

[Act 1998 No 121]



New South Wales

Marine Safety Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

The object of this Bill is to replace and revise existing legislation relating to marine safety (other than the *Marine Pollution Act 1987* and the *Ports Corporatisation and Waterways Management Act 1995*) in order to improve marine safety and to modernise and simplify that existing legislation.

The existing legislation that is replaced includes the following:

- the *Maritime Services Act 1935*
- the *Navigation Act 1901*
- the *Commercial Vessels Act 1979*
- the *Marine (Boating Safe?—Alcohol and Drugs) Act 1991*
- the *Marine Pilotage Act 1971*

The Bill also incorporates provisions relating to marine pilotage and harbour masters that are at present contained in Parts 6 and 7 of the *Ports Corporatisation and Waterways Management Act 1995*. The Bill amends that Act to carry forward provisions in the repealed Acts relating to the provision by the Minister of infrastructure for the use of waterways by vessels, whether for the purpose of marine safety or otherwise.

*Amended In committee—see table at end of volume.

Part 1 Preliminary (clauses 1–8)

This Part specifies the name (also known as the short title) of the proposed Act and provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

The Part defines expressions used in the proposed Act, in particular the meaning of the term *vessel*, a vessel *connected with this State* and *owner* of a vessel.

The Part provides for the general application of the proposed Act to all vessels, including all vessels in State waters and recreational and certain other vessels connected with the State in any waters. Defence Force vessels are specifically excluded from the proposed Act.

Part 2 Safety of navigation (clauses 9–18)

This Part provides for the safety of the navigation of vessels.

Regulations may be made for the prevention of collisions at sea. The regulations may adopt the international regulations for prevention of collisions at sea. It is an offence for the master of a vessel or any person concerned in its operation to contravene the regulations or cause them to be contravened.

The Minister may prohibit or regulate the operation of vessels in navigable waters by notice displayed in the vicinity of the waters. In so doing the Minister may impose any limitation on vessels that is considered necessary for the safety of the public or the protection of vessels or other property (for example, speed limits). A person operating a vessel contrary to such a notice is guilty of an offence. The Minister may also impose similar restrictions for special events by notice published in a newspaper. In that case, a person does not commit an offence unless the person ignores a direction of an authorised officer to comply with the notice. The Part imposes a requirement that any future grant or renewal of a lease for aquaculture will require the approval of the Minister.

The Part contains offences relating to the following:

- reckless, negligent, dangerous etc operation of a vessel.
- interference with navigation aids.
- failure to remove an obstruction from navigable waters when directed to do so by the Minister.

The Part also allows regulations to be made with respect to the safety of navigation generally, and in particular the following:

- the promotion or conduct of organised aquatic activities (such as races or other activities that restrict the availability of navigable waters for normal use by the public),
- the operation of vessels in navigable waters,
- the activities of persons that affect navigation.

Part 3 Boating safety—alcohol and drugs (clauses 19–27)

A person is prohibited from operating a vessel in any waters while under the influence of alcohol or any other drug. In addition, the master of a vessel must not permit a person to operate the vessel if the person is under the influence of alcohol or any other drug.

The Part also makes it an offence for a person to operate a vessel while having a blood alcohol level of 0.02 or more (in the case of a commercial vessel) or 0.05 or more (in the case of a recreational vessel). Penalties for these offences vary according to the concentration of alcohol present in the offender's blood. The prohibitions under the Part extend to skiers being towed by a vessel and to persons on vessels acting as observers of any such skier.

The Part contains ancillary provisions. In particular, it prevents a person from being liable for more than one of the alcohol and drug offences in relation to the same act or omission.

If a person is convicted of an offence against the Part, provision is made for the cancellation or suspension of any marine safety licence held by the person by the court or automatically in certain cases.

Part 4 Marine safety licences (clauses 28-42)

Division 1 General (clause 28)

This Division sets out the different types of marine safety licences that may be granted by the Minister, including vessel registration certificates, survey certificates for commercial vessels, boat driving licences for recreational vessels and marine pilot's licences.

Division 2 Grant of marine safety licences and related matters
(clauses 29–36)

This Division provides for the making of applications for, and the granting of, marine safety licences by the Minister. A licence may be granted unconditionally or subject to conditions. It is an offence to contravene a condition to which the licence is subject.

Fees for licences will be determined by the Minister (subject to any maximum prescribed by the regulations).

Regulations may be made with respect to licences, including the classes of licences and the eligibility of applicants for licences.

Division 3 Suspension or cancellation of marine safety licences (clauses 37–39)

This Division provides for the suspension or cancellation of marine safety licences by the Minister (in connection with an investigation under Part 8 or as authorised by the regulations) and by a court (in connection with the conviction of the holder of an authority of an offence relating to marine safety).

Division 4 Review by Administrative Decisions Tribunal (clauses 40–42)

This Division allows a person to apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

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

Provisions relating to the making of applications for review and the hearing and determination of any such application are contained in the *Administrative Decisions Tribunal Act 1997*.

Part 5 Requirements for vessels (clauses 43–69)

Division 1 Unsafe vessels (clauses 43–47)

This Division contains offences relating to operating an unsafe vessel and makes provision for the detention of unsafe vessels. The Division defines an unsafe vessel as a vessel whose operation is a danger to life (whether because of its condition, the nature or storage of its cargo or the number of persons on board or for any other reason).

The Minister may order the provisional detention of a vessel that appears to be unsafe and, in such a case, must appoint an investigator to investigate the vessel. Following the report of the investigator, the Minister may release the vessel or order that it be finally detained or finally detained pending the performance of such conditions as the Minister considers necessary to ensure the vessel is not unsafe.

Division 2 Vessel registration (clauses 48–51)

This Division requires all commercial and recreational vessels that operate in State waters to be registered under the proposed Act unless exempted from registration. Examples of vessels exempt from registration are vessels proceeding on overseas or interstate voyages, and vessels not ordinarily operated in State waters which are registered under the law of another State or a Territory.

The owner and master will be guilty of an offence for operating in State waters a registrable vessel that is not registered.

The Division also specifically authorises the Minister to refuse to register a vessel on environmental grounds or to refuse to register a vessel on aesthetic grounds.

Division 3 Survey certificates for commercial vessels (clauses 52-55)

This Division contains provisions relating to the grant of survey certificates for commercial vessels. A survey certificate must not be granted unless the vessel complies with relevant requirements as to design, construction and equipment and is safe to operate. The Minister will be able to rely on certificates concerning those matters from accredited marine surveyors. The owner and master will be guilty of an offence for operating in State waters a commercial vessel that does not have a survey certificate.

Regulations may be made with respect to design, construction, equipment and survey of, and other matters relating to, registrable commercial vessels.

Division 4 Certificates of competency for master and specified crew of commercial vessels and safety manning (clauses 56-60)

This Division requires the master of a registrable commercial vessel to hold an appropriate marine safety licence (namely a certificate of competency). Crew members may also be required by the regulations to hold certificates of competency.

Regulations may be made as to the minimum complement of crew required to be carried on a registrable commercial vessel operating in State waters.

Division 5 Boat driving licences for power-driven recreational vessels (clauses 61–63)

This Division requires power-driven recreational vessels operating in State waters (unless exempted) to be operated only by the holder of an appropriate marine safety licence (namely a person who holds a boat driving licence).

Division 6 Miscellaneous provision relating to vessels (clauses 64–69)

This Division makes provision for the recognition (including automatic mutual recognition) of vessel registration certificates, survey certificates and certificates of competency issued by authorities in other States or jurisdictions. This Division also contains miscellaneous regulation-making powers in relation to such matters as the installation or carriage on recreational vessels of marine safety equipment, the design and construction of recreational vessels, and the maximum number of passengers that may be carried by a vessel and hull or other identification of vessels.

Regulations under proposed Part 5 may adopt the *Uniform Shipping Laws Code* or any other standard, treaty, convention or international agreement.

Part 6 Pilotage (clauses 70–82)

The provisions of this Part are transferred from Part 6 of the *Ports Corporatisation and Waterways Management Act 1995*.

Division 1 Preliminary (clause 70)

This Division contains definitions of expressions used in the proposed Part. A *pilotage port* refers to a list of the major trading ports in which pilotage is currently compulsory. The *marine pilot* of a vessel refers to the person who has the conduct of the vessel but who does not belong to the vessel. The *pilotage service provider* refers to the Port Corporation or private contractor providing the service under an operating licence or under contract or (for the minor ports) the Minister.

Division 2 Prohibition against unauthorised marine pilots
(clauses 71 and 72)

This Division prohibits a person from acting as the marine pilot of a vessel in any port unless the pilot has an appropriate marine safety licence, namely, a marine pilot's licence that applies to that port. In addition, in a pilotage port, the person must have been assigned to act as a marine pilot in the port by the pilotage service provider.

Division 3 Pilotage (clauses 73–82)

This Division makes pilotage compulsory in every pilotage port. There are offences for entering, leaving or moving within a pilotage port without taking on the assigned marine pilot. Certain vessels are exempted from the compulsory pilotage requirement (for example, a vessel whose master has a marine pilotage exemption certificate, a recreational vessel or a vessel less than 30 metres in length).

The master of a vessel is required to assist the pilot, and the master of the vessel is not relieved of responsibility for the navigation of the vessel because the vessel is under pilotage. The Division continues the existing provisions that the master and owner of a vessel under compulsory pilotage are liable for loss or damage caused by the vessel and the Crown, pilots, pilotage service providers and others are not liable for any loss or damage that is attributable to the negligence of a marine pilot. The Division also continues the existing provision that a marine pilot who wilfully endangers a vessel or its crew commits an offence.

Regulations may be made with respect to pilotage.

Part 7 Harbour masters (clauses 83–92)

This Part provides for the appointment and functions of harbour masters. The provisions are transferred from Part 7 of the *Ports Corporatisation and Waterways Management Act 1995*.

Harbour masters may be appointed by the Minister for any port or other defined navigable waters, either from Departmental staff or the staff of a Ports Corporation. Provision is made for the appointment of persons to assist harbour masters.

The Part continues the existing powers of harbour masters relating to the control of the movements and securing of vessels within ports. In addition, the Part confers power on a harbour master to direct that dangerous vessels (namely, those in imminent danger of sinking and obstructing the port or of causing serious damage to property) are not to enter the port or to leave the port.

The Part also provides for the issue of identity cards to harbour masters, for the protection of harbour masters from personal liability and for offences.

Part 8 Marine investigation and enforcement (clauses 93–124)

Division 1 Preliminary (clauses 93–96)

This Division defines the expressions *incompetence*, *marine accident* and *misconduct* and provides that the Part extends, in the case of the holder of a marine safety licence, to the investigation of a marine accident or any incompetence or misconduct by the holder even though it occurred outside the jurisdiction of this State. The Division authorises the Minister to appoint authorised officers (apart from police officers and harbour masters) for the purposes of the enforcement of the Act.

Division 2 Duties of master and owners in case of marine accidents (clauses 97–101)

This Division requires the master of a vessel to give assistance at, and report to the Minister, marine accidents that the vessel is involved in. The owner of a vessel is also required to report the accident if the owner is aware of the accident. Both the owner and master of the vessel must take all reasonable measures to preserve any evidence relating to the accident (such as log books) required for an investigation.

Division 3 Investigation of marine accidents and other marine safety matters (clauses 102–112)

This Division allows the Minister to order an investigation into a marine accident, situations with a potential to cause accidents, or any report that the holder of a marine safety licence may have been guilty of incompetence or misconduct. The principal purposes of an investigation are to determine the circumstances of the accident or incident and to make recommendations to prevent a recurrence.

The Minister may appoint an investigator to conduct the investigation. The investigator may conduct such an investigation in such manner as the investigator considers appropriate, having regard to its principal purposes. On completion of the investigation, the investigator must report to the Minister. A person materially affected by a report is generally entitled to a copy of the report and to make representations to the investigator concerning it.

If the investigation involves the holder of a marine safety licence, the Minister may suspend the licence pending determination of the investigation, but only if the Minister has reason to believe it would be dangerous for the holder of the licence to continue the authorised activities. The suspension must not exceed 14 without the authority of a Magistrate.

The Minister may take any action available to the Minister following the report, including the improvement of marine safety procedures, reprimand of the holder of a marine safety licence or the suspension or cancellation of a licence.

Civil or criminal proceedings may not be brought against the Minister, an investigator or any person supplying information in connection with an investigation for information alleged to be defamatory or in breach of confidence.

Division 4 Investigative powers of authorised officers

(clauses 113–124)

This Division gives authorised officers certain powers in connection with investigations of offences against the proposed Act as well as of marine accidents. The powers include the power to stop and board vessels, to enter premises (other than premises used for residential purposes), to detain vessels (for not more than 48 hours, except with the authority of a Magistrate), to require persons to produce relevant marine safety licences, to require persons suspected of committing offences to identify themselves, and to require persons to answer questions and produce documents at an inquiry. The Part makes it an offence to obstruct the exercise of a power or to refuse to comply with a requirement under the Part, except with reasonable excuse.

Part 9 Legal proceedings (clauses 125–134)

This Part authorises the issue of penalty notices for marine safety offences, provides for the summary disposal of marine safety offences, contains evidentiary provisions, provides for the service of instruments under the proposed Act, provides for the service of any summons for an alleged offence and deals with other matters relating to legal proceedings under the proposed Act.

Part 10 Miscellaneous (clauses 135–141)

This Part provides that the proposed Act binds the Crown and provides for the review of the operation of the proposed Act by the Minister after the period of 5 years after the date of assent to the proposed Act. It also contains a general regulation-making power. In particular, the regulations may adopt for the purposes of the proposed Act (with or without modification) provisions of the *Uniform Shipping Laws Code*, Australian and other standards or international treaties and agreements. The regulations may also

provide for short-term exemptions from the Act or regulations. The Part includes provision for the adoption of ILO Convention No 58 relating to the employment of children at sea.

Schedule 1 contains ancillary provisions relating to breath testing and other matters concerning the use of alcohol or drugs when operating vessels (including by skiers being towed by vessels). The Schedule generally continues the existing provisions, but the powers of police officers under those provisions have been extended to authorised departmental officers.

Schedule 2 lists the Acts and regulations that are repealed.

Schedule 3 contains consequential amendments of other Acts. In particular the Schedule amends the *Ports Corporatisation and Waterways Management Act 1995* to:

- (a) carry forward provisions in the repealed Acts relating to the provision by the Minister of infrastructure for the use of waterways by vessels, whether for the purpose of marine safety or otherwise, and
- (b) ensure that the provision of that infrastructure and any other marine safety services may be funded from the Waterways Fund under that Act, and
- (c) carry forward provisions with respect to the licensing and other regulation of the occupation of navigable waters by vessels, floating objects and structures (including the mooring of vessels), and
- (d) repeal provisions relating to marine pilotage and harbour masters that are being transferred to the main provisions of the proposed *Marine Safety Act 1998* and to make other consequential changes. The Schedule amends the *Local Government Act 1993* to require local councils to obtain the consent of the Minister before erecting notices near navigable waters prohibiting or restricting the use of vessels (including personal watercraft) in those waters. The Schedule amends the *Marine Pollution Act 1987* to transfer to that Act provisions authorising the making of regulations relating to the pollution of State or other waters by vessels (including the installation of waste control facilities on vessels).

Schedule 4 contains savings and transitional provisions. In particular the Schedule saves existing marine safety licences.