

Marine Pilotage Licensing Act 1971 No 56

[1971-56]



New South Wales

Status Information

Currency of version

Historical version for 4 December 2006 to 5 July 2009 (accessed 19 November 2024 at 4:22)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Pilotage Act 1971
- **Does not include amendments by**
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **Proposed repeal**
The Act is to be repealed on the commencement of Part 1 of Sch 2 to the [Marine Safety Act 1998 No 121](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 December 2007

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New South Wales

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Marine Pilotage Licensing Act 1971 No 56



New South Wales

An Act to provide for the licensing of pilots; and for other purposes.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Marine Pilotage Licensing Act 1971*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 (Repealed)

3 Repeal, savings and amendment

- (1) (Repealed)
- (2) A pilot's licence or a pilotage certificate granted under the *Navigation Act 1901*, which is:
 - (a) in force, or
 - (b) subject to a suspension or revocation imposed for a period under section 72 of that Act,

at the commencement of this Act, shall be deemed to be respectively a licence or a pilotage exemption certificate granted under this Act and shall continue in force in accordance with its terms, subject to the provisions of this Act and to the continuation, unless removed under this Act, of any suspension or revocation for the period for which it was imposed.

- (3), (4) (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

certificate means a pilotage exemption certificate or a certificate of local knowledge,

granted under section 7.

certificate holder means the holder of a certificate of local knowledge granted under section 7.

Director-General means the Department Head of the Department, or the Head of the statutory authority, responsible to the Minister for the administration of this Act.

exempt master means the holder of a pilotage exemption certificate granted under section 7.

length means length overall.

licence means a licence granted under section 7.

master includes every person having lawfully, or de facto, the command, charge, or management of a vessel for the time being.

owner includes any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of the owner of a ship, whether on his or her own behalf or on behalf of another.

pilot means a person licensed under section 7 to conduct ships to which the person does not belong.

regulations means regulations made under this Act.

ship means a vessel not ordinarily propelled by oars only.

the jurisdiction means the navigable waters lying within one nautical league of the coast and the inland navigable waters of New South Wales.

vessel includes any lighter, barge, boat, raft, craft and any floating object or apparatus used wholly or in part for the conveyance of persons or things by water, of whatsoever description and howsoever navigated, and includes amphibious vehicles, hydroplanes, hydrofoils and hovercraft.

(2)-(4) (Repealed)

5 (Repealed)

6 Person not to be deemed a pilot etc in certain instances

(1) A person shall be deemed not to be a pilot, an exempt master or a certificate holder:

(a) when acting:

(i) in any port, or portion thereof, to which the person's licence or certificate does not apply,

- (ii) otherwise than in accordance with any other restriction on the application of the person's licence or certificate imposed by the Director-General under section 8 or by a Board of Review under section 46, or
 - (b) subject to the provisions of subsection (2), during any period when the person's licence or certificate is suspended, or is deemed to have been suspended as provided in subsection (2) of section 41.
- (2) Any reference in Part 5 to a pilot, an exempt master or a certificate holder includes a reference to a pilot, an exempt master or a certificate holder whose licence or certificate has been suspended.

Part 2 Licences, pilotage exemption certificates and certificates of local knowledge

7 Granting of licences and certificates

- (1) The Director-General may, subject to such limitations and restrictions as may be prescribed, grant:
 - (a) a licence to any person to conduct ships to which the person does not belong, and
 - (b) a pilotage exemption certificate or a certificate of local knowledge to any person.
- (1A) A certificate of local knowledge may only be issued to a person who holds a certificate of competency under the *Commercial Vessels Act 1979*.
- (2) A licence or a certificate shall:
 - (a) be in such form as the Director-General may determine,
 - (b) state the port or ports, or portions thereof, to which it applies, and
 - (c) state or have endorsed thereon any other restriction on its application imposed by the Director-General under section 8.
- (3) A certificate may consist of an endorsement on a certificate of competency under the *Commercial Vessels Act 1979* instead of a separate document.

8 Imposition etc of restrictions on application of licence or certificate

- (1) When granting a licence or certificate the Director-General may impose restrictions on its application.
- (2) If, subsequent to the granting of a licence or certificate, the Director-General decides that it is necessary to do so, the Director-General may impose restrictions on its application.
- (3) The power of the Director-General under subsection (2) to impose restrictions shall be

deemed to include a power to vary restrictions imposed.

- (4) The Director-General may revoke restrictions imposed by the Director-General.
- (5) The Director-General shall:
 - (a) exercise the Director-General's power under subsection (2) subject to such limitations and restrictions as may be prescribed, and
 - (b) give written notice to the pilot, exempt master or certificate holder when the Director-General imposes or revokes any restriction under subsection (2) or (4).

9 Duration of licence or certificate

Subject to the provisions of section 6, a licence or certificate shall be in force until withdrawn.

10 Suspension and withdrawal of licence or certificate

- (1) The Director-General may suspend or withdraw a licence or certificate if the Director-General decides that a pilot, exempt master or certificate holder has failed to take or satisfy such tests or examinations, or to meet such requirements, as may be prescribed.
- (2) The Director-General may withdraw the licence or certificate of a pilot, exempt master or certificate holder if that person has held a licence or certificate, as the case may be, for under one year.
- (3) In determining the period for which a pilot has held a licence or an exempt master or certificate holder has held a certificate there shall be:
 - (a) included any period during which:
 - (i) the pilot held a licence as a pilot,
 - (ii) the exempt master held a pilotage certificate,under the *Navigation Act 1901*, and
 - (b) excluded any period during which the licence or certificate was suspended, or a licence or pilotage certificate granted under the *Navigation Act 1901*, was suspended or revoked under that Act or suspended under this Act.
- (4) The Director-General shall give written notice to the person concerned of any suspension or withdrawal of the person's licence or certificate under this section.

11 Removal of suspension

The Director-General may at the time remove the suspension of a licence or certificate.

12 Production and delivery of licences and certificates

- (1) A person undertaking or proposing to undertake the conduct of a ship to which the person does not belong shall produce his or her licence to the master of the ship if required by the master to do so.

Maximum penalty: 10 penalty units.

- (2) An exempt master or a certificate holder shall produce his or her certificate on such occasions and to such persons as may be prescribed.

Maximum penalty: 10 penalty units.

- (3) A person whose licence or certificate is suspended or withdrawn under section 10, 36, or 40, shall deliver it to the Director-General within seven days of being given written notice by the Director-General of the suspension or withdrawal.

Maximum penalty: 10 penalty units.

- (4) A pilot, exempt master or certificate holder whose licence or certificate has been restricted in its application by the Director-General under subsection (2) of section 8 shall deliver it to the Director-General within seven days of being given written notice by the Director-General of the imposition of the restriction.

Maximum penalty: 10 penalty units.

- (5) The person into whose hands a licence or certificate comes after the death of a pilot, exempt master or certificate holder shall, on demand by the Director-General, deliver it to an officer of the Director-General.

Maximum penalty: 10 penalty units.

13 Offence to alter etc licence or certificate

No person shall:

- (a) alter, add to, endorse or mark in any way a licence or certificate, except by direction of the Director-General, or
- (b) damage, deface or destroy a licence or certificate.

Maximum penalty: 20 penalty units.

14 Prohibition against acting as pilot

- (1) No person, other than a pilot, shall undertake the conduct of a ship to which the person does not belong in any port within the jurisdiction.

Maximum penalty: 20 penalty units.

- (2) (Repealed)

Parts 3-4A

15-34D (Repealed)

Part 5 Investigations and appeals

35 Meaning of “certificated person” and “default”

In this Part:

certificated person means an exempt master or a certificate holder.

default means incompetence, misconduct or negligence in or in relation to the navigation of a ship.

36 Investigation by the Director-General of default

- (1) If it comes to the knowledge of the Director-General that a pilot or a certificated person, when acting as a pilot or a master, may have been guilty of any default, the Director-General may investigate the matter.
- (2) If the Director-General begins an investigation the Director-General:
 - (a) may suspend the pilot’s licence or the certificated person’s certificate, and
 - (b) shall give written notice to the pilot or certificated person concerning the investigation and any suspension of his or her licence or certificate.

37 Provisions relating to investigation of default

- (1) In making an investigation the Director-General:
 - (a) shall not be bound by the rules of evidence,
 - (b) may conduct the investigation without regard to legal forms, and
 - (c) shall not, except as provided in section 40, be obliged to hear the pilot or certificated person concerned.
- (2) The evidence to be required in connection with the determination of any matter under investigation shall be such as the Director-General may determine.

38 Director-General to have regard to findings of Court of Marine Inquiry

If, in pursuance of the provisions of an Act or of an Act of the Commonwealth, a competent authority convenes a Court of Marine Inquiry to inquire into any matter relevant to an investigation being made by the Director-General, the Director-General shall not, after the convening of such Court, make a finding under section 39 or 40 without first having regard to the findings of that Court.

39 Procedure if Director-General finds pilot etc not guilty of a default

The Director-General may, at any stage in an investigation, if in the Director-General's opinion the facts so warrant, find a pilot or a certificated person not guilty of any default, in which event the Director-General shall inform the pilot or certificated person of the Director-General's findings and remove any suspension of his or her licence or certificate imposed under section 36.

40 Procedure if Director-General finds pilot etc guilty of a default

- (1) The Director-General shall not find a pilot or a certificated person guilty of any default unless the Director-General has:
 - (a) provided the pilot or certificated person with a statement of the evidence considered by the Director-General in the course of the investigation, and
 - (b) afforded the pilot or certificated person an opportunity, within such reasonable time as it shall specify in a written notice given to the pilot or certificated person, to make written submissions to the Director-General.
- (2) The Director-General may make any further investigation the Director-General deems necessary as a result of written submissions made by a pilot or a certificated person, but shall not be required to provide the pilot or certificated person with a statement of any evidence obtained in the course of the further investigation.
- (3) If, after the Director-General has considered the written submissions, if any, made by a pilot or a certificated person, the Director-General decides that the pilot or certificated person has been guilty of any default, the Director-General shall so find and:
 - (a) may take no action against the pilot or certificated person, or
 - (b) may:
 - (i) withdraw the pilot's licence or the certificated person's certificate,
 - (ii) suspend, or continue the suspension of, the pilot's licence or the certificated person's certificate, or
 - (iii) reprimand the pilot or certificated person,and shall:
 - (c) give written notice to the pilot or certificated person of the Director-General's finding and of any action taken under paragraph (b), and
 - (d) remove any suspension of the pilot's licence or the certificated person's certificate if it acts as provided in paragraph (a) or subparagraph (iii) of paragraph (b).

- (4) The Director-General may provide a pilot or a certificated person with a statement of evidence in any way in which the Director-General may give written notice under subsection (2) of section 4, and the provisions of subsection (4) of that section shall apply where a statement of evidence is provided as they apply where written notice is given.

41 Withdrawal of licence or certificate deemed to be suspension

- (1) The withdrawal of:
- (a) a certificated person's certificate under subsection (1) of section 10, or
 - (b) a pilot's licence or a certificated person's certificate under paragraph (b) of subsection (3) of section 40,
- shall not take effect:
- (c) until one month after the pilot or authorised person is given written notice of the withdrawal, and
 - (d) if the pilot or authorised person appeals to a Board of Review under section 42, unless the Board of Review confirms the action taken by the Director-General.
- (2) During the period of one month referred to in paragraph (c) of subsection (1) and, if the pilot or certificated person appeals to a Board of Review, pending the decision of that Board, a licence or certificate which has been withdrawn shall be deemed to have been suspended.

42 Right of appeal to Board of Review

- (1) Subject to the provisions of subsection (4), a pilot whose licence has been restricted in its application by the Director-General, under subsection (2) of section 8, may appeal to a Board of Review against:
- (a) the decision to impose the restriction, or
 - (b) the nature and extent of the restriction imposed,
- or against both those matters.
- (2) A certificated person whose certificate:
- (a) has been restricted in its application by the Director-General under subsection (2) of section 8, may appeal to a Board of Review against:
 - (i) the decision to impose the restriction, or
 - (ii) the nature and extent of the restriction imposed,or against both those matters, or

(b) has been suspended or withdrawn under subsection (1) of section 10 may appeal to a Board of Review against the decision to suspend or withdraw the certificate.

(3) A pilot or a certificated person found guilty of any default under section 40 may appeal to a Board of Review against:

(a) the finding of the Director-General, or

(b) the action taken by the Director-General under paragraph (b) of subsection (3) of that section,

or against both these matters.

(4) No appeal shall lie under subsection (1) where the decision or restriction concerned relates to the port or ports, or portions thereof, to which a licence is to apply.

43 Procedure for making appeal

(1) A pilot or a certificated person having a right of appeal and wishing to appeal shall notify the Director-General in writing, stating in the notification the nature of his or her appeal and setting out such further particulars as may be prescribed.

(2) A notification under subsection (1) shall be given within one month, or within such extended period as the Director-General may allow, of the date on which written notice is given by the Director-General to the pilot or certificated person of the matter against which he or she wishes to appeal.

(3) On receipt of a notification:

(a) the Director-General shall take steps to cause a Board of Review to be appointed,

(b) the secretary shall:

(i) in the case of an appeal under subsection (1) or subsection (2) of section 42, prepare a statement containing the Director-General's decision, the reasons therefor, and, except in the case of an appeal under paragraph (b) of subsection (3) of that section, particulars of the restriction imposed, and

(ii) in the case of an appeal under subsection (3) of section 42, prepare a record of evidence containing the evidence which was before the Director-General as a result of the investigation, any written submission made by the pilot or certificated person, the Director-General's finding and particulars of the action taken.

(4) The secretary shall make available to the pilot or certificated person concerned a copy of the statement or record of evidence referred to in subsection (3).

44 Appointment of Board of Review

- (1) A Board of Review shall, when required, be appointed by the Governor and shall consist of:
 - (a) a District Court Judge (hereinafter in this Act referred to as **the Chairperson**),
 - (b) a member nominated by the Director-General, and
 - (c) a member nominated by an organisation entitled to represent the pilot or certificated person concerned in industrial proceedings, or, if there is more than one such organisation, the organisation so entitled which is selected by the pilot or certificated person.
- (2) No person shall be appointed in pursuance of a nomination under paragraph (b) or (c) of subsection (1) unless the Governor is satisfied that the person nominated is sufficiently experienced in the navigation of ports in the jurisdiction to warrant being appointed.

45 Procedure before and powers of Board of Review

- (1) The Chairperson shall fix a date and place for the hearing of an appeal and shall give seven days' notice thereof to the pilot or certificated person concerned.
- (2) A Board of Review shall receive and admit on production the statement or the record of evidence referred to in subsection (3) of section 43 if it is duly certified by the secretary as correct.
- (3) The pilot or certificated person either in person or by his or her solicitor or counsel shall be afforded an opportunity of showing cause why any decision or finding of the Director-General, or any restriction imposed or action taken by the Director-General, which is the subject of appeal, should not be upheld or confirmed by a Board of Review.
- (4) The decision of the Chairperson upon any question of law or procedure which may arise before a Board of Review shall be the decision of the Board of Review.
- (5) A Board of Review in dealing with any appeal:
 - (a) shall consider any statement or record of evidence received and admitted by it under subsection (2) and such other evidence and submissions as may be given before or made to it, and
 - (b) may require that further or better evidence, and in particular oral evidence where a witness able to give such evidence can in its opinion reasonably be made available, be tendered in respect of any matter which is bona fide disputed by the pilot or certificated person, or, in the case of evidence submitted by the pilot or certificated person, bona fide disputed by the Director-General.

- (6) For the purpose of any appeal a Board of Review shall have the powers, authorities, protections and immunities conferred by the *Royal Commissions Act 1923* on a commissioner and the chairperson of a commission respectively, appointed under Division 1 of Part 2 of that Act, and that Act, Division 2 of Part 2 excepted, shall, mutatis mutandis, apply to any witness summoned by or appearing before a Board of Review.
- (7) A Board of Review may make such order as it thinks fit respecting the costs of any appeal, and the costs awarded against any party to the proceedings may be recovered by the party in whose favour the order is made, in any court of competent jurisdiction.

46 Decision of Board of Review

- (1) A Board of Review may by order:
 - (a) uphold or quash a decision or finding of the Director-General, and
 - (b) confirm, vary or quash any restriction imposed or action taken by the Director-General,which is the subject of appeal.
- (2) For the purpose of varying any restriction imposed or action taken by the Director-General, a Board of Review shall have the powers of the Director-General under this Act.
- (3) If a Board of Review quashes a decision or finding of the Director-General it shall, by order, quash any restriction imposed or action taken by the Director-General consequent on such decision or finding, whether or not the restriction or action is the subject of appeal.

47 Effect and implementation of decision of Board of Review

- (1) An order of a Board of Review under section 46 shall have effect from the date thereof.
- (2) The Minister shall take all such steps as may be necessary to implement an order of a Board of Review.
- (3) A pilot or a certificated person shall deliver his or her licence or certificate on demand made by the Minister for the purpose of implementing an order of a Board of Review.
Maximum penalty: 10 penalty units.

Part 6 Miscellaneous

48 Director-General may hear pilot etc before making certain decisions

The Director-General may, but shall not be required to, hear the pilot, exempt master or

certificate holder concerned before making a decision under subsection (2) of section 8 or subsection (1) of section 10, and such a decision of the Director-General shall not be challenged in any proceedings by reason only of the Director-General's failure to hear the pilot, exempt master or certificate holder.

49 No proceedings against Director-General etc in connection with an investigation

No proceedings, civil or criminal, shall be brought against the Director-General or any person who has given or supplied any evidence or information to the Director-General in connection with an investigation under section 36, in respect of any matter contained in that evidence or information which is or is alleged to be defamatory.

50 Disclosure of confidential information

(1) No person shall give any confidential report or disclose any information contained therein to any person other than a prescribed person.

Maximum penalty: 20 penalty units.

(2) In this section:

confidential report means any report made by a pilot to the Minister, the pilotage service provider or the Director-General relating to or in connection with the navigation, management or condition of a ship when he or she was pilot of that ship.

prescribed person means:

- (a) a director, officer or employee of a pilotage service provider,
- (a1) the Director-General or his or her other delegate,
- (b) a chairperson or member of a Board of Review,
- (c) a court,
- (d) a person acting in a professional capacity or expert capacity before a Board of Review or a court, when the confidential report or any of the contents thereof are relevant to the proceedings before the Board of Review or court,
- (e) the owner of the ship concerned or a person designated by the owner in writing, or
- (f) any person designated by the Board or the Director-General in writing.

50A Delegation by Director-General

The Director-General may delegate the Director-General's powers, authorities, duties and functions under this Act (except this power of delegation) to:

- (a) a public servant, or

- (b) (Repealed)
- (c) any other person approved by the Minister.

51 Recovery of penalties

- (1) (Repealed)
- (2) All proceedings in respect of offences against this Act or the regulations shall be disposed of summarily before a stipendiary magistrate or any two justices in petty sessions.

52 Regulations

- (1) The Governor may make regulations for or with respect to:
 - (a) any matter which is required or permitted to be prescribed under this Act, or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act,
 - (b) (Repealed)
 - (c) the qualifications with regard to age, physical fitness, experience, local knowledge, skill, character, citizenship, or otherwise, to be required from persons applying for a licence or certificate, and the testing and examination, whether as to health, knowledge, ability, or otherwise, of those persons,
 - (d) the testing or examination, whether as to health, knowledge, ability or otherwise, of the holder of a licence or certificate,
 - (e) (Repealed)
 - (f) the payment of fees for licences and certificates, or for services rendered by the Director-General, and
 - (g) the forms to be used for the purposes of this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (3) A regulation made by the Board under this section (as in force before the commencement of the *Pilotage (Amendment) Act 1992*) is taken to be a regulation made by the Governor under this section (as in force after that commencement).
- (4), (5) (Repealed)

53 Exemption from compliance with regulations

- (1) If it appears to the Minister, on the application of any person affected by any regulation, that compliance with all or any part of the regulation is impracticable or

unnecessary, the Minister may direct that compliance with that regulation or part thereof may be dispensed with, and may, by the same direction, direct that some other requirement be substituted for the requirement of the regulation or part thereof.

- (2) A breach of any requirement directed by the Minister to be substituted for any regulation or part of a regulation shall be deemed to be a breach of that regulation.
- (3) Any direction under this subsection may be given under the hand of an officer or employee of the Minister authorised by the Minister in that behalf.
- (4) Any direction under this section may also be given by the Director-General if it relates to licences or certificates.

54 Pilotage (Amendment) Act 1992

Any licence or certificate issued by the Board under this Act before the commencement of the *Pilotage (Amendment) Act 1992* or anything done by the Board under this Act before that commencement in connection with such a licence or certificate is taken to have been issued or done by the Director-General under this Act.

Schedule (Repealed)