



New South Wales

# Marine Safety Amendment (Random Breath Testing) Act 2005 No 4

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New South Wales

## **Marine Safety Amendment (Random Breath Testing) Act 2005 No 4**

Act No 4, 2005

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An Act to amend the *Marine Safety Act 1998* in relation to random breath testing of, and the permissible blood alcohol concentrations for, persons operating vessels and associated offences; and for other purposes. [Assented to 10 March 2005]

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

**1 Name of Act**

This Act is the *Marine Safety Amendment (Random Breath Testing) Act 2005*.

**2 Commencement**

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

**3 Amendment of Marine Safety Act 1998 No 121**

The *Marine Safety Act 1998* is amended as set out in Schedule 1.

**4 Amendment of other Acts and Regulations**

The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Marine Safety Act 1998

(Section 3)

### [1] Section 20 Definitions

Insert at the end of paragraph (b) of the definition of *operate a vessel* in section 20 (1):

, or

- (c) supervise a juvenile operator of a motor vessel.

### [2] Section 22 Prescribed concentrations of alcohol

Insert before section 22 (a):

- (a1) the youth range prescribed concentration of alcohol is a reference to more than zero grams, but less than 0.02 grams, of alcohol in 100 millilitres of blood, and

### [3] Section 24 Operating vessel with prescribed concentration of alcohol in blood

Insert before section 24 (1):

- (1A) A person who is under 18 years of age and who operates a vessel in any waters while there is present in the person's blood the youth range prescribed concentration of alcohol is guilty of an offence.

### [4] Section 24 (3)–(5)

Omit section 24 (3)–(6). Insert instead:

- (3) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the youth range, special range or low range prescribed concentration of alcohol:
- (a) in the case of a first offence—to a penalty not exceeding 10 penalty units, or
- (b) in the case of a second or subsequent offence—to a penalty not exceeding 20 penalty units.
- (4) 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:
- (a) in the case of a first offence—to a penalty not exceeding 20 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 30 penalty units or to imprisonment for a period not exceeding 12 months, or both.
- (5) 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 30 penalty units or to imprisonment for a period not exceeding 18 months, or both, or
  - (b) in the case of a second or subsequent offence—to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 2 years, or both.

**[5] Section 24A**

Insert after section 24:

**24A Defence for offence relating to youth range prescribed concentration of alcohol**

It is a defence to a prosecution for an offence under section 24 (1A) if the defendant proves that, at the time of the alleged offence, the presence in the defendant's blood of the youth range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance),
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

**[6] Section 141 Repeals**

Insert at the end of the section:

- (2) Different days may be appointed for the commencement of subsection (1) in its application to Schedule 2 for the purpose of repealing different Acts or regulations, or different provisions of the same Act or regulation, on different days.

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**[7] Schedule 1 Alcohol and drugs—breath analysis and related matters**

Insert before clause 3 (1):

- (1A) A police 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 that the person is or was operating a vessel.

**[8] Schedule 1, clause 3 (1)**

Insert “(other than a police officer)” after “authorised officer”.

**[9] Schedule 1, clause 3 (1) (a)**

Omit “, or is or was in charge of a motor vessel operated by a juvenile,”.

**[10] Schedule 1, clause 3 (2)**

Omit the subclause. Insert instead:

- (2) An authorised officer to whom subclause (1) applies 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 that subclause.

**[11] Schedule 1, clause 4**

Insert before clause 4 (1) (a):

- (a1) it appears to the officer as a result of a breath test or assessment under this Part that more than zero grams of alcohol in 100 millilitres of blood may be present in the person’s blood and the officer has reasonable cause to believe the person is under 18 years of age, or

**[12] Schedule 1, clause 7 (c)**

Omit “12 hours”. Insert instead “3 hours”.

**[13] Schedule 1, clauses 14, 16 (3) and 17 (2)**

Insert “or nurse” after “practitioner” wherever occurring.

**[14] Schedule 1, clauses 16 (2) and 17 (1)**

Omit “2 hours” wherever occurring. Insert instead “3 hours”.

**[15] Schedule 1, clause 21 (a)**

Insert “or nurses” after “practitioners”.

**[16] Schedule 3 Amendment of other Acts**

Omit Schedule 3.1.

**[17] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Marine Safety Amendment (Random Breath Testing) Act 2005*

**[18] Schedule 4, Part 3**

Insert at the end of Schedule 4:

**Part 3 Provisions consequent on enactment of  
Marine Safety Amendment (Random  
Breath Testing) Act 2005**

**11 Definition**

In this Part:

*repealed Act* means the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.

**12 Amendments not to apply to offences occurring before the commencement of amendments**

- (1) Proceedings for offences committed, or alleged to have been committed, before the commencement of an amendment of a provision by Schedule 1 to the *Marine Safety Amendment (Random Breath Testing) Act 2005* are to be determined as if the amendment had not been enacted.
- (2) Accordingly, the law (including any relevant provision of this Act) that would have been applicable to the proceedings had the amendment not been enacted continues to apply to the proceedings as if the amendment had not been enacted.

**13 References to and in relation to marine safety licences in sections 27 and 40**

- (1) A reference in section 27 or 40 to a marine safety licence is taken to include a reference to a licence to which section 10 of the repealed Act applied immediately before its repeal by Schedule 2 to this Act.
- (2) A reference in section 27:
  - (a) to the cancellation or suspension of a marine safety licence is taken to include a reference to the withdrawal of

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- recognition of a recognised licence (within the meaning of section 10 of the repealed Act), and
- (b) to the disqualification of the holder of a marine safety licence is taken to include a reference to the disqualification of the person from having a recognised licence recognised.



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## Schedule 2 Amendment of other Acts and Regulations

(Section 4)

### 2.1 Crimes Act 1900 No 40

#### [1] Section 52B Dangerous navigation: substantive matters

Omit “*Marine (Boating Safety—Alcohol and Drugs) Act 1991*” from the definition of *vessel* in section 52B (9).

Insert instead “*Marine Safety Act 1998*”.

#### [2] Section 52BA Dangerous navigation: procedural matters

Omit “Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*” from section 52BA (2).

Insert instead “Schedule 1 to the *Marine Safety Act 1998*”.

### 2.2 Criminal Procedure Act 1986 No 209

#### Section 283 Law enforcement devices

Omit “section 24, 25 or 26 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*” from section 283 (1) (b).

Insert instead “clause 15, 16 or 17 of Schedule 1 to the *Marine Safety Act 1998*”.

### 2.3 Passenger Transport Act 1990 No 39

#### Section 9C Accreditation conditions relating to drug and alcohol programs and testing

Omit “the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*” from section 9C (5).

Insert instead “Part 3 of and Schedule 1 to the *Marine Safety Act 1998*”.

### 2.4 Passenger Transport (Drug and Alcohol Testing) Regulation 2004

#### Clause 7 Double jeopardy

Omit clause 7 (2) (d)–(f). Insert instead:

- (d) an offence under section 23 of the *Marine Safety Act 1998*,
- (e) an offence under section 24 of the *Marine Safety Act 1998*,

- (f) an offence under clause 12 (2) of Schedule 1 to the *Marine Safety Act 1998*,

## **2.5 Police Regulation 2000**

### **Clause 48 Operation of Part**

Omit “the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*,” from clause 48 (2).

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

### **Section 3 Definitions**

Omit “*Marine (Boating Safety—Alcohol and Drugs) Act 1991*” from the definition of *marine legislation* in section 3 (1).

Insert instead “Part 3 of and Schedule 1 to the *Marine Safety Act 1998*”.

[Second reading speech made in—  
Legislative Assembly on 8 December 2004  
Legislative Council on 2 March 2005]

BY AUTHORITY