels (Hire and Drive) Regulation 1986*

*Commercial Vessels (Load Lines) Regulation 1986*

*Commercial Vessels (Permits) Regulation 1986*

#### **Justices Act 1902**

*Maritime (Short Description of Offences) Regulation 1987*

#### **Marine Pilotage Licensing Act 1971**

*Marine Pilotage Licensing Regulations*

Marine Safety Act 1998 No 121

Schedule 2 Repeals

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**Maritime Services Act 1935**

*Boating (Safety Equipment) Regulation—N.S.W.*

*Management of Waters and Waterside Lands Regulations—  
N.S.W.*

*Port Authority—Land Traffic Control Regulation—N.S.W.*

*Water Traffic Regulation—N.S.W.*

**Navigation Act 1901**

*Navigation (Collision) Regulations 1983*



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## Schedule 3 Amendments of other Acts

(Section 142)

### 3.1 Crimes Act 1900 No 40

#### [1] Section 52B (Culpable navigation)

Omit "within the meaning of the *Maritime Services Act 1935*" from the definition of *vessel* in section 52B (1).

Insert instead "(including an undecked boat)".

#### [2] Section 414A (Certificates to be evidence)

Omit "Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*" from section 414A (9).

Insert instead "Part 2 of Schedule 1 to the *Marine Safety Act 1998*".

#### [3] Section 414A (11)

Omit "section 24 (Certificate evidence of concentration of alcohol in blood determined by analysis) of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*".

Insert instead "clause 15 of Schedule 1 to the *Marine Safety Act 1998*".

### 3.2 Dangerous Goods Act 1975 No 68

#### Sections 5 and 41

Omit ", the *Navigation Act 1901*" wherever occurring.

### 3.3 Darling Harbour Authority Act 1984 No 103

#### [1] Section 23J (Application of certain legislation)

Omit section 23J (1) (e) and (g). Insert instead:

(e) the *Marine Safety Act 1998*.

**[2] Section 59 (Application of certain legislation within Development Area)**

Omit section 59 (1) (f) and (h). Insert instead:

(f) the *Marine Safety Act 1998*

**3.4 Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Insert in alphabetical order:

*Marine Safety Act 1998*, section 126

**3.5 Local Government Act 1993 No 30**

**Section 633 Bathing (including nude bathing) and other water-based recreational activities**

Insert before section 633 (5):

- (4C) A notice referred to in this section cannot prohibit or regulate the use of any waters by a vessel (within the meaning of the *Marine Safety Act 1998*):
- (a) in the case of a notice erected after the commencement of this subsection—unless the Minister administering that Act has consented to the erection of that notice, or
  - (b) in the case of a notice erected before that commencement—if the Minister administering that Act has directed the council to remove the notice.

### **3.6 Marine Pollution Act 1987 No 299**

#### **[1] Section 3 Definition of “harbour master”**

Omit “*Ports Corporatisation and Waterways Management Act 1995*”.

Insert instead “*Marine Safety Act 1998*”.

#### **[2] Section 61 Regulations**

Insert after section 61 (1) (d):

(d1) for or with respect to preventing or regulating the pollution of State or other waters by vessels or by facilities used for loading, unloading, berthing or other operations of vessels.

(d2) for or with respect to the installation and operation on vessels in particular State waters or other waters of toilet and other waste control facilities.

#### **[3] Section 61**

Insert after section 61 (2):

(3) A regulation referred to in subsection (1) (d1) or (d2) does not prevail over any inconsistent environment protection legislation (within the meaning of the *Protection of the Environment Administration Act 1991*).

### **3.7 Ports Corporatisation and Waterways Management Act 1995 No 13**

#### **[1] Section 3 Definitions**

Omit "under Part 7" from the definition of *harbour master*.

Insert instead "under the *Marine Safety Act 1998*".

**[2] Section 3**

Omit the definition of *marine legislation*. Insert instead:

*marine legislation* means any of the following Acts (and the regulations and other instruments made under any of those Acts):

this Act

*Marine Safety Act 1998*

*Marine Pollution Act 1987*

Any other Act prescribed by the regulations.

**[3] Section 23 Functions under marine legislation**

Omit the note.

**[4] Section 25 Particular marine safety and other functions**

Omit "particular marine safety functions".

Insert instead "particular marine safety and other functions".

**[5] Section 25 (a)**

Omit the paragraph. Insert instead:

(a) to provide or arrange for the provision of marine safety infrastructure and services.

(a1) to provide or arrange for the provision of other infrastructure and services for use by vessels.

**[6] Section 25**

Insert at the end of the section:

(2) Examples of the infrastructure and services that may be provided under this section are as follows:

(a) the installation and maintenance of navigation aids.

(b) vessel traffic control within ports.

(c) pilotage services within ports.

- (d) the dredging and maintenance of navigation channels (including the improvement of river banks and other land for navigation),
  - (e) hydrographic services,
  - (f) moorings for vessels,
  - (g) wharves, piers, jetties and boat ramps,
  - (h) waste pump-out facilities for vessels,
  - (i) fire-fighting and rescue services relating to vessels and navigable waters.
- (3) The exercise of a function under this section is subject to any applicable provisions of the marine or other legislation.

**[7] Section 26A**

Insert after section 26:

**268 Minister may enter into a contract for the provision of pilotage services not provided by Port Corporation**

- (1) The Minister may enter into a contract with a person (a *contractor*) for the provision by that person of pilotage services at any port. Contracts may be entered into with different persons for the provision of pilotage services at different ports.
- (2) This section does not apply to pilotage services that are provided by a Port Corporation under an operating licence under Division 3 of Part 2 of the *Ports Corporatisation and Waterways Management Act 1995*.
- (3) The Minister is required to call public tenders for a contract under this section.
- (4) A contract under this section must include such provisions as the Minister thinks necessary or desirable to be included for ensuring compliance with the marine legislation and the provision of the pilotage services required in the port concerned.

- (5) Without limiting subsection (1), such a contract is to:
- (a) specify the level of pilotage services to be provided under the contract, and
  - (b) set out performance standards, and quality assurance programs, for pilotage services to be provided under the contract, and
  - (c) provide for the fixing and collection by, and payment to, the contractor of pilotage charges in accordance with Part 5, and
  - (d) specify the amount of consideration to be paid to the Minister by the contractor under the contract (such an amount may be calculated on the basis of a proportion of the pilotage charges payable to the contractor for the provision of pilotage services), and
  - (e) require the contractor to keep records of the pilotage services provided by the contractor and the amounts charged and paid in respect of those services, and
  - (f) empower the Minister and any person authorised by the Minister to inspect those records, and
  - (g) require the contractor to provide information, as and when the Minister requires, as to the costs incurred by the contractor in providing pilotage services at a port concerned, and
  - (h) empower the Minister to terminate or suspend the contract on the ground that the contractor is unable to provide pilotage services at the level referred to in paragraph (a) or has contravened the marine legislation, or on any other specified ground.

**[8] Section 42 Waterways Fund**

Insert after section 42 (4) (a):

- (aa) payments authorised by the Minister to fund the Minister's functions relating to marine safety and the provision of infrastructure and services for vessels, and

**[9] Section 47 Definitions generally**

Omit "Part 6" from the definition of *relevant port authority* in section 47 (1).

Insert instead "Part 6 of the *Marine Safety Act 1998*".

**[10] Section 48 Meaning of "owner" of vessel or cargo**

Insert "and has exclusive possession of the vessel" after "vessel" in section 48 (2) (b).

**[11] Section 53 Pilotage charges**

Insert "of the *Marine Safety Act 1998*" after "Part 6" wherever occurring.

**[12] Section 59 Meaning of "site"**

Omit "office of the Minister" from section 59 (1).

Insert instead "office of Marine Administration".

**[13] Part 6 Pilotage**

Omit the Part.

**[14] Part 7 Harbour masters**

Omit the Part.

**[15] Part 7A**

Insert before Part 8:

**Part 7A Occupation of navigable waters**

**99A Definition of "occupation"**

In this Part:

*occupation* of waters includes the use of moorings in any waters.

**99B Regulation of occupation of navigable waters by vessels, floating objects and structures**

- (1) The regulations may prohibit or regulate the occupation of navigable waters by vessels, floating objects or structures.
- (2) Any such regulation may prohibit any such occupation of navigable waters without a licence or other approval from the Minister.
- (3) Any such regulation may be made for the purposes of marine safety or for the purposes of the management of the occupation of navigable waters by vessels, floating objects and structures.

**99C Appeals to ADT**

The regulations may provide that a person may apply to the Administrative Decisions Tribunal for a review of a decision made in respect of the person under the regulations under this Part in relation to matters requiring a licence or other approval from the Minister.



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## **Schedule 4 Savings, transitional and other provisions**

(Section 143)

### **Part 1 Regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State, a Port Corporation or any authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State, a Port Corporation or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Existing speed limit and other notices in navigable waters**

Any notice prohibiting or regulating the operation of vessels in navigable waters that was erected under the *Maritime Services Act 1935* before the commencement of section 11 of this Act is taken to be a notice displayed by the Minister under that section.

### **3 Offences under Marine (Boating Safety—Alcohol and Drugs) Act 1991**

A reference in Part 3 to a *major offence* includes a reference to an offence against Part 2 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* that was committed before the repeal of that Act by this Act.

### **4 Saving of existing marine safety licences**

- (1) A registration, licence, certificate or other authority that was in force under an Act or regulation repealed by this Act immediately before its repeal (being an authority of the same type as a marine safety licence under this Act) is taken to have been granted under this Act as a marine safety licence.
- (2) If such a licence is a pilot's licence under section 7 of the *Marine Pilotage Licensing Act 1971*, the licence is taken to have been granted for a period of 5 years after the repeal of that Act.
- (3) This clause is subject to the provisions of this Act and the regulations, including regulations under this Schedule.
- (4) For avoidance of doubt, section 33 applies to a registration, licence, certificate or other authority that is taken to have been granted under this Act as a marine safety licence.

### **5 Saving of appointments of harbour masters**

A person who, immediately before the repeal of Part 7 of the *Ports Corporatisation and Waterways Management Act 1995*, was appointed as a harbour master, or to act in the capacity of a harbour master, under that Act is taken to have been so appointed under this Act.

### **6 Saving of evidentiary provisions**

The provisions of section 34 of the *Maritime Services Act 1935* (Proof of certain matters not required), as in force immediately before the repeal of that section, continue to apply to any prosecution or proceedings that may be instituted or continued despite the repeal of that Act, or any other Act or regulation, by this Act.

## **7 Investigations into previous matters**

An investigation may be made under Division 3 of Part 8 of this Act into a matter even though the matter occurred before the commencement of that Division.

## **8 Preservation of exemptions granted under repealed Acts**

The regulations under this Schedule may provide that exemptions granted under an Act repealed by this Act from any provision of or made under the repealed Act is taken to be an exemption granted under this Act from a specified requirement of or made under this Act. Any such exemption may be varied or revoked in accordance with this Act.

## **9 Staged repeal under Subordinate Legislation Act 1989 of regulations to be repealed by this Act**

A regulation that is to be repealed by this Act is taken not to be repealed by section 10 of the *Subordinate Legislation Act 1989*.

## **10 General saving**

Anything done under an Act or regulation repealed by this Act that has any force or effect immediately before its repeal, is taken to have been done under the corresponding provision of this Act.

[Minister's second reading speech made in—  
Legislative Assembly on 6 May 1998  
Legislative Council on 11 November 1998]