



New South Wales

Marine Safety Amendment Act 2008 No 59

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New South Wales

Marine Safety Amendment Act 2008 No 59

Act No 59, 2008

An Act to amend the *Marine Safety Act 1998* with respect to boating safety and marine safety licences; and for other purposes. [Assented to 1 July 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Marine Safety Amendment Act 2008*.

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 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert “and includes a fishing fleet support vessel within the meaning of that Act” after “Commonwealth” in the definition of *Australian fishing vessel* in section 4 (1).

[2] Section 4 (1), definition of “commercial vessel”

Omit the definition. Insert instead:

commercial vessel means:

- (a) any vessel used or intended to be used for or in connection with any business or commercial activity, including (but not limited to) a vessel used or intended to be used wholly or principally for:
 - (i) carrying passengers or cargo for hire or reward, whether within or outside State waters or in the course of overseas or interstate voyages, or
 - (ii) providing services to vessels for reward, or
- (b) a vessel used or intended to be used by the Crown in any capacity.

[3] Section 4 (1)

Insert in alphabetical order:

pleasure craft has the same meaning as in the *Navigation Act 1912* of the Commonwealth.

[4] Section 4 (1)

Omit the definition of *Uniform Shipping Laws Code* and the note to that definition.

[5] Section 9

Omit the section. Insert instead:

9 Application of Act to Defence Force vessels

- (1) Except as provided by this section, 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.
- (2) Parts 2 and 3, Division 4 of Part 8 and Schedule 1 apply to and in respect of a vessel belonging to the Defence Force of Australia

(other than a commissioned vessel) and to its master, crew and passengers.

- (3) In this section, a reference to a *commissioned vessel* includes a reference to any vessel carried on board or launched from a commissioned vessel.

Note. Section 31 of the *Interpretation Act 1987* provides for an Act to be construed so as not to exceed the legislative power of Parliament.

[6] Section 11 Speed limits, no wash zones and other restrictions on operation of vessels in navigable waters by display of notice

Omit section 11 (4). Insert instead:

- (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:

- (a) in the case of a notice restricting the creation of wash by vessels—50 penalty units, or
(b) in any other case—10 penalty units.

[7] Section 12 Restrictions on operation of vessels in navigable waters during special events by publication of notice

Omit section 12 (3). Insert instead:

- (3) Such a notice is to be published:
- (a) in a newspaper circulating throughout the State or, if the Minister approves in a particular case or class of cases, in a newspaper circulating in the locality concerned, and
(b) in such other manner as the Minister considers appropriate.

[8] Section 13

Omit the section. Insert instead:

13 Reckless, dangerous or negligent navigation and other acts

- (1) A person must not operate a vessel in any navigable waters:
- (a) negligently, or
(b) recklessly, or
(c) at a speed or in a manner dangerous to the public.

Maximum penalty:

- (a) if the operation of the vessel occasions death or grievous bodily harm—1,000 penalty units (where the vessel is a seagoing ship), 100 penalty units (where the vessel is any

-
- other commercial vessel) or 50 penalty units (where the vessel is a recreational vessel), or imprisonment for 2 years, or both, or
- (b) if the operation of the vessel does not occasion death or grievous bodily harm—1,000 penalty units (where the vessel is a seagoing ship), 100 penalty units (where the vessel is any other commercial vessel) or 50 penalty units (where the vessel is a recreational vessel).
- (2) 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.
- (3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
- (a) the nature and condition of the waters in which the offence is alleged to have been committed,
- (b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, in those waters.
- (4) The higher maximum penalty under paragraph (a) of the maximum penalty in subsection (1) does not apply unless it is alleged in the charge for the offence that the conduct concerned occasioned death or grievous bodily harm.
- (5) 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.
grievous bodily harm includes any permanent or serious disfigurement.
seagoing ship means a commercial vessel of more than 45.72 metres in length that is used or intended to be used to carry cargo or passengers for hire or reward and that normally operates on voyages between ports.

[9] Section 15A

Insert after section 15:

15A Power to give directions relating to safety on navigable waters

- (1) An authorised officer may give a direction to a person in, on or near navigable waters if the officer believes on reasonable grounds that:

- (a) the giving of the direction is necessary to ensure the safety of any person, or to prevent damage to property, in, on or near navigable waters, and
 - (b) the direction is reasonable in the circumstances for achieving that objective.
- (2) A person must not fail to comply with a direction given under this section to the person, whether or not the person may contravene another provision of the marine legislation by obeying the direction.
- Maximum penalty: 30 penalty units.
- (3) A person is not guilty of an offence against subsection (2) unless the authorised officer:
- (a) warned the person at the time of giving the direction that failure to comply with the direction may constitute an offence, and
 - (b) identified himself or herself as an authorised officer.
- (4) It is a defence to the prosecution of a person for an offence against a provision of the marine legislation if, at the time of the offence, the person was obeying a direction given under this section.
- (5) Despite any other provision of this section, a direction given under this section has no effect to the extent to which it is inconsistent with a direction given by a harbour master under Part 7.
- (6) In this section:
- (a) a reference to a person in, on or near navigable waters includes a reference to a person on a vessel, water skis or other apparatus, in, on or near navigable waters, and
 - (b) a reference to property in, on or near navigable waters includes a reference to property on a vessel.

[10] Section 18 Regulation of organised aquatic activities in navigable waters

Omit the definition of *aquatic activity* in section 18 (1). Insert instead:

aquatic activity means:

- (a) a race, competition or exhibition (whether or not involving vessels or equipment) that is conducted in or on any navigable waters, or
- (b) any other activity (whether or not 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.

[11] Section 18 (4)

Insert after section 18 (3):

- (4) A licence or other approval issued by the Minister for the purposes of this section may include an exemption from a requirement of this Act or the regulations in respect of any or all of the following:
- (a) the holder of the licence or approval,
 - (b) any person or class of persons involved in the conduct of, or taking part in, the aquatic activity to which the licence or approval relates,
 - (c) any vessel used in connection with that activity.

[12] Part 3

Omit the Part. Insert instead:

Part 3 Boating safety—alcohol and other drug use

Division 1 Interpretation

20 Definitions

- (1) In this Part and in Schedule 1:
- breath analysing instrument*** has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.
- breath test*** has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.
- drug*** has the same meaning as it has in the *Road Transport (Safety and Traffic Management) Act 1999*.
- 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, paraflaying device or other device, or
 - (b) act as observer on a vessel, for safety purposes, of any person being towed by the vessel, or
 - (c) supervise a juvenile operator of a motor vessel.
- (2) 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).
- (3) An offence against a provision of this Part or Schedule 1 is a ***second or subsequent offence*** only if, within the period of 5 years immediately before a person is convicted of the offence, the person was convicted of another offence against the same provision or of a major offence.
- (4) An offence against a provision of this Part or Schedule 1 is a ***first offence*** if it is not a second or subsequent offence.

21 Application of Part and Schedule 1

- (1) This Part and Schedule 1 apply to all vessels. However, this Part and Schedule 1 do 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 and Schedule 1 apply to a vessel only while the vessel is underway.
- (3) This Part and Schedule 1 apply to all waters, whether or not they are navigable waters.

22 Prescribed concentrations of alcohol

In this Part and in Schedule 1:

- (a) ***youth range prescribed concentration of alcohol*** means a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (b) ***special range prescribed concentration of alcohol*** means a concentration of 0.02 grammes or more, but less than 0.05 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and

- (c) ***low range prescribed concentration of alcohol*** means a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (d) ***middle range prescribed concentration of alcohol*** means a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (e) ***high range prescribed concentration of alcohol*** means a concentration of 0.15 grammes or more of alcohol in 210 litres of breath or 100 millilitres of blood.

23 Measurement of alcohol concentrations

- (1) For the purposes of this Part and Schedule 1, the concentration of alcohol present in a person's breath or blood may be expressed as follows:
 - (a) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the breath—the amount of alcohol in grammes in 210 litres of breath,
 - (b) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the blood—the amount of alcohol in grammes in 100 millilitres of blood,
 - (c) in the case of a sample of blood—the amount of alcohol in grammes in 100 millilitres of blood.
- (2) An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood.
- (3) Accordingly, any offence under this Part relating to the presence of a specified concentration of alcohol in a person's breath or blood at the time of the occurrence of a particular event is a single offence regardless of whether the concentration of alcohol concerned is measured by reference to the amount of alcohol present in breath or in blood (or both).

Division 2 Offences involving prescribed concentrations of alcohol

24 Presence of prescribed concentration of alcohol in person's breath or blood

(1) Offence—youth range prescribed concentration of alcohol

A person who is under 18 years of age must not operate a vessel in any waters while there is present in his or her breath or blood the youth range prescribed concentration of alcohol.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(2) Offence—special range prescribed concentration of alcohol

A person must not operate a vessel in any waters while there is present in his or her breath or blood the special range prescribed concentration of alcohol if:

- (a) the person is under 18 years of age, or
- (b) the person is operating the vessel for commercial purposes.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(3) Offence—low range prescribed concentration of alcohol

A person must not operate a vessel in any waters while there is present in his or her breath or blood the low range prescribed concentration of alcohol.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(4) Offence—middle range prescribed concentration of alcohol

A person must not operate a vessel in any waters while there is present in his or her breath or blood the middle range prescribed concentration of alcohol.

Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

(5) **Offence—high range prescribed concentration of alcohol**

A person must not operate a vessel in any waters while there is present in his or her breath or blood the high range prescribed concentration of alcohol.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

25 Alternative verdicts for lesser offences

(1) **Alternative verdict for lesser offence in prosecution for middle range prescribed concentration of alcohol**

If, on a prosecution of a person for an offence under section 24 (4), the court is satisfied that, at the time the person operated the vessel, there was not present in the person's breath or blood the middle range prescribed concentration of alcohol but there was present in the person's breath or blood the low range prescribed concentration of alcohol, the court may convict the person of an offence under section 24 (3).

(2) **Alternative verdict for lesser offence in prosecution for high range prescribed concentration of alcohol**

If, on a prosecution of a person for an offence under section 24 (5), the court is satisfied that, at the time the person operated the vessel, there was not present in the person's breath or blood the high range prescribed concentration of alcohol:

- (a) if the court is satisfied that the middle range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 24 (4), or
- (b) if the court is satisfied that the low range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 24 (3).

(3) **Alternative verdict for lesser offence in prosecution of special category persons**

If, on a prosecution of a person for an offence under section 24 (3), (4) or (5), the court is satisfied that, at the time the person operated the vessel:

- (a) the person was under 18 years of age or the person was operating the vessel for commercial purposes, and

- (b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol or the low range prescribed concentration of alcohol, but that there was present in the person's breath or blood the special range prescribed concentration of alcohol,

the court may convict the person of an offence under section 24 (2).

(4) Alternative verdict for lesser offence in prosecution of persons under 18

If, on a prosecution of a person for an offence under section 24 (2), (3), (4) or (5), the court is satisfied that, at the time the person was operating the vessel:

- (a) the person was under 18 years of age, and
- (b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol, the low range prescribed concentration of alcohol or the special range prescribed concentration of alcohol, but that there was present in the person's breath or blood the youth range prescribed concentration of alcohol,

the court may convict the person of an offence under section 24 (1).

26 Presence of higher concentration of alcohol not defence

- (1) It is not a defence to a prosecution for an offence under section 24 (1) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.02 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (2) It is not a defence to a prosecution for an offence under section 24 (2) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.05 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (3) It is not a defence to a prosecution for an offence under section 24 (3) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.08 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (4) It is not a defence to a prosecution for an offence under section 24 (4) if the defendant proves that, at the time he or she

was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.15 grammes or more in 210 litres of breath or 100 millilitres of blood.

27 Defence for offence relating to youth range prescribed concentration of alcohol

It is a defence to a prosecution for an offence under section 24 (1) if the defendant proves that, at the time the defendant was operating the vessel, the presence in the defendant's breath or 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.

Division 3 Offences involving operating a vessel under the influence of alcohol or other drug

28 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 court attendance notice 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 court attendance notice, 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 court attendance notice, or

- (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

Division 4 Related matters

28A 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.

28B Application of section 10 of Crimes (Sentencing Procedure) Act 1999

- (1) The provisions of section 10 of the *Crimes (Sentencing Procedure) Act 1999* 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 24 or 28 or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

28C Random breath testing and other matters related to alcohol and drug use

Schedule 1 has effect.

[13] Section 29 Types of marine safety licences

Omit section 29 (c).

[14] Section 29 (g1)

Insert after section 29 (g):

(g1) certificate of local knowledge—being a marine safety licence that exempts a vessel whose master is the holder of the certificate from compulsory pilotage under Part 6,

[15] Section 34 Fees for licences

Omit the section.

[16] Section 36 Special provision relating to marine pilot's licence, marine pilotage exemption certificate and certificate of local knowledge

Omit “or marine pilotage exemption certificate”.

Insert instead “, marine pilotage exemption certificate or certificate of local knowledge”.

[17] Section 37 Regulations relating to licences

Insert before section 37 (2) (a):

(a1) requiring a marine safety licence for the carrying out of any activity, or in relation to any other thing, that may be regulated under this Act,

[18] Section 37 (2) (k) and (l)

Omit section 37 (2) (k). Insert instead:

(k) fees and charges payable in connection with licences and applications for licences, including in relation to the inspection of vessels,

(l) the suspension and cancellation of marine safety licences, and the disqualification of persons from holding or obtaining marine safety licences.

[19] Section 38

Omit the section. Insert instead:

38 Suspension or cancellation of licences or disqualification of persons from holding licences

- (1) The Minister may suspend or cancel a marine safety licence, or disqualify a person from holding or obtaining a marine safety licence for a specified period:
 - (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 may be prescribed by the regulations.
- (2) The Minister may at any time remove the suspension of a marine safety licence, or a disqualification, imposed by the Minister under this section.

[20] Section 42 Rights of review

Omit section 42 (b). Insert instead:

- (b) the imposition of conditions or any other limitation or restriction on the person's marine safety licence (otherwise than by regulation),

[21] Section 44 Definition of "unsafe vessel"

Omit "a danger to human life".

Insert instead "likely to endanger any person".

[22] Section 45 Owner or master not to operate unsafe vessel

Omit section 45 (1) and (2). Insert instead:

- (1) The owner of a vessel must not operate the vessel if the owner knows, or ought reasonably to know, that it is an unsafe vessel.
Maximum penalty: 400 penalty units or 2 years imprisonment, or both.
- (2) The master of a vessel must not operate a vessel if the master knows, or ought reasonably to know, that it is an unsafe vessel.
Maximum penalty: 400 penalty units or 2 years imprisonment, or both.

[23] Section 50 Vessels exempt from registration

Insert “, a commercial vessel that is an Australian fishing vessel or a pleasure craft” after “recreational vessel” in section 50 (1).

[24] Section 51 Offence to operate unregistered vessel

Omit “50 penalty units”. Insert instead “75 penalty units”.

[25] Part 5, Division 3, heading

Insert “and other requirements” after “certificates”.

[26] Sections 53 and 53A

Omit section 53. Insert instead:

53 Vessels to which this Division applies

- (1) This Division applies to commercial vessels operating in State waters.
- (2) This Division extends to:
 - (a) a commercial vessel that is an Australian fishing vessel or a pleasure craft while it is operating outside State waters, and
 - (b) any other commercial vessel while it is operating outside State waters but only if it is proceeding on a voyage that is not an overseas or interstate voyage.

53A Offence to operate commercial vessel not complying with certain requirements

- (1) The owner of a commercial vessel must not operate the vessel unless:
 - (a) the vessel complies with the requirements prescribed by the regulations relating to the design, construction or equipment of any such vessel, and
 - (b) if required by the regulations, has a survey certificate under this Act.Maximum penalty: 100 penalty units.
- (2) The master of a commercial vessel must not operate the vessel unless:
 - (a) the vessel complies with the requirements prescribed by the regulations relating to the design, construction or equipment of any such vessel, and

(b) if required by the regulations, has a survey certificate under this Act.

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution under subsection (2) if the master establishes that he or she did not have any reasonable cause to believe that:

(a) the vessel did not comply with the requirements referred to in subsection (2) (a) or did not have a survey certificate under this Act, as the case may be, or

(b) any condition of an exemption granted in respect of the vessel for the purposes of this section was not being complied with at the relevant time.

Note. Section 139 (4) provides that an exemption granted by the regulations or by order of the Minister does not apply during any period that any condition to which the exemption is subject is not complied with.

(4) The regulations may exempt any class of vessels from any of the requirements of subsections (1) and (2).

(5) The Minister may exempt a vessel from any of the requirements of subsections (1) and (2) by order in writing given to the owner or master of the vessel or by a condition of the vessel's 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 holder is an offence—see section 32.

[27] Section 54 Grant of survey certificate and survey schedule for commercial vessels

Omit “and that the vessel is safe to operate” from section 54 (1).

[28] Section 54 (2)

Omit the subsection.

[29] Section 55 Accredited surveyors of commercial vessels

Omit the section.

[30] Section 56

Omit the section. Insert instead:

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

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

- (a) the construction, design, equipment, deck or load lines, survey, identification of and inspection of, and any other matter relating to, commercial vessels to which this Division applies,
- (b) the manner in which any matter referred to in paragraph (a) is to be determined,
- (c) applications for determinations or approvals under this Act in respect of a matter referred to in paragraph (a), and appeals and reviews of decisions made in respect of such applications (including enabling a person to apply for a review of any such decision to the Administrative Decisions Tribunal),
- (d) fees in relation to any such application, appeal or review.

[31] Section 57 Vessels to which this Division applies

Omit section 57 (1). Insert instead:

- (1) This Division applies to commercial vessels operating in State waters.
- (1A) This Division extends to:
 - (a) a commercial vessel that is an Australian fishing vessel or a pleasure craft while it is operating outside State waters, and
 - (b) any other commercial vessel while it is operating outside State waters but only if it is proceeding on a voyage that is not an overseas or interstate voyage.

[32] Section 59A

Insert after section 59:

59A Offences committed by disqualified holders of certificates of competency

- (1) A person who is disqualified by or under any Act from holding or obtaining a certificate of competency must not:

- (a) operate a commercial vessel to which this Division applies during the period of disqualification, or
- (b) make an application for a certificate of competency during the period of disqualification and in respect of the application state his or her name falsely or incorrectly or omit to mention the disqualification.

Maximum penalty: 100 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 125 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) Subsection (1) does not apply to the operation of a vessel in circumstances prescribed by the regulations.
- (3) An offence under this section is a second or subsequent offence for the purposes of this section if it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1) within the period of 5 years immediately before the person is convicted of the offence.
- (4) If a person is convicted by a court of an offence under subsection (1), the person:
 - (a) is disqualified by the conviction (and without any specific order) for the relevant disqualification period from the date of expiration of the existing disqualification or suspension or from the date of such conviction, whichever is the later, from holding a certificate of competency, and
 - (b) may also be disqualified, for such additional period as the court may order, from holding a certificate of competency.
- (5) The disqualification referred to in subsection (4) is in addition to any penalty imposed for the offence.
- (6) Subsection (1) applies to a person who is disqualified from holding a certificate of competency by a court in Australia or under any law in this State or another State or Territory.
- (7) In this section, the *relevant disqualification period* is:
 - (a) in the case of a first offence under subsection (1)—12 months, or
 - (b) in the case of a second or subsequent offence under subsection (1)—2 years.

[33] Section 60

Omit the section. Insert instead:

60 Crewing of commercial vessels to which this Division applies

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

- (a) the crew to be carried in a commercial vessel to which this Division applies,
- (b) the manner in which the number and type of crew to be carried in a commercial vessel to which this Division applies are to be determined,
- (c) the constitution of safety crewing committees and the functions to be exercised by such committees,
- (d) applications for determinations or approvals under this Act relating to the crew to be carried in a commercial vessel to which this Division applies, and appeals and reviews of decisions made in respect of such applications (including enabling a person to apply for a review of any such decision to the Administrative Decisions Tribunal),
- (e) fees in relation to any such application, appeal or review,
- (f) the keeping of records in relation to the crew carried in a commercial vessel to which this Division applies and the production and inspection of any such records.

[34] Section 63

Omit the section. Insert instead:

63 Offence to operate recreational vessel without appropriate boat driving licence

A person must not operate a recreational vessel to which this Division applies as its master unless the person is the holder of a boat driving licence under this Act of an appropriate type which authorises the person to operate the vessel.

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.

[35] Section 63A

Insert after section 63:

63A Offences committed by disqualified holders of boat driving licences

- (1) A person who is disqualified by or under any Act from holding or obtaining a boat driving licence under this Act must not:
 - (a) operate a recreational vessel to which this Division applies as its master during the period of disqualification, or
 - (b) make an application for a boat driving licence under this Act during the period of disqualification and in respect of the application state his or her name falsely or incorrectly or omit to mention the disqualification.

Maximum penalty: 100 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 125 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) Subsection (1) does not apply to the operation of a vessel in circumstances prescribed by the regulations.
- (3) An offence under this section is a second or subsequent offence for the purposes of this section if it is the second or subsequent occasion on which the person is convicted of any offence under subsection (1) within the period of 5 years immediately before the person is convicted of the offence.
- (4) If a person is convicted by a court of an offence under subsection (1), the person:
 - (a) is disqualified by the conviction (and without any specific order) for the relevant disqualification period from the date of expiration of the existing disqualification or suspension or from the date of such conviction, whichever is the later, from holding a boat driving licence under this Act, and
 - (b) may also be disqualified, for such additional period as the court may order, from holding a boat driving licence under this Act.
- (5) The disqualification referred to in subsection (4) is in addition to any penalty imposed for the offence.
- (6) Subsection (1) applies to a person who is disqualified from holding a boat driving licence by a court in Australia or under any law in this State or another State or Territory.

- (7) In this section, the *relevant disqualification period* is:
- (a) in the case of a first offence under subsection (1)—12 months, or
 - (b) in the case of a second or subsequent offence under subsection (1)—2 years.

[36] Section 64 Exemption from requirement to hold boat driving licence

Omit section 64 (1) (c). Insert instead:

- (c) is authorised under the law of another State or a Territory to operate the vessel concerned (being an authorisation that is not suspended) and is operating the vessel in accordance with the conditions of that authorisation.

[37] Section 64 (1A)

Insert after section 64 (1):

- (1A) Subsection (1) does not exempt a person from the requirement to hold a boat driving licence if:
- (a) the person holds a boat driving licence that is suspended, or
 - (b) the person has held a boat driving licence that has been cancelled and the person is disqualified from applying for another such licence.

[38] Section 67

Omit the section. Insert instead:

67 Regulation of marine safety equipment or facilities

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

- (a) the installation or carriage on vessels of marine safety equipment or facilities,
- (b) the wearing of safety equipment by persons on vessels or engaged in activities in or over the water.

[39] Section 68A

Insert after section 68:

68A Regulations relating to builders plates for vessels

- (1) Regulations may be made for or with respect to builders plates to be fixed on vessels.

- (2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to the following:
- (a) prohibiting or regulating the sale or supply of vessels in New South Wales without builders plates,
 - (b) the information to be included on builders plates for vessels, the form of such plates and the manner in which they are to be fixed to vessels,
 - (c) the persons who may fix builders plates to vessels,
 - (d) the alteration and removal of builders plates.

[40] Section 71 Definitions

Omit the definition of *pilotage* from section 71 (1). Insert instead:

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 from the time at which the vessel crosses the port limit until the vessel is at anchor or made fast to the shore,
- (b) outward pilotage, that is, the pilotage of a vessel leaving a pilotage port from the time at which the vessel is no longer at anchor or made fast to the shore until the vessel is clear of the port limit,
- (c) harbour pilotage, that is, the pilotage of a vessel being moved within a pilotage port from the time at which the vessel is no longer at anchor or made fast to the shore until the vessel is at anchor or made fast to the shore.

[41] Section 72 Marine pilots in any port to be licensed

Insert at the end of section 72:

- (2) An unlicensed person does not commit an offence against subsection (1) if the person is training as a marine pilot and is acting under the direct supervision of the holder of a marine pilot's licence under this Act that applies to the port concerned.

[42] Section 73

Omit the section. Insert instead:

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:

- (a) in a case where the pilotage service provider is the Minister, the person has been authorised by the Minister to act as a marine pilot in that pilotage port, or
- (b) in any other case, the person is employed or engaged by the pilotage service provider.

Maximum penalty: 100 penalty units.

[43] Section 74 Pilotage compulsory in pilotage ports

Insert after section 74 (2):

- (2A) Subsection (2) does not apply to the movement of a vessel if:
 - (a) approval for the movement of the vessel was obtained from the harbour master for the port concerned before the vessel was moved, and
 - (b) the movement of the vessel was recorded in the vessel's log.

[44] Section 75 Vessels exempted from compulsory pilotage

Insert after section 75 (1) (a):

- (a1) a vessel whose master is the holder of a certificate of local knowledge under this Act that applies to that port and vessel,

[45] Section 75 (2)

Insert "or certificate of local knowledge" after "certificate".

[46] Section 80 Immunity of State, marine pilots, pilotage service provider and others

Insert after section 80 (2):

- (3) A reference to a person made available to act as a marine pilot by a pilotage service provider includes a reference to a person who is in training as a marine pilot and acting under the direct supervision of the person made available to act as a marine pilot by the pilotage service provider.

[47] Section 81A

Insert after section 81:

81A Marine pilot to notify certain matters to harbour master

It is the duty of a person acting as a marine pilot for a vessel under this Part to immediately notify the harbour master of the port concerned if the master of the vessel does not ensure the carrying

out of any order of the person in relation to the conduct of the vessel while under that pilotage.

[48] Section 83 Regulations

Insert at the end of section 83:

- (2) The regulations relating to pilotage and marine pilots' licences may apply, adopt or incorporate by reference wholly or partly, and with or without modification, any document published by the Minister in the Gazette or on the website of the Maritime Authority as in force at a particular time or as in force from time to time.

[49] Section 85

Omit the section. Insert instead:

85 Appointment of harbour masters

- (1) The Minister may appoint a person to be the harbour master for any port.
- (2) Two or more persons cannot be appointed as harbour masters for the same port.
- (3) The Minister may revoke the appointment of a harbour master at any time.

[50] Section 86 Appointment of persons to exercise functions of harbour masters

Insert after section 86 (5):

- (6) More than one person may be appointed at any one time under this section to exercise the functions of a harbour master.

[51] Section 91A

Insert after section 91:

91A Directions of harbour master acting as marine pilot

- (1) Nothing prevents a harbour master who is acting as a marine pilot for a vessel from giving a direction under this Part in relation to the vessel.
- (2) However, any such direction is taken not to be properly given under this Part unless the person giving the direction has warned the person to whom it is given that it is a direction of the harbour master and that failure to comply with the direction may constitute an offence under section 91.

[52] Section 97A

Insert after section 97:

97A Obstruction of authorised officers and others

A person must not, without reasonable excuse, prevent or obstruct any authorised officer or other person in the exercise of a function under this Act.

Maximum penalty: 50 penalty units.

[53] Section 111 Action by Minister following report of investigation

Insert after section 111 (2) (d):

- (d1) disqualify a person from holding or obtaining a marine safety licence for a specified period,

[54] Section 121 Identification of owner and master of vessel

Insert after section 121 (2):

- (3) Without limiting subsection (2), an authorised officer may require the owner of a vessel to supply a written statement containing the identity and address of the master of the vessel. Any such written statement is admissible in any proceedings as evidence (without proof of signature) of the identity and address of the master of the vessel concerned.
- (4) Without limiting subsection (2), an authorised officer may require the master of a vessel to supply a written statement containing the identity and address of the owner of the vessel. Any such written statement is admissible in any proceedings as evidence (without proof of signature) of the identity and address of the owner of the vessel concerned.

[55] Section 125 Offences

Omit section 125 (1).

[56] Part 8, Division 5, heading

Omit the heading. Insert instead:

Division 5 Regulation of public ferry wharves

[57] Section 125A Public ferry wharves

Insert at the end of the section:

Note. The terms *ferry* and *public passenger service* are defined in section 94 (1) to have the same meanings as they have in the *Passenger Transport Act 1990*.

[58] Section 125B Inspections of public ferry wharves

Omit section 125B (4).

[59] Section 125C Improvement notices

Insert after section 125C (5):

- (6) An improvement notice may be varied at the request of, or with the consent of, the person to whom it is given.

[60] Section 125J Withdrawal and revocation of notices

Omit “, if satisfied that the notice was given in error or is incorrect in some respect” from section 125J (1).

[61] Sections 125L and 125M

Insert after section 125K:

125L Certificates relating to public ferry wharves

- (1) For the purposes of carrying out functions under this Division in relation to public ferry wharves, the Minister may, by notice in writing, direct the owner or person responsible for the maintenance of any such wharf to provide to the Minister a report from an appropriately qualified person as to the condition of the wharf within the time specified in the notice.
- (2) If a person is directed under this section to provide a report within a specified time and the report is not provided within that time, the Minister may obtain such a report and may recover from the person as a debt in any court of competent jurisdiction the reasonable charges and expenses incurred in obtaining the report.

125M Regulations relating to public ferry wharves

- (1) The regulations may make provision for or with respect to any of the following:
 - (a) the inspection of public ferry wharves under this Division,
 - (b) the methodology or standards with which inspections must comply,
 - (c) the provision of inspection reports to persons,
 - (d) the procedures with respect to responses to inspection reports,
 - (e) requirements relating to the maintenance and standards of construction of public ferry wharves,

- (f) requirements relating to the preparation of maintenance plans for public ferry wharves and the reporting on and keeping of records in respect of such plans.
- (2) The regulations under this section may apply, adopt or incorporate by reference wholly or partly, and with or without modification, any document published by the Minister in the Gazette or on the website of the Maritime Authority as in force at a particular time or as in force from time to time.

[62] Section 127

Omit the section. Insert instead:

127 Offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
 - (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

[63] Section 133 Proof of certain matters not required

Insert at the end of section 133 (1) (b):

, or

- (c) any such licence that had been suspended or cancelled has not been delivered to the Minister,

[64] Section 133 (2) (c)

Insert “or operator” after “master”.

[65] Section 133 (2) (l)

Insert after section 133 (2) (k):

- (l) the times of sunrise and sunset on any day as published in a statement in a newspaper circulating throughout New South Wales.

[66] Section 134 Service of instruments (except in proceedings for offences)

Omit “summons” wherever occurring.

Insert instead “court attendance notice”.

[67] Section 135 Service of court attendance notice and other process in legal proceedings

Omit “summons” wherever occurring.

Insert instead “court attendance notice”.

[68] Section 136A

Insert after section 136:

136A Minister or Maritime Authority may rely on advice

- (1) In exercising any function under this Act or the regulations, the Minister or the Maritime Authority is entitled to rely (wholly or partly) on a certificate, report or other form of advice obtained from an appropriately qualified person engaged for that purpose.
- (2) The Minister, the State, the Maritime Authority and any person acting on behalf of the Minister, the State or the Maritime Authority do not incur any liability as a consequence of the Minister or the Maritime Authority being satisfied of a matter by relying on advice referred to in this section.

[69] Section 137 Regulations

Insert after section 137 (1):

- (1A) The regulations may make provision for or with respect to fees and charges for services provided under this Act, including prescribing the basis on which any such fee or charge is to be determined and the waiver of any such fees or charges.

[70] Section 137 (3)

Insert after section 137 (2):

- (3) A regulation that provides for an application to be made to the Administrative Decisions Tribunal for the review of a decision may be made only with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

[71] Section 138 Adoption of codes, standards, treaties and other documents

Insert “by whatever means” after “published” in section 138 (1).

[72] Section 138 (2) and (3)

Omit section 138 (2). Insert instead:

- (2) Without limiting subsection (1), a regulation may adopt, wholly or in part and with or without modification any of the following documents as in force at a particular time or as in force from time to time:
 - (a) the *National Standard for Commercial Vessels* adopted by the Australian Transport Council as referred to in section 427 of the *Navigation Act 1912* of the Commonwealth,
 - (b) the *Uniform Shipping Laws Code* adopted by the Australian Transport Council as referred to in section 427 of the *Navigation Act 1912* of the Commonwealth or any other code,
 - (c) any Australian Standard or any standard of another country,
 - (d) any treaty, convention or international agreement.
- (3) The regulations may prescribe a person or body who is to be taken to be the statutory marine authority for New South Wales for the purposes of all or specified provisions of the *National Standard for Commercial Vessels* referred to in subsection (2) (a).

[73] Section 139 Exemptions

Omit section 139 (3). Insert instead:

- (3) An exemption granted by the regulations, by a licence or approval as referred to in section 18 or by an order of the Minister or other person may be made subject to any condition specified in the regulation, licence, approval or order.

[74] Section 139, note

Insert “18,” after “11,”.

[75] Section 144 Review of Act

Omit “this Act” from section 144 (2).

Insert instead “the *Marine Safety Amendment Act 2008*”.

[76] **Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1 Alcohol and drug use—random
breath testing and related matters**

(Section 28C)

Part 1 Interpretation

1 Definitions

(1) In this Schedule:

analyst has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

breath analysis has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

hospital means:

- (a) any public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, and
- (b) a statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*, and
- (c) any private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

prescribed laboratory means a laboratory prescribed by regulations under the *Road Transport (Safety and Traffic Management) Act 1999* for the purposes of any of the provisions of Part 2 of that Act.

prescribed place means a place prescribed by regulations under the *Road Transport (Safety and Traffic Management) Act 1999* for the purposes of any of the provisions of Part 2 of that Act.

prescribed sample taker has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

(2) 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 *Road Transport (Safety and Traffic Management) Act 1999*.

- (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.

Part 2 Random breath testing and breath analysis

2 Power to conduct random breath testing

- (1) A police officer may require a person to undergo a breath test in accordance with the officer's directions if the officer has reasonable cause to believe that the person is or was operating a vessel.
- (2) An authorised officer (other than 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:
- (a) the person is or was operating a vessel while there is or was alcohol in the person's breath or 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 by the regulations, the prescribed amount).
- (3) An authorised officer to whom subclause (2) 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.
- (4) A person must not, when required by a police officer to undergo a breath test under subclause (1) or required by an authorised officer to undergo a breath test under subclause (2), refuse or fail to undergo the breath test in accordance with the directions of the officer.
Maximum penalty: 10 penalty units.
- (5) It is a defence to a prosecution for an offence under subclause (4) if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to undergo a breath test.

- (6) Before requiring a person to undergo a breath test under subclause (1) or (2), and for the purpose of determining whether to conduct such a test, an authorised officer may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.

3 Arrest following failed breath test

- (1) An authorised officer may exercise the powers referred to in subclause (2) in respect of a person if:
- (a) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of more than zero grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is under 18 years of age, or
 - (b) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.02 grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is under 18 years of age or is operating the vessel for commercial purposes, or
 - (c) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.05 grammes in 210 litres of breath or 100 millilitres of blood, or
 - (d) the person refused to undergo a breath test required by an authorised officer under clause 2 (1) or (2) or fails to undergo that test in accordance with the directions of the officer.
- (2) An authorised officer may:
- (a) arrest a person referred to in subclause (1) without warrant, and
 - (b) take the person, or cause the person to be taken, with such force as may be necessary, to a police station or some other place as the officer considers desirable, and

- (c) detain the person, or cause the person to be detained, at that police station or other place for the purposes of this Part.

4 Breath analysis following arrest

- (1) An authorised officer may require a person who has been arrested under clause 3 to submit to a breath analysis in accordance with the directions of the officer.
- (2) A breath analysis must be carried out by a police officer authorised to do so by the Commissioner of Police at or near a police station or such other place as that officer considers desirable.
- (3) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysing instrument must deliver a written statement to that person signed by that officer specifying the following:
 - (a) the concentration of alcohol determined by the analysis to be present in that person's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood,
 - (b) the day on and time of the day at which the breath analysis was completed.
- (4) A person who is required by an authorised officer under subclause (1) to submit to a breath analysis must not refuse or fail to submit to that analysis in accordance with the directions of the officer.
Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).
- (5) 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, at the time the defendant was required to do so, to submit to a breath analysis.

5 Offence—wilfully altering alcohol concentration following request for breath test or breath analysis

A person must not wilfully do anything to alter the concentration of alcohol in the person's breath or blood:

- (a) between the time of the event referred to in clause 2 (1) or (2) in respect of which the person has been required by an authorised officer to undergo a breath test and the time when the person undergoes that test, or

- (b) if the person is required by an authorised officer to submit to a breath analysis—between the time of the event referred to in clause 2 (1) or (2) in respect of which the person has been required by an authorised officer to undergo a breath test and the time when the person submits to the breath analysis.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

6 When breath test or breath analysis not permitted

An authorised officer cannot require a person to undergo a breath test or to submit to a breath analysis:

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his or her treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person, or
- (b) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis, or
- (c) at any time after the expiration of 2 hours from the occurrence of the event by reason of which an authorised officer was entitled under clause 2 (1) or (2) to require that person to undergo a breath test, or
- (d) at that person's home.

7 Procedure to be followed for breath analysis

- (1) A person who is required under clause 4 (1) to submit to a breath analysis may request the authorised officer making the requisition to arrange for a medical practitioner to take, in the presence of an authorised officer, a sample of that person's blood, for analysis in accordance with this clause at that person's own expense.
- (2) A request by a person under subclause (1), or the taking of a sample of that person's blood, does not absolve that person from the obligation imposed on the person to submit to a breath analysis in accordance with clause 4 (1).

- (3) A medical practitioner by whom a sample of a person's blood is taken under an arrangement referred to in subclause (1) must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
 - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the authorised officer who was present at the time the sample was taken.
- (4) The authorised officer to whom a sample of blood is handed under subclause (3) must, as soon as reasonably practicable after the sample is handed to the officer, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine the concentration of alcohol in the blood.
- (5) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (6) An analyst at the laboratory to which a sample of blood is submitted for analysis under this clause may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (7) An analysis referred to in subclause (6) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood to be analysed and the breaking of any seal securing the sample) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

Part 3 Blood analysis of accident patients following accidents

8 Hospitals to which this Part applies

In this Part, a reference to a *hospital* includes a reference to any premises, institution or establishment prescribed by the regulations under the *Road Transport (Safety and Traffic*

Management) Act 1999 as a hospital for the purposes of Division 4 of Part 2 of that Act.

9 Blood samples to be taken in hospitals from accident patients

- (1) In this clause, *accident patient* means a person at least 15 years of age who attends at or is admitted into a hospital for examination or treatment because the person has been involved in an accident while operating a vessel.
- (2) Any medical practitioner by whom an accident patient is attended at a hospital is under a duty to take a sample of the patient's blood for analysis as soon as practicable.
- (3) The medical practitioner is under a duty to take the sample whether or not the accident patient consents to the taking of the sample.
- (4) If there is no medical practitioner present to attend the accident patient at the hospital, the blood sample is to be taken by a registered nurse who is attending the patient and who is accredited by a hospital as competent to perform the sampling procedures.
- (5) A medical practitioner or nurse is not required by this clause to take a sample of an accident patient's blood:
 - (a) if a sample of the accident patient's blood has already been taken in accordance with this clause by another medical practitioner or nurse, or
 - (b) if the medical practitioner or nurse has been informed by a police officer (or has reasonable grounds to believe) that the sample is required to be taken for the purposes of Part 5 of this Schedule.

10 Offence—failure to take blood sample

- (1) A medical practitioner or nurse must not fail to take a person's blood sample as required under this Part.
Maximum penalty: 20 penalty units.
- (2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner or nurse satisfies the court that:
 - (a) he or she believed on reasonable grounds that the taking of blood from the person from whom he or she was required by clause 9 to take a sample of blood would be prejudicial to the proper care and treatment of the person, or

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- (b) he or she did not believe that the person was at least 15 years of age and it was reasonable for him or her not to have so believed, or
 - (c) he or she did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a vessel that the person was operating, or
 - (d) without limiting paragraph (c)—he or she did not believe that the person was a person from whom he or she was required by clause 9 to take a sample of blood and it was reasonable for him or her not to have so believed, or
 - (e) the requirement that he or she take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or he or she believed on reasonable grounds that the requirement so arose, or
 - (f) he or she did not know, and could not with reasonable diligence have ascertained, which of 2 or more persons involved in an accident on a vessel was or were a person or persons from whom he or she was required by clause 9 to take a sample or samples of blood, or
 - (g) he or she was, by reason of the behaviour of the person, unable to take a sample of blood from the person at the time the person attended at or was admitted into the hospital or a reasonable time after so attending or being admitted, or
 - (h) there was reasonable cause for him or her not to take a sample of blood from the person in accordance with this Part.

11 Offence—hindering or obstructing health professional taking blood sample

- (1) A person must not hinder or obstruct a medical practitioner or nurse in attempting to take a sample of the blood of any other person in accordance with this Part.
Maximum penalty: 20 penalty units.
- (2) A person must not:
 - (a) by reason of the person's behaviour, prevent a medical practitioner or nurse from taking a sample of the person's blood in accordance with this Part, or
 - (b) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with this Part, wilfully do anything to alter the concentration of

alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional).

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution of a person for an offence under subclause (2) of wilfully doing anything to alter the concentration of alcohol in the person's blood if he or she satisfies the court that he or she did the thing after the expiration of 2 hours after the accident concerned occurred.
- (4) In this clause, ***appropriate health professional*** means a medical practitioner or nurse, or a person of a class or description prescribed by the regulations under this Act or the *Road Transport (Safety and Traffic Management) Act 1999*, for the proper care and treatment of the person.

12 Analysis of samples of blood taken under this Part

- (1) The medical practitioner or nurse by whom a sample of a person's blood is taken in accordance with this Part must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2) The medical practitioner or nurse must, as soon as reasonably practicable after the sample is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine the concentration of alcohol in the blood.

Maximum penalty: 20 penalty units.

- (3) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

-
- (4) A medical practitioner who, in another State or Territory, takes a sample of blood:
- (a) from a person attended by the medical practitioner in consequence of an accident in New South Wales, and
 - (b) in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of clause 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.
- (5) An authorised officer may arrange for a sample of a person's blood taken in accordance with this Part to be submitted to a prescribed laboratory for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood.
- (6) An authorised officer may not make arrangements under subclause (5) for analysis of a blood sample to determine the concentration in the blood of a drug other than alcohol unless:
- (a) the following circumstances apply:
 - (i) the accident that caused the person to attend at or be admitted to hospital was a fatal accident,
 - (ii) the person from whom the sample was taken was operating a vessel involved in the accident, or
 - (b) the following circumstances apply:
 - (i) 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,
 - (ii) no authorised officer attended the scene of the accident that led to the taking of the sample or, 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 Part 5, to an assessment of his or her sobriety.
- (7) An analyst to whom a sample of blood, or a portion of a sample of blood (under subclause (4)), is submitted for analysis under this clause may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.

- (8) An analysis referred to in subclause (7) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

13 Supervisee may perform functions of medical practitioner under this Part

- (1) Any duty of a medical practitioner under this Part and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner.
- (2) A duty performed by any such person is taken to have been performed by the medical practitioner.

Part 4 Blood and urine analysis of persons who are not accident patients following fatal accidents

14 Power to arrest persons involved in fatal accidents for blood and urine tests

- (1) This clause applies to a person who:
- (a) is at least 15 years old, and
 - (b) at the time of an accident was operating a vessel involved in the accident, and
 - (c) is not an accident patient within the meaning of clause 9.
- (2) An authorised officer may exercise the powers referred to in subclause (3) in relation to a person to whom this clause applies if the officer believes that:
- (a) the accident is a fatal accident, or
 - (b) it is more likely than not that a person will die within 30 days as a consequence of the accident.
- (3) An authorised officer may:
- (a) arrest the person without warrant, and
 - (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or prescribed place, and
 - (c) detain the person, or cause the person to be detained, at the hospital or other prescribed place to enable the person to

provide blood and urine samples in accordance with this Part.

- (4) In this Part, *accident* means an accident involving a vessel.

15 Procedure for taking samples following arrest

- (1) Except as provided by clause 16, an authorised officer may require a person who has been arrested under clause 14 to provide samples of the person's blood and urine (whether or not the person consents to the samples being taken) in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.
- (2) The authorised officer must inform any such medical practitioner, registered nurse or prescribed sample taker that the samples are required to be taken for the purposes of this Part.
- (3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of blood is taken in accordance with this Part must:
- (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (4) The medical practitioner, registered nurse or prescribed sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the blood contains a drug.
- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (6) The medical practitioner, registered nurse or prescribed sample taker under whose directions a sample of urine is provided in accordance with this Part 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.
- (7) Of the 2 sealed containers:
- (a) one must be handed by the medical practitioner, registered nurse or prescribed sample taker to the person from whom it was taken or to some other person on behalf of that person, and
 - (b) the other must be handed by the practitioner, nurse or prescribed sample taker to the authorised officer present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug.
- (8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this clause may carry out an analysis of the blood or urine to determine whether it contains a drug, but only if an authorised officer has notified the analyst in writing that a person involved in the accident that led to the sample of blood or urine being submitted for analysis:
- (a) has died within 30 days of the accident, or
 - (b) has died during the period beginning 30 days after the accident and ending 12 months after the accident and a medical practitioner has given advice that the person died as a result of the accident.
- (9) Any duty of a medical practitioner, registered nurse or prescribed sample taker under this Part and any relevant provisions of the regulations may be performed by a person acting under the supervision of the practitioner, nurse or prescribed sample taker. A duty performed by any such person is taken to have been performed by the medical practitioner, registered nurse or prescribed sample taker.
- (10) An analysis under this clause may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.
- (11) A blood or urine sample that has been provided under this clause must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no authorised officer has made a notification relating to a death under subclause (8).

16 When taking of samples not permitted

An authorised officer cannot require a person to provide a sample under this Part:

- (a) if a medical practitioner, registered nurse or prescribed sample taker has objected on the grounds that compliance would be dangerous to the person's health, or
- (b) if it appears to that officer that it would, because of any injuries to the person, be dangerous to the person's medical condition to provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the accident concerned.

17 Offences related to testing for drugs

- (1) A person must not:
 - (a) on being required under this Part by an authorised officer to provide samples of blood and urine:
 - (i) refuse or fail to submit to the taking of the sample of blood, or
 - (ii) refuse or fail to provide the sample of urine, in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker, or
 - (b) between the time of the fatal accident concerned and the time when the person provides a sample that the person is required to provide under this Part, wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine (except at the direction or under the supervision of an appropriate health professional).

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) It is a defence to a prosecution for an offence under subclause (1) (a) if the defendant satisfies the court that the defendant was unable, on medical grounds, to provide a sample when the defendant was required to do so.
- (3) It is a defence to a prosecution of a person for an offence under subclause (1) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the fatal accident concerned.

- (4) If a medical practitioner, registered nurse or prescribed sample taker is informed by an authorised officer in accordance with this Part that a sample is required to be taken for the purposes of this Part, the medical practitioner, registered nurse or prescribed sample taker must not:
- (a) fail to take the sample, or
 - (b) fail to comply with any requirement made by clause 15 (3), (4), (6) or (7) in relation to the sample.

Maximum penalty: 20 penalty units.

- (5) It is a defence to a prosecution for an offence under subclause (4) if the medical practitioner, registered nurse or prescribed sample taker satisfies the court that:
- (a) the practitioner, nurse or prescribed sample taker 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, nurse or prescribed sample taker believed on reasonable grounds that the person was less than 15 years of age, or
 - (c) the practitioner, nurse or prescribed sample taker was, because of the behaviour of the person, unable to take the sample, or
 - (d) there was other reasonable cause for the practitioner, nurse or prescribed sample taker not to take the sample.

- (6) A person must not hinder or obstruct a medical practitioner, registered nurse or prescribed sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Part.

Maximum penalty: 20 penalty units.

Part 5 Sobriety assessments and related drug analysis

18 Authorised officer may require sobriety assessment

- (1) An authorised officer may require a person to submit to an assessment of his or her sobriety in accordance with the directions of the officer if:
- (a) the person has undergone a breath test in accordance with Part 2 of this Schedule, and

- (b) the result of the test does not permit the person to be required to submit to a breath analysis.
- (2) A person cannot be required to submit to a sobriety assessment unless:
 - (a) an authorised officer has a reasonable belief that, by the way in which the person is or was operating a vessel the person may be under the influence of a drug, and
 - (b) the assessment is carried out by an authorised officer at or near the place where the person underwent the breath test.

19 Arrest following failure to submit to (or pass) sobriety assessment

If the person refuses to submit to a sobriety assessment under this Part or, 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:

- (a) arrest that person without warrant, and
- (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purposes of this Part.

20 Procedure for taking samples following arrest

- (1) Except as provided by clause 21, an authorised officer may require a person who has been arrested under clause 19 to provide samples of the person's blood and urine (whether or not the person consents to them being taken) in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker.
- (2) The authorised officer must inform any such medical practitioner, registered nurse or prescribed sample taker that the samples are required to be taken for the purposes of this Part.
- (3) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of blood is taken in accordance with this Part must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and

- (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (4) The medical practitioner, registered nurse or prescribed sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the blood contains a drug.

Maximum penalty: 20 penalty units.

- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

- (6) The medical practitioner, registered nurse or prescribed sample taker by whom or under whose directions a sample of urine is taken in accordance with this Part 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.

- (7) Of the 2 sealed containers:

- (a) one must be handed by the medical practitioner, registered nurse or prescribed sample taker to the person from whom it was taken or to some other person on behalf of that person, and
- (b) the other must be handed by the practitioner, nurse or prescribed sample taker to the authorised officer present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug.

- (8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this clause may carry out an analysis of the blood or urine to determine whether it contains a drug.

- (9) Any duty of a medical practitioner, registered nurse or prescribed sample taker under this Part and any relevant provisions of the regulations may be performed by a person acting under the

supervision of the medical practitioner, registered nurse or prescribed sample taker. A duty performed by any such person is taken to have been performed by the medical practitioner, registered nurse or prescribed sample taker.

- (10) An analysis under this clause may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.

21 When sobriety assessment and taking of samples not permitted

An authorised officer cannot require a person to submit to a sobriety assessment or to provide a sample under this Part:

- (a) if the person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement and the medical practitioner does not object on the grounds that compliance would be prejudicial to the proper care and treatment of the person, or
- (b) if it appears to that officer that it would, because of the person's injuries, be dangerous to the person's medical condition to submit to the assessment or provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the event referred to in clause 18 (2) (a) because of which the officer was entitled to require the person to submit to the assessment or provide the sample, or
- (d) at the person's home.

22 Offences related to sobriety assessments and testing for drugs

- (1) A person must not, when required by an authorised officer to submit to an assessment under clause 18, refuse or fail to submit to the assessment in accordance with the directions of the officer.
Maximum penalty: 10 penalty units.
- (2) A person must not:
 - (a) on being required under this Part by an authorised officer to provide samples of blood or urine:
 - (i) refuse or fail to submit to the taking of the sample of blood, or

- (ii) refuse or fail to provide the sample of urine, in accordance with the directions of a medical practitioner, registered nurse or prescribed sample taker, or
- (b) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in clause 18 (2) (a) in respect of which the person has been required by an authorised officer to submit to an assessment and the time when the person undergoes that assessment, or
- (c) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in clause 18 (2) (a) in respect of which the person has been required by an authorised officer to submit to an assessment and the time when the person provides a sample that the person is required to provide under this Part.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution for an offence under subclause (1) or (2) (a) if the defendant satisfies the court that the defendant was unable on medical grounds, when the defendant was required to do so, to submit to an assessment or to provide a sample.
- (4) It is a defence to a prosecution of a person for an offence under subclause (2) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the event referred to in clause 18 (2) (a).
- (5) If a medical practitioner, registered nurse or prescribed sample taker is informed by an authorised officer in accordance with this Part that a sample is required to be taken for the purposes of this Part, the medical practitioner, registered nurse or prescribed sample taker must not:
 - (a) fail to take the sample, or
 - (b) fail to comply with any requirement made by clause 20 (3) or (4) in relation to the sample.

Maximum penalty: 20 penalty units.

- (6) It is a defence to a prosecution for an offence under subclause (5) if the medical practitioner, registered nurse or prescribed sample taker satisfies the court that:
- (a) the practitioner, nurse or prescribed sample taker 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, nurse or prescribed sample taker did not believe that the person was of or above the age of 15 years and it was reasonable for the practitioner, nurse or prescribed sample taker not to have so believed, or
 - (c) the practitioner, nurse or prescribed sample taker was, because of the behaviour of the person, unable to take the sample, or
 - (d) there was other reasonable cause for the practitioner, nurse or prescribed sample taker not to take the sample.
- (7) A person must not hinder or obstruct a medical practitioner, registered nurse or prescribed sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Part.
- Maximum penalty: 20 penalty units.

Part 6 Powers of authorised officers

23 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.

24 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.

25 Detention of vessel in certain cases

- (1) An authorised officer may take charge of and remove any vessel in respect of which an offence under Division 2 or 3 of Part 3 has been committed to any convenient place for safe keeping.
- (2) The court adjudicating may, if it is of the opinion that there was reasonable cause for any such taking charge, removal and safe keeping, order the costs, charges and expenses of it to be paid by the offender.

Part 7 Evidentiary and other procedural matters

26 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 24

- (1) In proceedings for an offence under section 24, evidence may be given of the concentration of alcohol present in the breath or blood of the person charged as determined by:
 - (a) a breath analysing instrument operated by a police officer authorised to do so by the Commissioner of Police, or
 - (b) an analysis of the person's blood under this Schedule.
- (2) In proceedings for an offence under section 24, the concentration of alcohol so determined is taken to be the concentration of alcohol in the person's breath or blood at the time of the occurrence of the relevant event referred to in clause 2 (1) or (2) if the breath analysis was made, or blood sample taken, within 2 hours after the event unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time concerned was:
 - (a) in the case of an offence under section 24 (1)—zero grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (b) in the case of an offence under section 24 (2)—less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (c) in the case of an offence under section 24 (3)—less than 0.05 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or

- (d) in the case of an offence under section 24 (4)—less than 0.08 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (e) in the case of an offence under section 24 (5)—less than 0.15 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.
- (3) Nothing in subclause (2) affects the operation of section 25.

27 Certificate evidence about breath or blood analysis in proceedings for offences under section 24

- (1) In proceedings for an offence under section 24 a certificate purporting to be signed by a police officer certifying that:
- (a) the officer is authorised by the Commissioner of Police to operate breath analysing instruments, and
 - (b) a person named in the certificate submitted to a breath analysis, and
 - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of this Act, 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 analysing instrument and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood was present in the breath or 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 (3) was delivered in accordance with that subclause,
- is admissible and is prima facie evidence of the particulars certified in and by the certificate.
- (2) In proceedings for an offence under section 24 or Part 2 of this Schedule a certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is admissible and is prima facie evidence of the particulars certified in and by the certificate.
- (3) In proceedings for an offence under section 24 or Part 2 of this Schedule, evidence of the condition of a breath analysing instrument, or of the manner in which it was operated, is not required unless evidence sufficient to raise doubt that the

instrument was in proper condition and properly operated has been adduced.

- (4) In proceedings for an offence under section 24, a certificate purporting to be signed by a medical practitioner or nurse certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that he or she was a medical practitioner or nurse who attended a specified person who attended at or was admitted into a hospital as referred to in clause 9,
 - (b) that he or she took a sample of the person's blood in accordance with Part 3 of this Schedule, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
 - (c) that he or she dealt with the sample in accordance with clause 12 (1) and any relevant provisions of the regulations,
 - (d) that he or she used equipment of a specified description in so taking and dealing with the sample,
 - (e) that the container was sealed, and marked or labelled, in a specified manner.
- (5) In proceedings for an offence under section 24, a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the officer received a sample of a specified person's blood taken in accordance with Part 3 of this Schedule,
 - (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,
 - (c) that the container was sealed, and marked or labelled, in a specified manner.
- (6) In proceedings for an offence under section 24, 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 sample of a specified person's blood in a container submitted for analysis under this Schedule,
 - (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 sample to determine the concentration of alcohol in the sample,
 - (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes 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 this Schedule,
- is admissible and is prima facie evidence:
- (g) of the particulars certified in and by the certificate, and
 - (h) that the sample was a sample of the blood of that specified person, and
 - (i) that the sample had not been tampered with before it was received by the analyst.
- (7) In proceedings for an offence under section 24, a certificate purporting to be signed by a person who, in another State or Territory:
- (a) took a blood sample, or
 - (b) analysed a blood sample,
- in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of Part 3 of this Schedule is admissible and 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 that Part.

28 Evidence of drugs revealed by blood or urine analysis in proceedings for offence under section 28

In proceedings for an offence under section 28 (1):

- (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 Part 3, 4 or 5 of this Schedule 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, as the case may be, is to be taken to have

been present in the blood or urine of that person when the event referred to in section 28 (1) occurred,
if the sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

29 Certificate evidence about blood or urine analysis in proceedings for offences under section 28

- (1) In proceedings for an offence under section 28 (1), a certificate purporting to be signed by a medical practitioner, nurse or prescribed sample taker certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the medical practitioner, nurse or prescribed sample taker was a medical practitioner, nurse or prescribed sample taker who attended a specified person who attended at or was admitted into a hospital or a prescribed place as referred to in Part 3, 4 or 5 of this Schedule,
 - (b) that the medical practitioner, nurse or prescribed sample taker took a sample of the person's blood or urine in accordance with Part 3, 4 or 5 of this Schedule and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
 - (c) that the medical practitioner, nurse or prescribed sample taker dealt with the sample in accordance with Part 3, 4 or 5 of this Schedule and any relevant provisions of the regulations,
 - (d) that the container was sealed, and marked or labelled, in a specified manner.
- (2) In proceedings for an offence under section 28 (1), a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the officer received a sample of a specified person's blood or urine taken in accordance with Part 3, 4 or 5 of this Schedule,
 - (b) that the officer arranged for the sample to be submitted for 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.

- (3) In proceedings for an offence under section 28 (1), 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 sample of a specified person's blood or urine in a container submitted for analysis under Part 3, 4 or 5 of this Schedule,
 - (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 sample to determine whether any drug was present in the sample,
 - (e) that a specified drug ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,
 - (f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Schedule,
- is admissible and is prima facie evidence:
- (g) of the particulars certified in and by the certificate, and
 - (h) that the sample was a sample of the blood or urine of that specified person, and
 - (i) that the sample had not been tampered with before it was received by the analyst.
- (4) Subclauses (1)–(3):
- (a) do not apply to proceedings brought on a charge that, by the operation of clause 32 (4), cannot be laid, and
 - (b) do not enable evidence to be given of or in relation to:
 - (i) the presence of a drug other than alcohol, or
 - (ii) the presence of a particular concentration of a drug other than alcohol,in the blood of a person charged with an offence under section 28 (1), as determined by an analysis under Part 3 of this Schedule, unless the court is satisfied that the analysis was not arranged in contravention of clause 12 (6).

30 Certificate evidence may specify minimum concentrations

If, in any proceedings in which evidence is permitted to be given of the results of an analysis, undertaken for the purposes of this Act, of a sample of a person's blood or urine, evidence is given by a certificate under this Act 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 Act.

31 Evidence of breath test, breath analysis or blood or urine analysis and related facts not admissible in insurance cases to prove intoxication or drug use

- (1) For the purposes of any contract of insurance, any of the following facts are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of operating or of exercising effective control over a vessel:
 - (a) the fact that a person has undergone a breath test or submitted to a breath analysis under Part 2 of this Schedule,
 - (b) the result of a breath test or breath analysis,
 - (c) the fact that a person has been convicted of an offence under section 24 or clause 2 (4), 4 (4) or 5.
- (2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under Part 3, 4 or 5 of this Schedule are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or other drug or incapable of operating or of exercising effective control over a vessel.
- (3) Nothing in subclause (1) or (2) precludes the admission of any other evidence to show a fact referred to in the subclause.
- (4) The provisions of this clause have effect despite anything contained in any contract of insurance.
- (5) Any covenant, term, condition or provision in any contract of insurance is void:
 - (a) to the extent that the operation of this clause is excluded, limited, modified or restricted, or

- (b) to the extent that it purports to exclude or limit the liability of the insurer in the event of any person being convicted of an offence under section 24 or Part 2 of this Schedule.
- (6) However, nothing in subclause (5) precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision under which the liability of the insurer is excluded or limited.

32 Double jeopardy in relation to alcohol and other drug offences

- (1) If a person has been convicted of an offence under clause 4 (4), 5, 17 (1) or (6) or 22 (2), the person is not liable to be convicted of an offence under section 28 (1) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.
- (2) If a person has been convicted of an offence under section 28 (1), the person is not liable to be convicted of an offence under clause 4 (4), 5, 17 (1) or (6) or 22 (2) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.
- (3) If, by reason of the occurrence of an event referred to in clause 2 (1) or (2), a person is required by an authorised officer to undergo a breath test and as a consequence of that test to submit to a breath analysis and the person submits to the breath analysis in accordance with the directions of an authorised officer, the person cannot be charged with an offence under section 28 (1) of operating a vessel, at the time of that event, while the person was under the influence of intoxicating liquor.
- (4) A person who has had a sample of blood taken in accordance with Part 3 of this Schedule because of an accident is not to be charged with an offence under section 28 (1) if it is alleged as a component of the offence that the person was under the influence of alcohol and the offence relates to the same accident.

Part 8 Miscellaneous

33 Personal liability for good faith taking of samples

- (1) A medical practitioner, nurse or prescribed sample taker does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner, nurse or prescribed sample taker in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to

detect the presence of any drug if the practitioner, nurse or prescribed sample taker:

- (a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood or urine from the person, or
 - (b) believed on reasonable grounds that the person was involved in an accident on a vessel (whether in New South Wales or elsewhere) and he or she did not know, and could not with reasonable diligence have ascertained, whether or not he or she was required to take the sample from the person under Part 3 or 4 of this Schedule, or
 - (c) was informed by an authorised officer that the person was a person from whom the practitioner, nurse or prescribed sample taker was required under this Act to take the sample of blood or urine.
- (2) Subclause (1) extends to any person acting under the supervision of the medical practitioner, nurse or prescribed sample taker as referred to in clause 13, 15 (9) or 20 (9).

34 Regulations for the purposes of Part 3 and this Schedule

- (1) Regulations may be made for the purposes of Part 3 and this Schedule.
- (2) Without limiting subclause (1), the regulations may make provision for or with respect to the following:
 - (a) the methods and conditions to be observed by medical practitioners or nurses in taking samples of blood or urine under this Schedule,
 - (b) the storage of samples so taken,
 - (c) the delivery or transmission of samples so taken to the persons from whom they are taken, to authorised officers or to analysts,
 - (d) the destruction of samples so taken.

[77] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Marine Safety Amendment Act 2008

[78] Schedule 4, clause 1 (4) and (5)

Insert after clause 1 (3):

- (4) The regulations may make provision for or with respect to the following:
 - (a) providing that a specified provision of this Act or the regulations has no effect until a specified Act or Regulation referred to in Schedule 2, or a specified provision of any such Act or Regulation, is repealed,
 - (b) construing all references in this Act or the regulations, or specified references, to marine safety licences or a particular type of marine safety licence as meaning, or including a reference to, a licence, permit or other authorisation, or a particular type of licence, permit or other authorisation, issued under an Act or Regulation referred to in Schedule 2.
- (5) For the avoidance of doubt, any provision of the regulations made for the purposes of this clause may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).

[79] Schedule 4, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Marine Safety Amendment Act 2008

14 Definitions

In this clause:

amending Act means the *Marine Safety Amendment Act 2008*.

15 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 substitution of Part 3 and Schedule 1 by the amending Act are to be determined as if the amendments 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 amendments not been enacted continues to apply to the proceedings as if the amendments had not been enacted.

16 References to and in relation to marine safety licences in section 28A

- (1) A reference in section 28A to a marine safety licence is taken to include a reference to a licence to which section 10 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* applied immediately before its repeal.
- (2) A reference in section 28A:
 - (a) to the cancellation or suspension of a marine safety licence is taken to include a reference to the withdrawal of recognition of a recognised licence (within the meaning of section 10 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*), 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.

17 Offences relating to disqualification from holding certain marine safety licences

Section 59A or 63A (as inserted by the amending Act):

- (a) applies only to a disqualification occurring after the commencement of the section, and
- (b) does not apply to any offence committed before the commencement of the section.

18 Appointment of harbour masters

A harbour master whose appointment as harbour master was in force immediately before the substitution of section 85 by the amending Act is taken to have been appointed under section 85 as so substituted.

[Agreement in principle speech made in Legislative Assembly on 5 June 2008

Second reading speech made in Legislative Council on 25 June 2008]

BY AUTHORITY