

Marine Safety Amendment Act 2008 No 59

[2008-59]



New South Wales

Status Information

Currency of version

Historical version for 10 December 2008 to 7 January 2010 (accessed 1 May 2024 at 18:46)

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

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)
- **Proposed repeal**
The Act is to be repealed by sec 4 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

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 14 December 2009

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Marine Safety Amendment Act 2008 No 59



New South Wales

An Act to amend the *Marine Safety Act 1998* with respect to boating safety and marine safety licences; and for other purposes.

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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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[1]-[12] (Repealed)

[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]-[22] (Repealed)

[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]-[79] (Repealed)