



New South Wales

Marine Safety Amendment (Random Breath Testing) Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Marine Safety Act 1998* as follows:

- (a) to enable random breath testing of persons operating vessels,
- (b) to prohibit persons under 18 years from operating vessels with any alcohol present in their blood,
- (c) to increase the penalties for offences under the Act involving the presence of certain prescribed concentrations of alcohol in the blood of persons operating vessels in line with the penalties for offences involving prescribed concentrations of alcohol under the *Road Transport (Safety and Traffic Management) Act 1999*.

The Bill also makes amendments of a minor, consequential or ancillary nature (including consequential amendments to other legislation).

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Marine Safety Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulations specified in Schedule 2.

Schedule 1 Amendment of Marine Safety Act 1998

Schedule 1 [1] amends the definition of *operate a vessel* in section 20 (1) of the *Marine Safety Act 1998* (the *Principal Act*) so that the term (where used in Part 3 of and Schedule 1 to the Principal Act relating to alcohol and drugs in connection with boating safety) includes supervising a juvenile operator of a motor vessel. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [2] amends section 22 of the Principal Act to provide for a youth range prescribed concentration of alcohol (*PCA*), being more than zero grams, but less than 0.02 grams, of alcohol in 100 millilitres of blood, for the purposes of Part 3 of and Schedule 1 to the Principal Act. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [3] inserts proposed section 24 (1A) into the Principal Act to make it an offence for a person under 18 years of age to operate a vessel while having the youth range PCA present in the person's blood.

Schedule 1 [4] amends section 24 of the Principal Act to provide for a penalty for the offence in proposed section 24 (1A). The amendment also increases the penalties for existing offences under the Act involving the presence of certain prescribed concentrations of alcohol in the blood of persons operating vessels in line with the penalties for offences involving prescribed concentrations of alcohol under the *Road Transport (Safety and Traffic Management) Act 1999*. The proposed penalties are as follows:

- (a) for an offence involving the proposed youth range PCA, the special range PCA or low range PCA—a maximum penalty of 10 penalty units (currently 5 penalty units) in the case of a first offence, or 20 penalty units (currently 10 penalty units) in the case of any subsequent offence,
- (b) for an offence involving the middle range PCA—a maximum penalty of 20 penalty units or 9 months imprisonment, or both, in the case of a first offence, or 30 penalty units or 12 months imprisonment, or both, in the case of any subsequent offence (currently 10 penalty units or 6 months imprisonment, or both, whether a first or subsequent offence),

- (c) for an offence involving the high range PCA—a maximum penalty of 30 penalty units (currently 15 penalty units) or 18 months imprisonment (currently 9 months), or both, in the case of a first offence, or 50 penalty units (currently 20 penalty units) or 2 years imprisonment (currently 12 months), or both, in the case of any subsequent offence.

The item also omits an offence (relating to supervision of a juvenile operator of a motor vessel while having a specified concentration of alcohol in the blood) which is no longer necessary given the amendment made by Schedule 1 [1] and the existing offences relating to the operation of a vessel while having a specified concentration of alcohol in the blood.

Schedule 1 [5] provides for a defence to the offence in proposed section 24 (1A). It is a defence to the proposed offence if the defendant proves that the presence in the defendant's blood of the youth range PCA at the time that the person is alleged to have committed the offence was not caused by the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance), or the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

Schedule 1 [6] inserts proposed section 141 (2) into the Principal Act to allow the Acts and regulations repealed by Schedule 2 to the Principal Act, or different provisions of the same Act or Regulation, to be repealed on different days.

Schedule 1 [7] amends clause 3 of Schedule 1 to the Principal Act to allow for random breath testing by police officers. Under the proposed clause, a police officer may require a person to undergo a breath test if the officer has reasonable cause to believe the person is or was operating a vessel. **Schedule 1 [8]** and **[10]** make consequential amendments.

Schedule 1 [13] and **[15]** make amendments by way of statute law revision.

Clauses 16 and 17 of Schedule 1 to the Principal Act facilitate the admission into evidence, in proceedings for an offence under section 24 or 23, respectively, of the alcohol concentration in the defendant's blood (in the case of clause 16) and the presence and concentration of a drug in the defendant's blood or urine (in the case of clause 17) if the blood or urine sample was taken within 2 hours after the time the defendant operated the vessel concerned (unless the defendant proves otherwise). **Schedule 1 [14]** amends clauses 16 and 17 to increase the time limit for the taking of samples for the purposes of those provisions from 2 hours to 3 hours. **Schedule 1 [12]** makes a consequential amendment.

Schedule 1 [16] omits Schedule 3.1 to the Principal Act which contains redundant amendments (uncommenced) made by the Principal Act to the *Crimes Act 1900*.

Schedule 1 [17] amends Schedule 4 to the Principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [18] inserts provisions of a savings or transitional nature into Schedule 4 to the Principal Act. In particular, the effect of proposed clause 12 is that legal proceedings for offences committed before the commencement of an amendment made by Schedule 1 to the proposed Act will continue to be determined under the law as it stood before that commencement.

Schedule 2 Amendment of other Acts and Regulations

Schedule 2.1–2.6 make amendments to certain Acts and Regulations consequential on the repeal of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* by Schedule 2 to (and section 141 of) the Principal Act.

First print



New South Wales

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New South Wales

Marine Safety Amendment (Random Breath Testing) Bill 2004

No. , 2004

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Marine Safety Amendment (Random Breath Testing) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Marine Safety Act 1998 No 121	7
The <i>Marine Safety Act 1998</i> is amended as set out in Schedule 1.	8
4 Amendment of other Acts and Regulations	9
The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.	10 11

Schedule 1	Amendment of Marine Safety Act 1998	1
	(Section 3)	2
[1] Section 20 Definitions		3
	Insert at the end of paragraph (b) of the definition of <i>operate a vessel</i> in section 20 (1):	4
		5
	, or	6
	(c) supervise a juvenile operator of a motor vessel.	7
[2] Section 22 Prescribed concentrations of alcohol		8
	Insert before section 22 (a):	9
	(a1) the youth range prescribed concentration of alcohol is a reference to more than zero grams, but less than 0.02 grams, of alcohol in 100 millilitres of blood, and	10
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		12
[3] Section 24 Operating vessel with prescribed concentration of alcohol in blood		13
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	Insert before section 24 (1):	15
	(1A) A person who is under 18 years of age and who operates a vessel in any waters while there is present in the person's blood the youth range prescribed concentration of alcohol is guilty of an offence.	16
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[4] Section 24 (3)–(5)		20
	Omit section 24 (3)–(6). Insert instead:	21
	(3) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the youth range, special range or low range prescribed concentration of alcohol:	22
		23
	(a) in the case of a first offence—to a penalty not exceeding 10 penalty units, or	24
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	(b) in the case of a second or subsequent offence—to a penalty not exceeding 20 penalty units.	27
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	(4) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the middle range prescribed concentration of alcohol:	29
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	(a) in the case of a first offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 9 months, or both, or	32
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(b)	in the case of a second or subsequent offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 12 months, or both.	1 2 3
(5)	A person who is guilty of an offence under this section is liable, if there is present in the person's blood the high range prescribed concentration of alcohol:	4 5 6
(a)	in the case of a first offence—to a penalty not exceeding 30 penalty units or to imprisonment for a period not exceeding 18 months, or both, or	7 8 9
(b)	in the case of a second or subsequent offence—to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 2 years, or both.	10 11 12
[5] Section 24A		13
	Insert after section 24:	14
24A Defence for offence relating to youth range prescribed concentration of alcohol		15 16
	It is a defence to a prosecution for an offence under section 24 (1A) if the defendant proves that, at the time of the alleged offence, the presence in the defendant's blood of the youth range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following:	17 18 19 20 21
(a)	the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance),	22 23
(b)	the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.	24 25 26
[6] Section 141 Repeals		27
	Insert at the end of the section:	28
(2)	Different days may be appointed for the commencement of subsection (1) in its application to Schedule 2 for the purpose of repealing different Acts or regulations, or different provisions of the same Act or regulation, on different days.	29 30 31 32

[7] Schedule 1 Alcohol and drugs—breath analysis and related matters	1
Insert before clause 3 (1):	2
(1A) A police officer may require a person to undergo a breath test in accordance with the directions of the officer if the officer has reasonable cause to believe that the person is or was operating a vessel.	3 4 5 6
[8] Schedule 1, clause 3 (1)	7
Insert “(other than a police officer)” after “authorised officer”.	8
[9] Schedule 1, clause 3 (1) (a)	9
Omit “, or is or was in charge of a motor vessel operated by a juvenile,”.	10
[10] Schedule 1, clause 3 (2)	11
Omit the subclause. Insert instead:	12
(2) An authorised officer to whom subclause (1) applies may only require a person who is or was operating a vessel to undergo a breath test if there is reasonable cause as referred to in that subclause.	13 14 15 16
[11] Schedule 1, clause 4	17
Insert before clause 4 (1) (a):	18
(a1) it appears to the officer as a result of a breath test or assessment under this Part that more than zero grams of alcohol in 100 millilitres of blood may be present in the person’s blood and the officer has reasonable cause to believe the person is under 18 years of age, or	19 20 21 22 23
[12] Schedule 1, clause 7 (c)	24
Omit “12 hours”. Insert instead “3 hours”.	25
[13] Schedule 1, clauses 14, 16 (3) and 17 (2)	26
Insert “or nurse” after “practitioner” wherever occurring.	27
[14] Schedule 1, clauses 16 (2) and 17 (1)	28
Omit “2 hours” wherever occurring. Insert instead “3 hours”.	29
[15] Schedule 1, clause 21 (a)	30
Insert “or nurses” after “practitioners”.	31

[16] Schedule 3 Amendment of other Acts	1
Omit Schedule 3.1.	2
[17] Schedule 4 Savings, transitional and other provisions	3
Insert at the end of clause 1 (1):	4
<i>Marine Safety Amendment (Random Breath Testing) Act 2004</i>	5
[18] Schedule 4, Part 3	6
Insert at the end of Schedule 4:	7
Part 3 Provisions consequent on enactment of Marine Safety Amendment (Random Breath Testing) Act 2004	8
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11 Definition	11
In this Part:	12
<i>repealed Act</i> means the <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> .	13
	14
12 Amendments not to apply to offences occurring before the commencement of amendments	15
	16
(1) Proceedings for offences committed, or alleged to have been committed, before the commencement of an amendment of a provision by Schedule 1 to the <i>Marine Safety Amendment (Random Breath Testing) Act 2004</i> are to be determined as if the amendment had not been enacted.	17
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(2) Accordingly, the law (including any relevant provision of this Act) that would have been applicable to the proceedings had the amendment not been enacted continues to apply to the proceedings as if the amendment had not been enacted.	22
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13 References to and in relation to marine safety licences in sections 27 and 40	26
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(1) A reference in section 27 or 40 to a marine safety licence is taken to include a reference to a licence to which section 10 of the repealed Act applied immediately before its repeal by Schedule 2 to this Act.	28
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(2) A reference in section 27:	32
(a) to the cancellation or suspension of a marine safety licence is taken to include a reference to the withdrawal of	33
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- recognition of a recognised licence (within the meaning of section 10 of the repealed Act), and
- (b) to the disqualification of the holder of a marine safety licence is taken to include a reference to the disqualification of the person from having a recognised licence recognised.

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Schedule 2	Amendment of other Acts and Regulations	1
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	(Section 4)	3
2.1	Crimes Act 1900 No 40	4
[1]	Section 52B Dangerous navigation: substantive matters	5
	Omit “ <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ” from the definition of <i>vessel</i> in section 52B (9).	6
	Insert instead “ <i>Marine Safety Act 1998</i> ”.	7
[2]	Section 52BA Dangerous navigation: procedural matters	8
	Omit “Part 3 of the <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ” from section 52BA (2).	9
	Insert instead “Schedule 1 to the <i>Marine Safety Act 1998</i> ”.	10
2.2	Criminal Procedure Act 1986 No 209	11
	Section 283 Law enforcement devices	12
	Omit “section 24, 25 or 26 of the <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ” from section 283 (1) (b).	13
	Insert instead “clause 15, 16 or 17 of Schedule 1 to the <i>Marine Safety Act 1998</i> ”.	14
2.3	Passenger Transport Act 1990 No 39	15
	Section 9C Accreditation conditions relating to drug and alcohol programs and testing	16
	Omit “the <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ” from section 9C (5).	17
	Insert instead “Part 3 of and Schedule 1 to the <i>Marine Safety Act 1998</i> ”.	18
2.4	Passenger Transport (Drug and Alcohol Testing) Regulation 2004	19
	Clause 7 Double jeopardy	20
	Omit clause 7 (2) (d)–(f). Insert instead:	21
	(d) an offence under section 23 of the <i>Marine Safety Act 1998</i> ,	22
	(e) an offence under section 24 of the <i>Marine Safety Act 1998</i> ,	23
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(f) an offence under clause 12 (2) of Schedule 1 to the <i>Marine Safety Act 1998</i> ,	1 2
2.5 Police Regulation 2000	3
Clause 48 Operation of Part	4
Omit “the <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ,” from clause 48 (2).	5 6
2.6 Ports Corporatisation and Waterways Management Act 1995 No 13	7 8
Section 3 Definitions	9
Omit “ <i>Marine (Boating Safety—Alcohol and Drugs) Act 1991</i> ” from the definition of <i>marine legislation</i> in section 3 (1).	10 11
Insert instead “Part 3 of and Schedule 1 to the <i>Marine Safety Act 1998</i> ”.	12