



New South Wales

# Maritime and Transport Licensing Legislation Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Marine Safety Act 1998* and the *Marine Safety (General) Regulation 2009* to transfer the functions of the Minister for Roads and Freight (*the Minister*) with respect to boat driving licensing and vessel registration to Roads and Maritime Services (*RMS*), and
- (b) to amend the *Road Transport Act 2013* and the *Marine Safety Act 1998* to enable RMS to grant driver licences that include boat driving licences as an alternative to issuing separate boat driving licence documentation, and
- (c) to amend the *Road Transport Act 2013* to facilitate the taking and use of photographs in connection with the granting of marine safety licences under the *Marine Safety Act 1998* and the identification of applicants and licence holders, and
- (d) to amend the *Ports and Maritime Administration Act 1995* to enable the regulations under that Act to make provision for the management of dangerous goods in ports and to make a consequential amendment to the *Work Health and Safety Regulation 2011*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## **Schedule 1      Amendments concerning harmonisation of licensing and registration requirements**

### **Transfer of boat driving licensing and vessel registration functions to RMS**

**Schedule 1.1 [1]** amends the *Marine Safety Act 1998* to provide that the responsible licensing official, in relation to a marine safety licence, is:

- (a) RMS, in the case of any of the following kinds of licences:
  - (i) a boat driving licence—being a marine safety licence to operate a power-driven recreational vessel that is required by Division 5 of Part 5 of the Act,
  - (ii) a vessel registration certificate—being a marine safety licence for a vessel that is required by Division 2 of Part 5 of the Act, and
- (b) the Minister, in any other case.

**Schedule 1.1 [2] and [5]–[13]** make consequential amendments to the Act to ensure that various functions in relation to marine safety licences that are currently exercisable by the Minister are exercised by the responsible licensing official for the type of marine safety licence concerned.

**Schedule 1.1 [14]** transfers all pending applications for boat driving licences and vessel registration certificates, and any rights and liabilities of the Minister in connection with such licences and certifications (including applications for them), to RMS on the day it becomes the responsible licensing official for boat driving licences and vessel registration certificates.

**Schedule 1.2** makes amendments to the *Marine Safety (General) Regulation 2009* that are consequential on the transfer of licensing and registration functions from the Minister to RMS.

### **Grant of driver licences that include boat driving licences**

**Schedule 1.3** amends the *Road Transport Act 2013*:

- (a) to enable the statutory rules under that Act to make provision for or with respect to the granting of driver licences that include boat driving licences under the *Marine Safety Act 1998* (*combined licences*), and
- (b) to provide for the legal effect of combined licences in connection with certain requirements under legislation with respect to the carrying, production, delivery, surrender or confiscation of driver licences and boat driving licences, and
- (c) to provide for the continued efficacy of a driver licence or boat driving licence if the other licence included on a combined licence is varied, suspended, cancelled, surrendered, confiscated or downgraded, and
- (d) to facilitate the taking and use of photographs in connection with the granting of such driver licences or marine safety licences under the *Marine Safety Act 1998* and the identification of applicants and licence holders.

**Schedule 1.1 [3]** amends the *Marine Safety Act 1998* to note that boat driving licences may be included on combined licences as an alternative to issuing separate boat driving licence documentation.

**Schedule 1.1 [4]** amends the *Marine Safety Act 1998* to enable RMS to alter the period during which a boat driving licence is in force so as to align it with the period during which a driver licence on a combined licence is in force.

## **Schedule 2      Amendments concerning dangerous goods in ports**

**Schedule 2.1** amends the *Ports and Maritime Administration Act 1995*:

- (a) to enable the regulations under that Act to make provision for or with respect to the management of dangerous goods in ports, and

- (b) to enable regulations made for this purpose to create offences punishable by a penalty not exceeding 300 penalty units (currently, \$33,000).

**Schedule 2.2** amends the *Work Health and Safety Regulation 2011*, which currently continues in effect certain provisions under repealed legislation concerning dangerous goods in ports, to provide for those provisions to cease to have effect on a day declared by regulations made under the *Ports and Maritime Administration Act 1995*.



New South Wales

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New South Wales

# Maritime and Transport Licensing Legislation Amendment Bill 2014

No. , 2014

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## **A Bill for**

An Act to amend certain marine and transport legislation to provide for the harmonisation of boat and vehicle licensing and registration requirements and the management of dangerous goods in ports.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Maritime and Transport Licensing Legislation Amendment Act 2014</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 2 commences on the date of assent to this Act.	7

<b>Schedule 1</b>	<b>Amendments concerning harmonisation of licensing and registration requirements</b>	1 2
<b>1.1</b>	<b>Marine Safety Act 1998 No 121</b>	3
<b>[1]</b>	<b>Section 4 Definitions</b>	4
	Insert in alphabetical order in section 4 (1):	5
	<i>responsible licensing official</i> , in relation to a marine safety licence, means:	6
	(a) RMS, in the case of any of the following kinds of licences:	7
	(i) a boat driving licence—being a marine safety licence to operate a power-driven recreational vessel that is required by Division 5 of Part 5,	8 9 10
	(ii) a vessel registration certificate—being a marine safety licence for a vessel that is required by Division 2 of Part 5, and	11 12
	(b) the Minister, in any other case.	13
<b>[2]</b>	<b>Sections 30, 31 (3) and (4), 38, 40, 50 (4), 52 and 64 (2) (c)</b>	14
	Omit “Minister” wherever occurring. Insert instead “responsible licensing official”.	15
<b>[3]</b>	<b>Section 30 Grant of licences</b>	16
	Insert after section 30 (2):	17
	(3) Without limiting subsection (1) or (2), a boat driving licence may be granted by including it on a driver licence granted in accordance with statutory rules made under the <i>Road Transport Act 2013</i> .	18 19 20
	<b>Note.</b> Section 57A of the <i>Road Transport Act 2013</i> enables the statutory rules under that Act to make provision for the granting of driver licences under that Act that include boat driving licences. The section provides that such combined licences have effect as both driver licences and boat driving licences for the purposes of the road transport legislation and marine legislation.	21 22 23 24 25
<b>[4]</b>	<b>Section 33 Duration of licence</b>	26
	Insert after section 33 (1):	27
	(1A) If a boat driving licence is to be included on a driver licence granted under the <i>Road Transport Act 2013</i> , RMS (as the responsible licensing official for a boat driving licence) may alter the period during which the boat driving licence is in force so as to align it with the period during which the driver licence is in force.	28 29 30 31 32
<b>[5]</b>	<b>Section 110 Suspension of marine safety licence pending investigation</b>	33
	Omit “If the Minister has ordered an investigation under this Division”, “Minister may” and “Minister has reason” from section 110 (1).	34 35
	Insert instead “If an investigation has been ordered under this Division”, “responsible licensing official may” and “responsible licensing official has reason”, respectively.	36 37
<b>[6]</b>	<b>Section 110 (3)</b>	38
	Omit “Minister” wherever occurring. Insert instead “responsible licensing official”.	39

<b>[7] Section 111 Action by Minister following report of investigation</b>	1
Insert after section 111 (2):	2
(2A) If RMS is the responsible licensing official for a marine safety licence rather than the Minister, the Minister may require RMS to take action for the purposes of subsection (2) in connection with that licence.	3 4 5
<b>[8] Section 111 (3)</b>	6
Insert “(or requiring action to be taken)” after “action”.	7
<b>[9] Section 111 (5)</b>	8
Insert “or RMS (as the case requires)” after “Minister”.	9
<b>[10] Section 133 Proof of certain matters not required</b>	10
Insert “, RMS” after “Minister” where firstly occurring in section 133 (1).	11
<b>[11] Section 133 (1) (c) and (2) (a)</b>	12
Insert “or RMS” after “Minister” wherever occurring.	13
<b>[12] Section 134 Service of instruments (except in proceedings for offences)</b>	14
Insert “or RMS” after “Minister” in section 134 (1) (c).	15
<b>[13] Section 139 Exemptions</b>	16
Omit “or other” wherever occurring in section 139 (2) and (3).	17
Insert instead “, RMS or other”.	18
<b>[14] Schedule 4 Savings, transitional and other provisions</b>	19
Insert at the end of the Schedule with appropriate Part and clause numbering:	20
<b>Part Provisions consequent on enactment of Maritime and Transport Licensing Legislation Amendment Act 2014</b>	21 22 23
<b>Application of amendments transferring licensing functions to RMS</b>	24
(1) The <i>transfer day</i> for the purposes of this clause is the day on which RMS becomes the responsible licensing official for a boat driving licence and vessel registration certificate (a <i>relevant licence</i> ) by virtue of the amendments made to this Act by the <i>Maritime and Transport Licensing Legislation Amendment Act 2014</i> .	25 26 27 28 29
(2) The following provisions have effect on and from the transfer day:	30
(a) any application for the grant of a relevant licence made (but not yet determined) before the transfer day is to be determined by RMS,	31 32
(b) any right or liability of the Minister in relation to a relevant licence (or an application for such a licence) becomes by virtue of this clause a right or liability of RMS,	33 34 35
(c) all proceedings relating to a right or liability of the Minister in relation to a relevant licence (or an application for such a licence) commenced before the transfer day by or against the Minister that are pending immediately before the transfer day are taken to be proceedings pending by or against RMS,	36 37 38 39 40

(d)	any act, matter or thing done or omitted to be done in relation to a relevant licence (or an application for such a licence) before the transfer day by, to or in respect of the Minister is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of RMS,	1 2 3 4 5
(e)	RMS has all the entitlements and obligations of the Minister in relation to a relevant licence (or an application for such a licence) that the Minister would have had but for the transfer of the Minister's functions to RMS, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,	6 7 8 9 10
(f)	a reference in any instrument made under any Act or in any document of any kind to the Minister is (to the extent that it relates to a relevant licence or an application for such a licence, but subject to this clause) to be read as, or as including, a reference to RMS.	11 12 13 14
(3)	The Minister is authorised to provide RMS with any documents or other information obtained or held by or on behalf of the Minister in connection with relevant licences (or applications for such licences) for the purpose of facilitating the exercise by RMS of functions that are conferred or imposed on it by subclause (2).	15 16 17 18 19
(4)	The operation of this clause (or the provision of documents or other information under this clause) is not to be regarded as:	20 21
(a)	a breach of contract or confidence or otherwise as a civil wrong, or	22
(b)	a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or	23 24
(c)	giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or	25 26 27 28
(d)	an event of default under any contract or instrument.	29
(5)	In this clause:	30
	<i>liabilities</i> means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).	31 32
	<i>rights</i> means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).	33 34
<b>1.2</b>	<b>Marine Safety (General) Regulation 2009</b>	35
[1]	<b>Clauses 37 (5) and (6), 53 (1) and (3), 54, 55, 56 (1), 60 (4), 61 (2) (c), 62, 66A, 77 (2) and (3), 78 (1), 80 (2) and (3), 80A (2) (d), 80D (g), 80E, 80G (f) and 80H</b>	36 37
	Omit "Minister" wherever occurring. Insert instead "responsible licensing official".	38
[2]	<b>Clause 63 Hull identification number requirements</b>	39
	Omit "the Minister or the RMS" from clause 63 (3).	40
	Insert instead "the responsible licensing official".	41

<b>1.3 Road Transport Act 2013 No 18</b>	1
<b>[1] Section 4 Definitions</b>	2
Insert in alphabetical order in section 4 (1):	3
<i>boat driving licence</i> means a marine safety licence to operate a power-driven recreational vessel that is required by Division 5 of Part 5 of the <i>Marine Safety Act 1998</i> .	4 5 6
<b>[2] Section 55 Photographs to which this Part applies</b>	7
Insert “(including a driver licence that includes a boat driving licence)” after “driver licence” in section 55 (a).	8 9
<b>[3] Section 55 (f)</b>	10
Insert at the end of section 55 (e):	11
, and	12
(f) photographs in the possession of the Authority that were taken or provided for the purposes of applications for the issue of a marine safety licence under the <i>Marine Safety Act 1998</i> .	13 14 15
<b>[4] Section 56 Purposes for which photographs may be kept and used</b>	16
Insert “(including a driver licence that includes a boat driving licence)” after “driver licence” in section 56 (1) (a).	17 18
<b>[5] Section 56 (1) (a) (vii)</b>	19
Insert after section 56 (1) (a) (vi):	20
(vii) a marine safety licence under the <i>Marine Safety Act 1998</i> ,	21
<b>[6] Section 56 (1) (b)</b>	22
Insert “(including a driver licence that includes a boat driving licence)” after “driver licence”.	23 24
<b>[7] Section 57A</b>	25
Insert before section 58:	26
<b>57A Inclusion of boat driving licences on driver licences</b>	27
(1) The statutory rules may make provision for or with respect to the granting of driver licences under this Act that include boat driving licences ( <b><i>combined licences</i></b> ).	28 29 30
(2) The following provisions apply with respect to a combined licence:	31
(a) the combined licence has effect for the purposes of the road transport legislation and marine legislation as both a driver licence and a boat driving licence of the classes or kinds specified on the licence,	32 33 34
(b) the holder of a combined licence is not excused from any requirement under legislation to carry, produce, deliver or surrender a driver licence or boat driving licence that is included on a combined licence merely because the combined licence also includes another licence to which the requirement is not directed,	35 36 37 38 39
(c) the variation, suspension, cancellation, surrender, confiscation or downgrading of one of the licences included on a combined licence	40 41

	does not of itself affect the validity or continued efficacy of the other licence included on the combined licence,	1 2
	(d) a person or body entitled under legislation to confiscate a driver licence or boat driving licence may confiscate a combined licence that includes the licence to which the entitlement relates.	3 4 5
(3)	Without limiting subsection (1) or any other relevant statutory rule-making provision, the statutory rules may make provision for or with respect to the following matters:	6 7 8
	(a) the information about boat driving licences to be included on combined licences (for example, licence numbers and codes identifying licence classes and conditions),	9 10 11
	(b) the making of applications for combined licences,	12
	(c) the surrender of driver licences and boat driving licences to be included on combined licences,	13 14
	(d) the issue, replacement, renewal, surrender and confiscation of combined licences,	15 16
	(e) the provision of information concerning any of the licences included on combined licences,	17 18
	(f) the issue or reissue of boat driving licences or driver licences to replace licences included on combined licences,	19 20
	(g) the modification of specified provisions of the marine legislation or road transport legislation in their application to driver licences or boat driving licences that are included on combined licences.	21 22 23
(4)	In this section:	24
	<i>confiscation</i> includes seizure.	25
	<i>legislation</i> means an Act or statutory rule made under an Act.	26
	<i>marine legislation</i> has the same meaning as in the <i>Marine Safety Act 1998</i> .	27
	<i>modification</i> includes addition, exception, omission or substitution.	28
	<i>relevant statutory rule-making provision</i> means a provision of this Act or the <i>Marine Safety Act 1998</i> that confers a power to make statutory rules.	29 30
<b>[8]</b>	<b>Section 257 Certificate evidence</b>	31
	Insert after item 15 in the Table to section 257 (1):	32
16	A specified person was or was not the holder of a relevant Australian driver licence that included a specified boat driving licence held by the person.	

<b>Schedule 2</b>	<b>Amendments concerning dangerous goods in ports</b>	1 2
<b>2.1</b>	<b>Ports and Maritime Administration Act 1995 No 13</b>	3
<b>[1]</b>	<b>Section 110 Regulations</b>	4
	Omit section 110 (2). Insert instead:	5
	(2) Without limiting subsection (1), the regulations may make provision for or with respect to the management of dangerous goods in ports, including (but not limited to) the following:	6 7 8
	(a) the identification or classification of substances and articles as dangerous goods,	9 10
	(b) the navigation or mooring of vessels carrying dangerous goods,	11
	(c) the use, storage or handling of dangerous goods,	12
	(d) the use of equipment in connection with the use, storage or handling of dangerous goods,	13 14
	(e) the inspection, examination and testing of dangerous goods and equipment used (or intended for use) in connection with dangerous goods,	15 16 17
	(f) the making, keeping, inspection and provision of records in connection with dangerous goods,	18 19
	(g) the escape or spillage of dangerous goods,	20
	(h) the declaration of the day on which clause 63 of Schedule 18B to the <i>Work Health and Safety Regulation 2011</i> (or any provision that is made under the <i>Work Health and Safety Act 2011</i> in substitution of that provision) ceases to apply in relation to ports.	21 22 23 24
	(2A) The regulations may create offences punishable by:	25
	(a) in the case of regulations made for the purposes of subsection (2)—a penalty not exceeding 300 penalty units, and	26 27
	(b) in any other case—a penalty not exceeding 100 penalty units.	28
<b>[2]</b>	<b>Section 110 (3)</b>	29
	Insert “guidelines,” after “any”.	30

<b>2.2 Work Health and Safety Regulation 2011</b>	1
<b>Schedule 18B Savings and transitional provisions</b>	2
Insert after clause 63 (4):	3
(5) Except as provided by subclause (6), this clause ceases to have effect on and from the day declared by regulations made under the <i>Ports and Maritime Administration Act 1995</i> as the day on which this clause ceases to apply in relation to ports.	4 5 6 7
<b>Note.</b> Section 110 (2) of the <i>Ports and Maritime Administration Act 1995</i> enables the regulations under that Act to make provision for or with respect to the management of dangerous goods in ports.	8 9 10
(6) Nothing in subclause (5) affects the continued application of this clause to acts or omissions that occurred before the day referred to in that subclause.	11 12