

# Marine Safety Act 1998 No 121

[1998-121]



New South Wales

## Status Information

### Currency of version

Historical version for 3 January 2014 to 31 August 2014 (accessed 9 December 2024 at 14:46)

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**
  - [Marine Pollution Act 2012 No 5](#) (not commenced — to commence on 1.9.2014)
  - [Maritime and Transport Licensing Legislation Amendment Act 2014 No 38](#) (not commenced)
- **See also**
  - [Road Transport Amendment \(Alcohol and Drug Testing\) Bill 2014](#)
  - [Passenger Transport Bill 2014](#)

### Authorisation

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File last modified 22 August 2014

# Marine Safety Act 1998 No 121



New South Wales

## Contents

<b>Long title</b> .....	11
<b>Part 1 Preliminary</b> .....	11
1 Name of Act .....	11
2 Commencement .....	11
3 Objects of Act .....	11
4 Definitions .....	11
5 Meaning of “vessel” .....	14
6 Meaning of vessel “connected with this State” .....	14
7 Meaning of “owner” of vessel .....	15
8 Vessels and waters to which Act applies .....	15
9 Application of Act to Defence Force vessels .....	15
<b>Part 1A Application of Commonwealth domestic commercial vessel national law</b> .....	16
<b>Division 1 Preliminary</b> .....	16
9A Purpose of Part .....	16
9B Definitions .....	16
<b>Division 2 The applied provisions</b> .....	17
9C Application of Commonwealth laws as laws of this State .....	17
9D Interpretation of Commonwealth domestic commercial vessel national law .....	18

<b>Division 3 Functions and powers under applied provisions</b> .....	18
9E Functions and powers of National Regulator and other authorities and officers.....	18
9F Delegations by the National Regulator .....	18
<b>Division 4 Offences</b> .....	18
9G Object of this Division .....	18
9H Application of Commonwealth criminal laws to offences against applied provisions .....	19
9I Functions and powers conferred on Commonwealth officers and authorities relating to offences ..	19
9J No double jeopardy for offences against applied provisions.....	20
<b>Division 5 Administrative laws</b> .....	20
9K Application of Commonwealth administrative laws to applied provisions .....	20
9L Functions and powers conferred on Commonwealth officers and authorities.....	20
<b>Division 6 Fees and fines</b> .....	21
9M Fees payable to officers or employees of State acting as delegates .....	21
9N Infringement notice fines .....	21
9O Fines, fees etc not otherwise payable to State.....	21
<b>Division 7 Miscellaneous</b> .....	21
9P Things done for multiple purposes .....	21
9Q Reference in Commonwealth law to a provision of another law.....	21
9R Regulations of this State .....	22
<b>Part 2 Safety of navigation</b> .....	22
10 Regulations for prevention of collisions at sea or in other navigable waters .....	22
11 Speed limits, no wash zones and other restrictions on operation of vessels in navigable waters by display of notice .....	22
12 Restrictions on operation of vessels in navigable waters during special events by publication of notice .....	23
13 Reckless, dangerous or negligent navigation and other acts .....	24
14 Unreasonable interference by operation or use of vessel.....	25
15 Protection of navigation aids .....	25
15A Power to give directions relating to safety on navigable waters .....	25
16 Removal of obstructions in navigable waters .....	26

17 Minister’s approval required for aquaculture leases over navigable waters .....	27
18 Regulation of organised aquatic activities in navigable waters .....	27
19 Regulations relating to safety of navigation .....	28
<b>Part 3 Boating safety—alcohol and other drug use .....</b>	<b>28</b>
<b>Division 1 Interpretation.....</b>	<b>28</b>
20 Definitions .....	28
21 Application of Part and Schedule 1 .....	29
22 Prescribed concentrations of alcohol .....	30
23 Measurement of alcohol concentrations.....	30
<b>Division 2 Offences involving prescribed concentrations of alcohol .....</b>	<b>31</b>
24 Presence of prescribed concentration of alcohol in person’s breath or blood.....	31
24A (Repealed).....	32
25 Alternative verdicts for lesser offences .....	32
26 Presence of higher concentration of alcohol not defence .....	33
27 Defence for offence relating to youth range prescribed concentration of alcohol .....	33
<b>Division 3 Offences involving operating a vessel under the influence of alcohol or other drug .....</b>	<b>33</b>
.....	33
28 Operating vessel under influence of alcohol or other drug.....	34
<b>Division 4 Related matters .....</b>	<b>34</b>
28A Cancellation and suspension of marine safety licences .....	34
28B Application of section 10 of Crimes (Sentencing Procedure) Act 1999 .....	35
28C Random breath testing and other matters related to alcohol and drug use.....	35
<b>Part 4 Marine safety licences.....</b>	<b>35</b>
<b>Division 1 General.....</b>	<b>35</b>
29 Types of marine safety licences.....	35
<b>Division 2 Grant of marine safety licences and related matters.....</b>	<b>36</b>
30 Grant of licences .....	36
31 Conditions of licences.....	36

32 Offence to contravene conditions of licence.....	36
33 Duration of licence .....	36
34 (Repealed) .....	37
35 Offences relating to licences .....	37
36 Special provision relating to marine pilot’s licence, marine pilotage exemption certificate and certificate of local knowledge .....	37
37 Regulations relating to licences.....	37
<b>Division 3 Suspension or cancellation of marine safety licences .....</b>	<b>38</b>
38 Suspension or cancellation of licences or disqualification of persons from holding licences .....	38
39 Cancellation and suspension of licences by court in connection with offence.....	38
40 Return of suspended or cancelled licence .....	39
<b>Division 4 Administrative review by Civil and Administrative Tribunal ....</b>	<b>39</b>
41 Definition.....	39
42 Application for administrative review .....	39
43 Failure to make decision .....	39
<b>Part 5 Requirements for vessels .....</b>	<b>39</b>
<b>Division 1 Unsafe vessels .....</b>	<b>39</b>
44 Definition of “unsafe vessel” .....	39
45 Owner or master not to operate unsafe vessel.....	40
46 Detention of unsafe vessels .....	40
47 Operating detained vessel.....	41
48 Costs of detention .....	41
<b>Division 2 Vessel registration .....</b>	<b>42</b>
49 Vessels requiring State registration .....	42
50 Vessels exempt from registration .....	42
51 Offence to operate unregistered vessel.....	42
52 Additional grounds for refusal, suspension or cancellation of registration .....	43
<b>Division 3 (Repealed).....</b>	<b>43</b>
<b>Division 4 (Repealed).....</b>	<b>43</b>

<b>Division 5 Boat driving licences for power-driven recreational vessels</b> ...	43
62 Vessels to which Division applies.....	43
63 Offence to operate recreational vessel without appropriate boat driving licence.....	43
63A Offences committed by disqualified holders of boat driving licences.....	43
64 Exemption from requirement to hold boat driving licence.....	44
<b>Division 6 Miscellaneous provisions relating to vessels</b> .....	45
65 Recognised marine safety licences.....	45
66 Mutual recognition of marine safety licences .....	45
67 Regulation of marine safety equipment or facilities .....	46
68 Regulation of design and construction of recreational vessels .....	46
68A Regulations relating to builders plates for vessels .....	46
69 Regulation of passengers .....	46
70 Vessel identification etc.....	46
<b>Part 6 Pilotage</b> .....	47
<b>Division 1 Preliminary</b> .....	47
71 Definitions .....	47
<b>Division 2 Prohibition against unauthorised marine pilots</b> .....	48
72 Marine pilots in any port to be licensed.....	48
73 Marine pilots in pilotage ports to be provided by pilotage service provider .....	48
<b>Division 3 Pilotage</b> .....	48
74 Pilotage compulsory in pilotage ports.....	48
75 Vessels exempted from compulsory pilotage .....	49
76 Deferment of pilotage generally.....	49
77 Deferment of pilotage for safety reasons .....	50
78 Duties of master in connection with pilotage .....	50
79 Liability of master and owner of vessel under pilotage .....	51
80 Immunity of State, marine pilots, pilotage service provider and others .....	51
81 Offence for marine pilot to endanger vessel .....	51
81A Marine pilot to notify certain matters to harbour master .....	51
82 Provisions to apply when vessel under pilotage at request of owner .....	51

83 Regulations.....	52
<b>Part 7 Harbour masters</b> .....	<b>52</b>
84 Definition of “port” .....	52
85 Appointment of harbour masters.....	52
86 Appointment of persons to exercise functions of harbour masters .....	52
87 General functions of harbour master.....	53
88 General powers of harbour master in relation to vessels .....	53
89 Powers of harbour master to direct dangerous vessels not to enter or move within, or to leave, port or part of port .....	54
90 Harbour master may carry out direction .....	54
91 Offence for failing to comply with direction, or obstructing, harbour master .....	54
91A Directions of harbour master acting as marine pilot .....	55
92 Identity cards.....	55
93 Protection from liability .....	55
<b>Part 8 Marine investigation and enforcement</b> .....	<b>56</b>
<b>Division 1 Preliminary</b> .....	<b>56</b>
94 Definitions .....	56
95 Application.....	57
96 Appointment of authorised officers (other than harbour masters and police officers) .....	57
97 Identity cards for authorised officers.....	57
97A Obstruction of authorised officers and others .....	58
<b>Division 2 Duties of masters and owners in case of marine accidents</b> .....	<b>58</b>
98 Requirements of masters in case of accident involving vessels .....	58
99 Duty to report marine accidents to Minister .....	59
100 Marine accident particulars .....	59
101 Preservation of evidence .....	59
102 Offence .....	60
<b>Division 3 Investigation of marine accidents and other marine safety matters</b> .....	<b>60</b>

103 Ordering of investigation .....	60
104 Principal purposes of investigation .....	60
105 Appointment of investigator .....	61
106 Powers of investigator .....	61
107 Conduct of investigations .....	61
108 Report to Minister of investigation.....	61
109 Representations by persons affected by report .....	62
110 Suspension of marine safety licence pending investigation .....	62
111 Action by Minister following report of investigation .....	63
112 Public release of report.....	64
113 Protection from liability .....	64
<b>Division 4 Investigative powers of authorised officers.....</b>	<b>64</b>
114 Application of Division .....	64
115 Power to stop and board vessels .....	64
116 Other powers of entry .....	65
117 General investigative powers .....	65
118 Detention of vessel for purposes of investigation.....	66
119 Production of marine safety licences.....	66
120 Identification of person suspected of committing offence.....	66
121 Identification of owner and master of vessel.....	66
122 Power to require persons to attend to answer questions or produce documents or other things..	67
123 Limitation on self-incrimination .....	67
124 General provisions relating to functions under this Division.....	68
125 Offences .....	68
<b>Division 5 Regulation of public ferry wharves .....</b>	<b>68</b>
125A Public ferry wharves .....	68
125B Inspections of public ferry wharves.....	68
125C Improvement notices .....	69
125D Failure to comply with improvement notice .....	69
125E Prohibition notices .....	70
125F Notices may include directions.....	70
125G Review of notices by Minister.....	70
125H Application to Civil and Administrative Tribunal for stay of prohibition notice .....	71



125I Administrative review by Civil and Administrative Tribunal .....	71
125J Withdrawal and revocation of notices.....	71
125K Proceedings for offences not affected by notices .....	71
125L Certificates relating to public ferry wharves .....	72
125M Regulations relating to public ferry wharves.....	72
<b>Part 9 Legal proceedings</b> .....	<b>72</b>
126 Penalty notices .....	72
127 Offences .....	73
128 Time within which proceedings may be commenced .....	73
129 Persons who may bring proceedings .....	73
130 Offences by corporations.....	74
131 Proof of lawful or reasonable excuse .....	74
132 Act presumed to apply to vessels.....	74
133 Proof of certain matters not required .....	74
134 Service of instruments (except in proceedings for offences).....	75
135 Service of court attendance notice and other process in legal proceedings.....	76
135A Suspension or cancellation of licences by court in connection with offence .....	76
<b>Part 10 Miscellaneous</b> .....	<b>77</b>
136 Act binds Crown.....	77
136A Reliance on advice .....	77
137 Regulations.....	77
138 Adoption of codes, standards, treaties and other documents .....	77
139 Exemptions.....	78
140 (Repealed) .....	78
141 Repeals.....	78
142 Amendment of other Acts.....	79
143 Savings, transitional and other provisions.....	79
144 Review of Act.....	79
<b>Schedule 1 Alcohol and drug use—random breath testing and related matters</b> .....	<b>79</b>

<b>Schedule 2 Repeals</b> .....	106
<b>Schedule 3 Amendment of other Acts</b> .....	106
<b>Schedule 4 Savings, transitional and other provisions</b> .....	109

# Marine Safety Act 1998 No 121



New South Wales

An Act relating to marine safety and other matters; to repeal the *Maritime Services Act 1935*, the *Navigation Act 1901*, the *Commercial Vessels Act 1979* and certain other marine legislation.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Marine Safety Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to ensure the safe operation of vessels in ports and other waterways,
- (b) to promote the responsible operation of vessels in those waters so as to protect the safety and amenity of other users of those waters and the amenity of occupiers of adjoining land,
- (c) to provide for the investigation of marine accidents and for appropriate action following any such investigation,
- (d) to consolidate marine safety legislation.

### 4 Definitions

(1) In this Act:

**authorised officer** means:

- (a) a harbour master, or
- (b) a police officer, or
- (c) a person (or a person of a class) appointed as an authorised officer under section

96.

**commercial purpose** means a purpose for which a vessel is used that results in the vessel being a commercial vessel.

**commercial vessel** has the same meaning as **domestic commercial vessel** in the National law.

**crew** of a vessel means the persons (including the master of the vessel) whose duty it is to navigate or work the vessel or to carry out other operations on the vessel.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**harbour master** means a person appointed as harbour master under Part 7 and, in relation to a function of a harbour master under the marine legislation, includes a person appointed under Part 7 to exercise that function.

**length** means length overall.

**marine legislation** means any of the following Acts (and the regulations and other instruments made under any of those Acts):

this Act,

[Ports and Maritime Administration Act 1995](#),

[Marine Pollution Act 1987](#).

**marine pilot** of a vessel means the person who has the conduct of the vessel but who does not belong to the vessel.

**marine safety licence** means a marine safety licence referred to in section 29.

**master** of a vessel means the person having the command or charge of the vessel, but does not include a marine pilot.

**National law** means:

- (a) the Commonwealth domestic commercial vessel national law within the meaning of section 9B, and
- (b) the applied provisions within the meaning of section 9B.

**National licence** means a certificate or unique identifier issued under the National law.

**navigable waters** means all waters (whether or not in the State) that are from time to time capable of navigation and are open to or used by the public for navigation,

whether on payment of a fee or otherwise.

**navigation aid** means any device used for the safety of navigation (such as a beacon, buoy or marine mark), but does not include a device on board a vessel.

**operate** a vessel includes:

- (a) to determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel (whether or not the vessel is underway), and
- (b) to pilot the vessel, and
- (c) in the case of the owner of the vessel, to cause or allow the vessel to be operated by someone else.

**overseas voyage** has the same meaning as in the [Navigation Act 2012](#) of the Commonwealth.

**owner** of a vessel is defined in section 7.

**pilotage** and **pilotage port** have the same meanings as in Part 6.

**port** includes any of the following waters (or any part of those waters):

- (a) any harbour or haven, whether natural or artificial,
- (b) any estuary, channel, river, creek or roadstead,
- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers.

**Port Corporation** means Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation.

**recreational vessel** means a vessel other than a commercial vessel.

**regulated Australian vessel** has the same meaning as in the National law.

**RMS** means Roads and Maritime Services constituted under the [Transport Administration Act 1988](#).

**State registrable vessel** is defined in section 49.

**State waters** means any navigable waters within the limits of the State or the coastal waters of the State (within the meaning of Part 10 of the [Interpretation Act 1987](#)).

**Note—**

Part 10 of the [Interpretation Act 1987](#) defines **coastal waters of the State** generally as that part of the territorial sea of Australia that is within 3 nautical miles of the coast. The [Marine Pollution Act 1987](#) defines **State waters** differently for the purposes of that Act (the definition extends to all the territorial sea

adjacent to the State and only limited other internal waters of the State.

**vessel** is defined in section 5.

- (2) For the purposes of this Act, a vessel is taken to be proceeding on a voyage from when it gets underway for the voyage until it gets underway for another voyage.
- (3) Notes in the text of this Act do not form part of this Act.

**Note—**

Penalties for offences are expressed in penalty units. Under the [Interpretation Act 1987](#), the amount of a penalty unit was \$110 on the enactment of this Act.

## **5 Meaning of “vessel”**

- (1) In this Act, **vessel** includes water craft of any description used or capable of being used as a means of transportation on water.
- (2) Without limiting the above, a vessel includes:
  - (a) any non-displacement craft, and
  - (b) a seaplane, but only while it is on water.
- (3) However, a vessel does not include anything declared by the regulations not to be a vessel and includes anything used on water that is declared by the regulations to be a vessel.

## **6 Meaning of vessel “connected with this State”**

A vessel is **connected with this State** for the purposes of this Act if:

- (a) the vessel is registered, or is required to be registered, under the marine legislation, or
- (b) the vessel is registered under the [Shipping Registration Act 1981](#) of the Commonwealth, or the National law, with a home port in this State, or
- (c) the vessel is owned by a person who is ordinarily resident in this State, or
- (d) the vessel is owned by a person whose place of business, or principal place of business, is in this State, or
- (e) the vessel is owned by a person whose principal place of business for managing the vessel’s operation is in this State, or
- (f) the vessel is declared by the regulations to be a vessel connected with this State.

## **7 Meaning of “owner” of vessel**

- (1) In this Act, **owner** of a vessel means (subject to this section) the person who owns the vessel.
- (2) A reference in this Act to the owner of a vessel includes a reference to:
  - (a) a person registered as the vessel’s owner in the relevant marine safety licence, National licence or other certificate of registry for the vessel, or
  - (b) a person who is the charterer of the vessel.
- (3) A reference in this Act to the owner of a vessel includes a reference to a joint owner of the vessel.
- (4) A reference in this Act to the owner of a vessel includes a reference to any person who, whether on the person’s own behalf or on behalf of another:
  - (a) exercises any of the functions of the owner of the vessel, or
  - (b) publicly represents that the person has those functions or accepts the obligation to exercise those functions.
- (5) For the purposes of this Act, a person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired.

## **8 Vessels and waters to which Act applies**

- (1) This Act applies to and in respect of the following vessels (and their owners, masters, crew and passengers):
  - (a) all vessels that are in State waters (including vessels proceeding on overseas voyages),
  - (b) all vessels that are proceeding on voyages other than overseas voyages (including vessels that have left State waters), except recreational vessels while they are in the waters of or adjacent to another State or Territory of the Commonwealth,
  - (c) all vessels connected with this State, wherever they may be.
- (2) Despite subsection (1), Parts 4 and 5 (other than sections 67 (b), 68A and 69) do not apply to or in respect of commercial vessels or regulated Australian vessels.
- (3) This section is subject to any express provision of this Act to the contrary.
- (4) The National law prevails over this Act to the extent of any inconsistency.

## **9 Application of Act to Defence Force vessels**

- (1) Except as provided by this section, this Act does not apply to or in respect of a vessel

belonging to the Defence Force of Australia or to the naval, military or air forces of any other country.

- (2) Parts 2 and 3, Division 4 of Part 8 and Schedule 1 apply to and in respect of a vessel belonging to the Defence Force of Australia (other than a commissioned vessel) and to its master, crew and passengers.
- (3) In this section, a reference to a **commissioned vessel** includes a reference to any vessel carried on board or launched from a commissioned vessel.

**Note—**

Section 31 of the [Interpretation Act 1987](#) provides for an Act to be construed so as not to exceed the legislative power of Parliament.

## **Part 1A Application of Commonwealth domestic commercial vessel national law**

### **Division 1 Preliminary**

#### **9A Purpose of Part**

- (1) The purpose of this Part is to adopt in this State a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law).
- (2) Accordingly, this Part:
  - (a) applies the Commonwealth domestic commercial vessel national law as a law of this State, and
  - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of this State to be administered on a uniform basis by the Commonwealth (and by State officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

#### **9B Definitions**

- (1) In this Part:

**applied provisions** means the Commonwealth domestic commercial vessel national law that applies as a law of this State because of section 9C.

**Commonwealth administrative laws** means the following Commonwealth Acts, regulations or other legislative instruments:

- (a) the [Administrative Appeals Tribunal Act 1975](#) (excluding Part IVA),
- (b) the [Freedom of Information Act 1982](#),



- (c) the *Ombudsman Act 1976*,
- (d) the *Privacy Act 1988*,
- (e) the regulations and other legislative instruments in force under any of those Acts.

**Commonwealth domestic commercial vessel national law** means the provisions of the following Acts, regulations or other legislative instruments:

- (a) the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth),
  - (b) the regulations and other legislative instruments in force under that Law,
  - (c) any other provision of a Commonwealth Act (or of a regulation or other legislative instrument in force under a Commonwealth Act) that is of a savings or transitional nature consequent on the enactment or amendment of that Law.
- (2) Terms used in this Part and also in the Commonwealth domestic commercial vessel national law have the same meanings in this Part as they have in that law.
- (3) In this Part, a reference to a Commonwealth Act includes a reference to:
- (a) that Commonwealth Act, as amended and in force for the time being, and
  - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

## **Division 2 The applied provisions**

### **9C Application of Commonwealth laws as laws of this State**

- (1) The Commonwealth domestic commercial vessel national law, as in force from time to time, applies as a law of this State.
- (2) The Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which this State may make laws:
  - (a) whether or not the Commonwealth may make laws in relation to those matters, and
  - (b) even though the Commonwealth domestic commercial vessel national law provides that it applies only to specified matters with respect to which the Commonwealth may make laws.
- (3) Subsection (2) does not operate to exclude a law of this State relating to marine safety that would not otherwise be excluded by the Commonwealth domestic

commercial vessel national law.

- (4) The regulations made under this Act may provide that the Commonwealth domestic commercial vessel national law applies under this section as if an amendment to that law:
- (a) made by a law of the Commonwealth, and
  - (b) specified in the regulations made under this Part,
- had not taken effect.

#### **9D Interpretation of Commonwealth domestic commercial vessel national law**

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions, and so applies as if the applied provisions were a Commonwealth Act or were regulations or other legislative instruments under a Commonwealth Act, as the case requires.
- (2) The *Interpretation Act 1987* does not apply to the applied provisions.

### **Division 3 Functions and powers under applied provisions**

#### **9E Functions and powers of National Regulator and other authorities and officers**

The National Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth.

#### **9F Delegations by the National Regulator**

Any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

### **Division 4 Offences**

#### **9G Object of this Division**

- (1) The object of this Division is to further the purpose of this Part by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):
- (a) the investigation and prosecution of offences, and

- (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and
  - (e) the sentencing, punishment and release of persons convicted of offences, and
  - (f) fines, penalties and forfeitures, and
  - (g) infringement notices in connection with offences, and
  - (h) liability to make reparation in connection with offences, and
  - (i) proceeds of crime, and
  - (j) spent convictions.
- (3) For the purposes of this Division, offences include contraventions for which a civil penalty may be imposed.

**9H Application of Commonwealth criminal laws to offences against applied provisions**

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions:
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth, and
  - (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Part.

**9I Functions and powers conferred on Commonwealth officers and authorities relating to offences**

- (1) A Commonwealth law applying because of section 9H that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or

authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth domestic commercial vessel national law.

**9J No double jeopardy for offences against applied provisions**

If:

- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth domestic commercial vessel national law, and
- (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law,

the offender is not liable to be punished for the offence under the applied provisions.

**Division 5 Administrative laws**

**9K Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of this State to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions:
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth, and
  - (b) is taken not to be a matter arising in relation to laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Part.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this State) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

**9L Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 9K that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.

- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

## **Division 6 Fees and fines**

### **9M Fees payable to officers or employees of State acting as delegates**

Regulations may be made under this Act for or with respect to fees payable to this State in relation to anything done under the Commonwealth domestic commercial vessel national law (as that law applies as a law of the Commonwealth), or under the applied provisions, by a delegate of the National Regulator, or an accredited person, who is an officer or employee of this State or an agency of this State.

### **9N Infringement notice fines**

- (1) Any amount paid to this State by the National Regulator under section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth in relation to an infringement notice is payable into the Waterways Fund established under the *Ports and Maritime Administration Act 1995*.
- (2) Any amount payable by this State under section 10 (2) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth is payable out of that Fund.

### **9O Fines, fees etc not otherwise payable to State**

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.
- (2) Subsection (1) does not apply to any fees referred to in section 9M.

## **Division 7 Miscellaneous**

### **9P Things done for multiple purposes**

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth domestic commercial vessel national law.

### **9Q Reference in Commonwealth law to a provision of another law**

For the purposes of sections 9H and 9K, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

## **9R Regulations of this State**

The Governor may make regulations, not inconsistent with this Act or the applied provisions, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part or the applied provisions.

## **Part 2 Safety of navigation**

### **10 Regulations for prevention of collisions at sea or in other navigable waters**

- (1) The regulations may make provision for or with respect to the prevention of collisions at sea or in other navigable waters (including the use on vessels of lights, shapes and signals).
- (2) The regulations under this section may adopt, with or without modification, international regulations for preventing collisions at sea.
- (3) The master or any other person concerned in the operation of a vessel who contravenes the regulations under this section, or who causes those regulations to be contravened, is guilty of an offence.

Maximum penalty: 50 penalty units.

### **11 Speed limits, no wash zones and other restrictions on operation of vessels in navigable waters by display of notice**

- (1) The Minister may prohibit or regulate the operation of vessels in navigable waters by a notice displayed in or in the vicinity of those waters.
- (2) The Minister may, by such a notice, impose any restriction considered appropriate for the safety of the public or for the protection of vessels or other property. In particular, the Minister may impose restrictions on:
  - (a) the speed of vessels, or
  - (b) the creation of wash by vessels, or
  - (c) the mooring or anchoring of vessels, or
  - (d) the use of vessels for particular purposes.
- (3) A notice under this section may apply:
  - (a) to vessels generally or to any class of vessels specified in the notice, and
  - (b) at all times or at such times as may be specified in the notice, and
  - (c) in any other circumstances specified in the notice.

- (4) A person who operates a vessel to which a notice under this section applies in contravention of the notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a notice restricting the creation of wash by vessels—50 penalty units, or
- (b) in any other case—10 penalty units.
- (5) The regulations may exempt vessels from compliance with a notice under this section.
- (6) The regulations may make provision for or with respect to the admission in evidence and the effect of certificates, in proceedings for offences against this section, of the measurement of the speed or other matter relating to the use of vessels by measuring devices.
- (7) Nothing in this section affects any regulation that prohibits or regulates the operation of vessels or any power relating to the navigation or other use of vessels conferred on any person or body by the marine legislation or the National law.
- (8) In any proceedings for an offence against this section, proof of the display of a notice in accordance with this section is not required until evidence is given to the contrary.

## **12 Restrictions on operation of vessels in navigable waters during special events by publication of notice**

- (1) In this section, **special event** means a major race for vessels or other event that may affect the safety of navigation in any particular waters.
- (2) The Minister may prohibit or regulate the operation of vessels in specified navigable waters during a special event by public notice.
- (3) Such a notice is to be published:
- (a) in a newspaper circulating throughout the State or, if the Minister approves in a particular case or class of cases, in a newspaper circulating in the locality concerned, and
- (b) in such other manner as the Minister considers appropriate.
- (4) The Minister may, by such a notice, exclude vessels from specified areas during the event concerned and impose any other restrictions of a kind that may be imposed under section 11.
- (5) An authorised officer may direct a person to cease operating a vessel to which such a notice applies in contravention of the notice.
- (6) A person who continues to operate the vessel in contravention of the notice after

being directed by an authorised officer to cease doing so is guilty of an offence.

Maximum penalty: 10 penalty units.

- (7) Nothing in this section affects any regulation or notice under section 11 that prohibits or regulates the operation of vessels or any power relating to the navigation or other use of vessels conferred on any person or body by the marine legislation or the National law.
- (8) In any proceedings for an offence against this section, proof of the publication of a notice in accordance with this section is not required until evidence is given to the contrary.

### **13 Reckless, dangerous or negligent navigation and other acts**

- (1) A person must not operate a vessel in any navigable waters:

- (a) negligently, or
- (b) recklessly, or
- (c) at a speed or in a manner dangerous to the public.

Maximum penalty:

- (a) if the operation of the vessel occasions death or grievous bodily harm—1,000 penalty units (where the vessel is a seagoing ship), 100 penalty units (where the vessel is any other commercial vessel) or 50 penalty units (where the vessel is a recreational vessel), or imprisonment for 2 years, or both, or
  - (b) if the operation of the vessel does not occasion death or grievous bodily harm—1,000 penalty units (where the vessel is a seagoing ship), 100 penalty units (where the vessel is any other commercial vessel) or 50 penalty units (where the vessel is a recreational vessel).
- (2) A person who is on a vessel in navigable waters, or is being towed by such a vessel, must not do anything that is dangerous to the public.

Maximum penalty: 50 penalty units.

- (3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
  - (a) the nature and condition of the waters in which the offence is alleged to have been committed,
  - (b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, in those waters.

- (4) The higher maximum penalty under paragraph (a) of the maximum penalty in



subsection (1) does not apply unless it is alleged in the charge for the offence that the conduct concerned occasioned death or grievous bodily harm.

(5) In this section:

***dangerous to the public*** includes anything that causes or is likely to cause injury to any person or damage to any property.

***grievous bodily harm*** includes any permanent or serious disfigurement.

***seagoing ship*** means a commercial vessel of more than 45.72 metres in length that is used or intended to be used to carry cargo or passengers for hire or reward and that normally operates on voyages between ports.

#### **14 Unreasonable interference by operation or use of vessel**

A person must not:

- (a) operate a vessel in any navigable waters, or
- (b) make any other use of a vessel in any navigable waters,

in a manner that interferes unreasonably with the lawful use of those waters (or adjoining land) by other persons.

Maximum penalty: 50 penalty units.

#### **15 Protection of navigation aids**

A person must not, without reasonable excuse, remove, damage, interfere with or obstruct the use of any navigation aid.

Maximum penalty: 50 penalty units.

#### **15A Power to give directions relating to safety on navigable waters**

(1) An authorised officer may give a direction to a person in, on or near navigable waters if the officer believes on reasonable grounds that:

- (a) the giving of the direction is necessary to ensure the safety of any person, or to prevent damage to property, in, on or near navigable waters, and
- (b) the direction is reasonable in the circumstances for achieving that objective.

(2) A person must not fail to comply with a direction given under this section to the person, whether or not the person may contravene another provision of the marine legislation by obeying the direction.

Maximum penalty: 30 penalty units.

(3) A person is not guilty of an offence against subsection (2) unless the authorised

officer:

(a) warned the person at the time of giving the direction that failure to comply with the direction may constitute an offence, and

(b) identified himself or herself as an authorised officer.

(4) It is a defence to the prosecution of a person for an offence against a provision of the marine legislation if, at the time of the offence, the person was obeying a direction given under this section.

(5) Despite any other provision of this section, a direction given under this section has no effect to the extent to which it is inconsistent with a direction given by a harbour master under Part 7.

(6) In this section:

(a) a reference to a person in, on or near navigable waters includes a reference to a person on a vessel, water skis or other apparatus, in, on or near navigable waters, and

(b) a reference to property in, on or near navigable waters includes a reference to property on a vessel.

## **16 Removal of obstructions in navigable waters**

(1) In this section, **obstruction to navigation** means anything in, over or on navigable waters (including a vessel, whether wrecked or not) that:

(a) is a danger to the safe navigation of vessels, or

(b) is moored, berthed or placed in contravention of the marine legislation or the National law,

but not including anything lawfully erected in, over or on navigable waters.

(2) The Minister may direct the owner of or person responsible for an obstruction to navigation to remove the obstruction within such time as is specified in the notice. Any such owner or person who fails, without reasonable excuse, to comply with the direction is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) The Minister may remove, or authorise the removal of, any obstruction to navigation in such manner as the Minister thinks fit (whether or not the Minister has issued a direction for its removal under this section). The obstruction may be removed by its destruction if it is reasonable to do so in the circumstances.

(4) The Minister may, subject to and in accordance with the regulations, dispose of

anything removed under this section.

- (5) The Minister may recover as a debt in a court of competent jurisdiction the reasonable costs and expenses incurred by the Minister in the exercise of his or her powers under this section from the owner of or person responsible for the obstruction to navigation.

#### **17 Minister's approval required for aquaculture leases over navigable waters**

- (1) The Minister administering the *Fisheries Management Act 1994* may not grant or renew an aquaculture lease over navigable waters under Part 6 of that Act without the approval of the Minister administering this Act.
- (2) The grounds on which the Minister may refuse to give that approval are that:
  - (a) it is in the public interest that the area concerned remain available for the navigation of vessels rather than be used for aquaculture, or
  - (b) sufficient provision has not been made to ensure that structures on the leased area are not, and will not become, a danger to the safe navigation of vessels.
- (3) This section does not apply to:
  - (a) the renewal of a lease to which the lessee is entitled under the *Fisheries Management Act 1994*, or
  - (b) the grant or renewal of a lease of a class excluded from this section by notice given to the Minister administering that Act by the Minister administering this Act.

#### **18 Regulation of organised aquatic activities in navigable waters**

- (1) In this section:

**aquatic activity** means:

- (a) a race, competition or exhibition (whether or not involving vessels or equipment) that is conducted in or on any navigable waters, or
- (b) any other activity (whether or not involving vessels or equipment) that is conducted in or on any navigable waters and that restricts the availability of those waters for normal use by the public.

**conduct** an aquatic activity includes promote or organise the activity.

- (2) The regulations may prohibit or regulate the conduct of aquatic activities.
- (3) Any such regulation may prohibit the conduct of aquatic activities without a licence or other approval from the Minister.
- (4) A licence or other approval issued by the Minister for the purposes of this section may include an exemption from a requirement of this Act or the regulations in respect of

any or all of the following:

- (a) the holder of the licence or approval,
- (b) any person or class of persons involved in the conduct of, or taking part in, the aquatic activity to which the licence or approval relates,
- (c) any vessel used in connection with that activity.

## **19 Regulations relating to safety of navigation**

- (1) The regulations may make provision for or with respect to the safety of navigation.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the operation of vessels in navigable waters, and
  - (b) vessels or objects that have been abandoned in navigable waters, and
  - (c) the activities of persons that affect navigation (including persons carried on vessels, surfboard riders, divers or other persons in or on navigable waters), and
  - (d) navigation aids, and
  - (e) cables, wires, pipes or other material crossing over or under any navigable waters, and their supporting structures, and
  - (f) the safety of port operations relating to vessels, passengers and cargo.
- (3) The regulations may provide that a person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision made in respect of the person under this Part or the regulations under this Part in relation to matters requiring a licence or other approval of the Minister.

### **Note—**

Part 7A of the [Ports and Maritime Administration Act 1995](#) deals with the licensing or other regulation of the occupation of navigable waters by vessels, floating objects and structures (including the mooring of vessels).

## **Part 3 Boating safety—alcohol and other drug use**

### **Division 1 Interpretation**

#### **20 Definitions**

- (1) In this Part and in Schedule 1:

***breath analysing instrument*** has the same meaning as in the [Road Transport Act 2013](#).

**breath test** has the same meaning as in the *Road Transport Act 2013*.

**drug** has the same meaning as it has in the *Road Transport Act 2013*.

**juvenile** means a person who is not more than 16 years of age.

**major offence** means:

- (a) the crime of murder or manslaughter or an offence against section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*, being a crime or offence by which the death of or bodily harm to another person was caused by or arose out of the operation of a vessel, or
- (b) an offence against this Part.

**operate a vessel** includes:

- (a) being towed by a vessel, whether on a water ski, aquaplane, paraflaying device or other device, or
  - (b) act as observer on a vessel, for safety purposes, of any person being towed by the vessel, or
  - (c) supervise a juvenile operator of a motor vessel.
- (2) A reference in this Part to a major offence includes a reference to any such offence committed before the commencement of this Part.

**Note—**

A reference to a major offence includes an offence against Part 2 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* committed before the repeal of that Act by this Act (see clause 3 of Schedule 4).

- (3) An offence against a provision of this Part or Schedule 1 is a **second or subsequent offence** only if, within the period of 5 years immediately before a person is convicted of the offence, the person was convicted of another offence against the same provision or of a major offence.
- (4) An offence against a provision of this Part or Schedule 1 is a **first offence** if it is not a second or subsequent offence.

## **21 Application of Part and Schedule 1**

- (1) This Part and Schedule 1 apply to all vessels. However, this Part and Schedule 1 do not apply to a surfboard or similar device used by a swimmer or surfer to support the swimmer or surfer in the water (other than a sailboard or a device being towed by a vessel).
- (2) This Part and Schedule 1 apply to a vessel only while the vessel is underway.
- (3) This Part and Schedule 1 apply to all waters, whether or not they are navigable

waters.

## 22 Prescribed concentrations of alcohol

In this Part and in Schedule 1:

- (a) **youth range prescribed concentration of alcohol** means a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (b) **special range prescribed concentration of alcohol** means a concentration of 0.02 grammes or more, but less than 0.05 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (c) **low range prescribed concentration of alcohol** means a concentration of 0.05 grammes or more, but less than 0.08 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (d) **middle range prescribed concentration of alcohol** means a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 210 litres of breath or 100 millilitres of blood, and
- (e) **high range prescribed concentration of alcohol** means a concentration of 0.15 grammes or more of alcohol in 210 litres of breath or 100 millilitres of blood.

## 23 Measurement of alcohol concentrations

- (1) For the purposes of this Part and Schedule 1, the concentration of alcohol present in a person's breath or blood may be expressed as follows:
  - (a) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the breath—the amount of alcohol in grammes in 210 litres of breath,
  - (b) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the blood—the amount of alcohol in grammes in 100 millilitres of blood,
  - (c) in the case of a sample of blood—the amount of alcohol in grammes in 100 millilitres of blood.
- (2) An amount of alcohol in grammes present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grammes present in blood when measured by reference to 100 millilitres of blood.
- (3) Accordingly, any offence under this Part relating to the presence of a specified

concentration of alcohol in a person's breath or blood at the time of the occurrence of a particular event is a single offence regardless of whether the concentration of alcohol concerned is measured by reference to the amount of alcohol present in breath or in blood (or both).

## **Division 2 Offences involving prescribed concentrations of alcohol**

### **24 Presence of prescribed concentration of alcohol in person's breath or blood**

- (1) **Offence—youth range prescribed concentration of alcohol** A person who is under 18 years of age must not operate a vessel in any waters while there is present in his or her breath or blood the youth range prescribed concentration of alcohol.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

- (2) **Offence—special range prescribed concentration of alcohol** A person must not operate a vessel in any waters while there is present in his or her breath or blood the special range prescribed concentration of alcohol if:

- (a) the person is under 18 years of age, or
- (b) the person is operating the vessel for commercial purposes.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

- (3) **Offence—low range prescribed concentration of alcohol** A person must not operate a vessel in any waters while there is present in his or her breath or blood the low range prescribed concentration of alcohol.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

- (4) **Offence—middle range prescribed concentration of alcohol** A person must not operate a vessel in any waters while there is present in his or her breath or blood the middle range prescribed concentration of alcohol.

Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

- (5) **Offence—high range prescribed concentration of alcohol** A person must not operate a vessel in any waters while there is present in his or her breath or blood the high range prescribed concentration of alcohol.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the

case of a second or subsequent offence).

#### **24A (Repealed)**

#### **25 Alternative verdicts for lesser offences**

- (1) Alternative verdict for lesser offence in prosecution for middle range prescribed concentration of alcohol** If, on a prosecution of a person for an offence under section 24 (4), the court is satisfied that, at the time the person operated the vessel, there was not present in the person's breath or blood the middle range prescribed concentration of alcohol but there was present in the person's breath or blood the low range prescribed concentration of alcohol, the court may convict the person of an offence under section 24 (3).
- (2) Alternative verdict for lesser offence in prosecution for high range prescribed concentration of alcohol** If, on a prosecution of a person for an offence under section 24 (5), the court is satisfied that, at the time the person operated the vessel, there was not present in the person's breath or blood the high range prescribed concentration of alcohol:

  - (a) if the court is satisfied that the middle range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 24 (4), or
  - (b) if the court is satisfied that the low range prescribed concentration of alcohol was present in the person's breath or blood—the court may convict the person of an offence under section 24 (3).
- (3) Alternative verdict for lesser offence in prosecution of special category persons** If, on a prosecution of a person for an offence under section 24 (3), (4) or (5), the court is satisfied that, at the time the person operated the vessel:

  - (a) the person was under 18 years of age or the person was operating the vessel for commercial purposes, and
  - (b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol or the low range prescribed concentration of alcohol, but that there was present in the person's breath or blood the special range prescribed concentration of alcohol,

the court may convict the person of an offence under section 24 (2).
- (4) Alternative verdict for lesser offence in prosecution of persons under 18** If, on a prosecution of a person for an offence under section 24 (2), (3), (4) or (5), the court is satisfied that, at the time the person was operating the vessel:

  - (a) the person was under 18 years of age, and



(b) there was not present in the person's breath or blood the high range prescribed concentration of alcohol, the middle range prescribed concentration of alcohol, the low range prescribed concentration of alcohol or the special range prescribed concentration of alcohol, but that there was present in the person's breath or blood the youth range prescribed concentration of alcohol,

the court may convict the person of an offence under section 24 (1).

## **26 Presence of higher concentration of alcohol not defence**

- (1) It is not a defence to a prosecution for an offence under section 24 (1) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.02 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (2) It is not a defence to a prosecution for an offence under section 24 (2) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.05 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (3) It is not a defence to a prosecution for an offence under section 24 (3) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.08 grammes or more in 210 litres of breath or 100 millilitres of blood.
- (4) It is not a defence to a prosecution for an offence under section 24 (4) if the defendant proves that, at the time he or she was operating the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.15 grammes or more in 210 litres of breath or 100 millilitres of blood.

## **27 Defence for offence relating to youth range prescribed concentration of alcohol**

It is a defence to a prosecution for an offence under section 24 (1) if the defendant proves that, at the time the defendant was operating the vessel, the presence in the defendant's breath or blood of the youth range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance),
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

## **Division 3 Offences involving operating a vessel under the influence of alcohol or other drug**

## 28 Operating vessel under influence of alcohol or other drug

- (1) A person must not operate a vessel in any waters while under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

- (2) The master of a vessel must not permit a person to operate in any waters a vessel in the charge of the master if the master is aware, or has reasonable cause to believe, that the person is under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

- (3) If a person is charged with an offence under this section:

- (a) the court attendance notice may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
- (i) a drug described in the court attendance notice, or
  - (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

## Division 4 Related matters

### 28A Cancellation and suspension of marine safety licences

- (1) If a person is convicted of an offence against this Part in relation to the operation of a vessel and, at the time the offence was committed, the person was required by or under this Act to hold a marine safety licence in order to operate the vessel, the court may, by order:

- (a) cancel or suspend the licence, and
- (b) disqualify the convicted person from holding or obtaining a marine safety licence for a period specified by the court.

- (2) The holder of a marine safety licence referred to in subsection (1) who is convicted of an offence under this Part (**the convicted person**) is automatically disqualified from holding or obtaining such a licence for a period of:

- (a) 3 months—if during the period of 5 years before the conviction he or she has not been convicted of any other major offence, or
- (b) 12 months—if during the period of 5 years before the conviction he or she has been convicted of any other major offence.

(3) However, the court before which the person is convicted may order that the convicted person be disqualified under subsection (2) for a shorter period specified in the order.

(4) Any disqualification under this section is in addition to any penalty imposed for the offence.

**Note—**

Section 135A deals with National licences.

**28B Application of section 10 of *Crimes (Sentencing Procedure) Act 1999***

(1) The provisions of section 10 of the *Crimes (Sentencing Procedure) Act 1999* do not apply to or in respect of a person who is charged with an alcohol or drug offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge (whether such period commenced before or after the commencement of this section), the provisions of that section are or have been applied to or in respect of the person in respect of a charge for another alcohol or drug offence (whether of the same or a different kind).

(2) In this section:

***alcohol or drug offence*** means an offence under section 24 or 28 or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

**28C Random breath testing and other matters related to alcohol and drug use**

Schedule 1 has effect.

**Part 4 Marine safety licences**

**Division 1 General**

**29 Types of marine safety licences**

For the purposes of this Act, there are the following types of marine safety licences:

(a) vessel registration certificate—being a marine safety licence for a vessel that is required by Division 2 of Part 5,

(b)–(d) (Repealed)

(e) boat driving licence—being a marine safety licence to operate a power-driven recreational vessel that is required by Division 5 of Part 5,

(f) marine pilot's licence—being a marine safety licence to act as pilot of a vessel in any port that is required by Part 6,

(g) marine pilotage exemption certificate—being a marine safety licence exempting a vessel from compulsory pilotage under Part 6,

- (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,
- (h) any other licence or approval required by or under the marine legislation that is declared by the regulations to be a marine safety licence (whether for the purposes of all or only specified provisions of this Act).

## **Division 2 Grant of marine safety licences and related matters**

### **30 Grant of licences**

- (1) Marine safety licences are to be granted by the Minister.
- (2) The Minister may approve or refuse applications for marine safety licences in accordance with this Act and the regulations.

### **31 Conditions of licences**

- (1) Marine safety licences may be granted unconditionally or subject to conditions.
- (2) Any such condition may relate to any matter concerning marine safety, including insurance coverage, or indemnities, for damage or injury caused in connection with the activity to which the licence relates.
- (3) After granting a marine safety licence, the Minister may, by notice in writing to the holder of the licence:
  - (a) impose conditions or further conditions on the licence, or
  - (b) vary or revoke any of the conditions to which the licence is subject.
- (4) A marine safety licence is also subject to such conditions as are prescribed by the regulations. Any such condition cannot be varied or revoked by the Minister under this section.
- (5) A condition under this section may restrict or limit an activity authorised by the licence.

### **32 Offence to contravene conditions of licence**

The holder of a marine safety licence must not, without lawful excuse, contravene any condition to which the licence is subject.

Maximum penalty: 50 penalty units.

### **33 Duration of licence**

- (1) A marine safety licence remains in force (unless sooner cancelled) for the period specified in the licence or (if no such period is specified) until cancelled.

(2) A marine safety licence is not in force during any period it is suspended.

**Note—**

See clause 4 of Schedule 4 with respect to duration of certain former licences.

**34 (Repealed)**

**35 Offences relating to licences**

- (1) A person must not pretend to be the holder of a marine safety licence.
- (2) A person must not, for the purpose of obtaining a marine safety licence, provide any information or produce any document that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

**36 Special provision relating to marine pilot's licence, marine pilotage exemption certificate and certificate of local knowledge**

A marine pilot's licence, marine pilotage exemption certificate or certificate of local knowledge must state, by way of condition, the ports or parts of ports (including berths) to which it applies.

**37 Regulations relating to licences**

- (1) The regulations may make provision for or with respect to marine safety licences.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (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,
  - (a) the classes of a particular type of licence,
  - (b) restrictions on the authority conferred by a particular type of licence or class of licence, whether by reference to the length of the vessel concerned or otherwise,
  - (c) applications for licences,
  - (d) the eligibility of applicants (including age, good character, qualifications, knowledge, experience, training and health),
  - (e) the testing or examination of applicants or the holders of licences to determine whether they are or continue to be eligible to hold a licence,
  - (f) the continuing education and training of holders of licences,
  - (g) the grant of further licences after the expiry of licences,

- (h) the granting of different types of licences in the same document,
- (i) the replacement of licences that are lost, destroyed or defaced,
- (j) the return of licences that require alteration,
- (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.

### **Division 3 Suspension or cancellation of marine safety licences**

#### **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.

#### **39 Cancellation and suspension of licences by court in connection with offence**

- (1) A court that convicts the holder of a marine safety licence of a marine safety offence in connection with activities to which the licence relates may, by order:
  - (a) cancel or suspend the licence, and
  - (b) disqualify the convicted person from holding or obtaining such a licence for a period specified by the court.
- (2) Any disqualification under this section is in addition to any penalty imposed for the offence.
- (3) In this section, a **marine safety offence** means any offence relating to the operation of a vessel that causes the death or injury of a person or damage to property, or that causes a risk of any such death, injury or damage.

**Note—**

A licence may also be suspended or cancelled in connection with an alcohol or drug related boating offence—see

section 28A. Section 135A deals with National licences.

#### **40 Return of suspended or cancelled licence**

The holder of a marine safety licence suspended or cancelled under this Act must deliver the licence to the Minister as soon as practicable after the licence is suspended or cancelled.

Maximum penalty: 10 penalty units.

### **Division 4 Administrative review by Civil and Administrative Tribunal**

#### **41 Definition**

In this Division, ***Tribunal*** means the Civil and Administrative Tribunal.

#### **42 Application for administrative review**

A person who is dissatisfied with any of the following decisions under this Act may apply to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision:

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

#### **43 Failure to make decision**

For the purposes of this Division, an application for the grant of a marine safety licence is taken to have been refused if the licence is not granted within 60 days (or such other period as is prescribed by the regulations) after the application was duly made.

## **Part 5 Requirements for vessels**

### **Division 1 Unsafe vessels**

#### **44 Definition of "unsafe vessel"**

A vessel is an ***unsafe vessel*** for the purposes of this Division if, because of:

- (a) the condition or equipment of the vessel, or
- (b) the manner or place in which cargo or equipment on the vessel is stowed or secured,  
or
- (c) the nature of the cargo, or

- (d) the overloading of the vessel with persons or cargo (including the submergence of the vessel's load line), or
  - (e) the number or qualifications of its crew, or
  - (f) any other reason,
- the operation of the vessel is likely to endanger any person.

#### **45 Owner or master not to operate unsafe vessel**

- (1) The owner of a vessel must not operate the vessel if the owner knows, or ought reasonably to know, that it is an unsafe vessel.

Maximum penalty: 400 penalty units or 2 years imprisonment, or both.

- (2) The master of a vessel must not operate a vessel if the master knows, or ought reasonably to know, that it is an unsafe vessel.

Maximum penalty: 400 penalty units or 2 years imprisonment, or both.

- (3) The fact that an unsafe vessel has been detained under this Division does not prevent a prosecution for an offence against this section.

#### **46 Detention of unsafe vessels**

- (1) The Minister may order a vessel to be provisionally detained if it appears to the Minister to be an unsafe vessel. The vessel may not be provisionally detained unless it is in State waters or in any other part of the State.

- (2) When a vessel has been ordered to be provisionally detained the following provisions apply:

- (a) The Minister must, as soon as practicable, cause to be served on the master or owner of the vessel a notice of the detention and a written statement of the reasons for the detention.

- (b) The Minister is required to appoint an investigator to investigate the vessel in accordance with Part 8 and report to the Minister.

- (c) The Minister may, on receipt of the report:

- (i) order its release, or

- (ii) if of the opinion that it is an unsafe vessel, order it to be finally detained either absolutely or until the performance of such conditions as the Minister considers necessary to ensure that the vessel is not an unsafe vessel.

- (d) The Minister may at any time (and without any report) order the release of the vessel (with or without conditions) if satisfied that the vessel is not an unsafe



vessel.

- (e) Before an order for final detention is made, the Minister must cause a copy of the report to be served on the master or owner of the vessel.
  - (f) The Minister must cause a copy of an order for final detention to be served on the owner and master of the vessel (if their identity and whereabouts are known to the Minister).
- (3) When any order for the final detention of a vessel is made, the vessel must not be released until the Minister is satisfied that its further detention is no longer necessary, and orders its release.

**Note—**

Section 134 provides that an instrument required by this section to be served on the owner or master of a vessel may be served instead on the agent of the vessel.

**47 Operating detained vessel**

- (1) The owner of a vessel must not cause or allow the vessel to be taken on a voyage if the owner knows that the vessel has been detained under this Division and has not been duly released.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (2) The master of a vessel must not take the vessel on a voyage if the master knows that the vessel has been detained under this Division and has not been duly released.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (3) An agent for a vessel that has been detained under this Division and has not been duly released must not assist the owner or master of the vessel to contravene this section.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (4) A person must not obstruct or fail to comply with any reasonable requirement of a person appointed by the Minister to take charge of a vessel detained under this Division in connection with the exercise of that person's functions.

Maximum penalty: 20 penalty units.

**48 Costs of detention**

If a vessel is detained under this Division without reasonable cause, the State or the Minister is liable to pay the owner of the vessel compensation for any loss or damage resulting from the detention.

## Division 2 Vessel registration

### 49 Vessels requiring State registration

- (1) All vessels that operate in State waters are required to be registered under this Act unless exempt from registration.
- (2) A vessel that is required to be registered under this Act is a ***State registrable vessel*** for the purposes of this Act.

### 50 Vessels exempt from registration

- (1) (Repealed)
- (2) A vessel is exempt from registration under this Act if the vessel:
  - (a) is not ordinarily operated in State waters, and
  - (b) has been in State waters for less than 3 months, and
  - (c) is registered under the law of another State or a Territory, or of another country, and is operated in accordance with that law.
- (3) A vessel is exempt from registration under this Act if it is of a class exempted by the regulations.
- (4) A vessel is exempt from registration under this Act if the Minister exempts it from registration by order in writing given to the owner or master of the vessel.

### 51 Offence to operate unregistered vessel

- (1) The owner of a State registrable vessel must not operate the vessel in State waters unless the vessel is registered under this Act and the owner is the holder of the vessel registration certificate.
- (2) The master of a State registrable vessel must not operate the vessel in State waters if the vessel is not registered under this Act or is being operated in contravention of any conditions of its vessel registration certificate. It is a defence to a prosecution under this subsection if the master establishes that he or she did not have any reasonable cause to believe that the vessel was not registered or was being so operated.

Maximum penalty: 75 penalty units.

#### **Note—**

The registration of 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 owner is an offence—see section 32.

## **52 Additional grounds for refusal, suspension or cancellation of registration**

In addition to any other ground on which the Minister may refuse to register a vessel or may suspend or cancel its registration, the Minister may do so on the following grounds:

- (a) the Minister may do so on environmental grounds, that is, the vessel causes or will cause unreasonable noise, air or other pollution because of its design, construction or equipment,
- (b) the Minister may do so on aesthetic grounds, that is, the vessel is or will be an eyesore in the port or other area in which it operates or is moored or in which it is proposed to operate or be moored.

## **Division 3**

**53-56 (Repealed)**

## **Division 4**

**57-61 (Repealed)**

## **Division 5 Boat driving licences for power-driven recreational vessels**

### **62 Vessels to which Division applies**

- (1) This Division applies to any power-driven recreational vessels operating in or from State waters, other than vessels exempted by the regulations.
- (2) In this Division, **recreational vessel** includes a commercial vessel while hired or used for recreational or sporting purposes and not hired or used for any commercial purpose.

### **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.

### **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.

#### **64 Exemption from requirement to hold boat driving licence**

- (1) A person is exempt from the requirement to hold a boat driving licence if the person:
  - (a) is not ordinarily resident in this State, and
  - (b) has been operating power-driven recreational vessels in State waters for less than 3 months, and

(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.

(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.

(2) A person is exempt from the requirement to hold a boat driving licence if the person:

(a) is the holder of a certificate of competency as a master, first mate, second mate or coxswain (or other crew member prescribed by the regulations) under the National law, or

(b) is exempted by the regulations, or

(c) is exempted by the Minister by order in writing given to the person.

## **Division 6 Miscellaneous provisions relating to vessels**

### **65 Recognised marine safety licences**

(1) This section applies to a marine safety licence that is a vessel registration certificate required to be held by this Part.

(2) A marine safety licence under this Act may take the form of the grant of recognition for a marine safety licence (or similar licence) granted under the law of the Commonwealth, of another State or a Territory or of another country.

(3) In that case:

(a) a reference in this Act to the grant of the relevant marine safety licence is a reference to the grant of recognition of the licence, and

(b) a reference in this Act to the cancellation or suspension of the relevant marine safety licence is a reference to the withdrawal of recognition indefinitely or for a period, and

(c) a reference in this Act to the disqualification of the holder of the relevant marine safety licence includes a reference to the disqualification of the person from having a licence recognised.

### **66 Mutual recognition of marine safety licences**

(1) The regulations may provide for automatic recognition for any marine safety licence

to which section 65 applies.

- (2) Any such recognition is subject to compliance with the conditions of the licence and of any law of the jurisdiction in which the licence was issued that relates to authority conferred by the licence.

#### **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.

#### **68 Regulation of design and construction of recreational vessels**

The regulations may make provision for or with respect to the design and construction of recreational vessels.

#### **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.

#### **69 Regulation of passengers**

The regulations may make provision for or with respect to:

- (a) the maximum number of passengers or other persons to be carried on vessels, or
- (b) the conduct of passengers on vessels, including the removal of passengers from vessels.

#### **70 Vessel identification etc**

The regulations may require identifying and other information to be displayed on vessels (including the display of particulars of registration of vessels or the maximum carrying capacity of vessels).

## Part 6 Pilotage

### Division 1 Preliminary

#### 71 Definitions

(1) In this Part:

**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.

**pilotage port** means (subject to subsection (2)) any of the following ports:

- (a) Sydney Harbour,
- (b) Botany Bay,
- (c) Newcastle,
- (d) Port Kembla,
- (e) Yamba,
- (f) Eden.

**pilotage service provider** means:

- (a) in relation to pilotage services provided by a Port Corporation under an operating licence under Division 3 of Part 2 of the [Ports and Maritime Administration Act 1995](#)—the Port Corporation (and, if those services are provided by way of a subsidiary, includes the subsidiary), or
- (b) in relation to pilotage services provided by a contractor under a contract under section 26A of the [Ports and Maritime Administration Act 1995](#)—the contractor, or
- (c) in relation to any other pilotage services—the Minister.

**subsidiary**, in relation to a Port Corporation, means a body corporate that would be a subsidiary (as determined by the [Corporations Act 2001](#) of the Commonwealth) of the

Port Corporation if the Port Corporation were a company.

- (2) The regulations may provide that any other port is a pilotage port for the purposes of this Part or that a port is no longer such a port.

## **Division 2 Prohibition against unauthorised marine pilots**

### **72 Marine pilots in any port to be licensed**

- (1) A person must not act as the marine pilot of a vessel in any port unless the person is the holder of a marine pilot's licence under this Act and the licence applies to that port.

Maximum penalty: 100 penalty units.

#### **Note—**

A marine pilot's licence is a marine safety licence—Part 4 deals with the grant and other matters relating to any such licence.

- (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.

### **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.

## **Division 3 Pilotage**

### **74 Pilotage compulsory in pilotage ports**

- (1) Pilotage is compulsory in every pilotage port.
- (2) The master of a vessel must not enter, leave or move within a pilotage port with the vessel before taking on board the marine pilot made available by the pilotage service provider to conduct the vessel on its movement into the port, out of the port or within the port.

Maximum penalty: 100 penalty units.

- (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.
- (3) This section continues to apply even though a marine pilot has deferred pilotage under this Division.

**Note—**

Pilotage charges are imposed by Part 5 of the [Ports and Maritime Administration Act 1995](#).

**75 Vessels exempted from compulsory pilotage**

- (1) Pilotage is not compulsory in a pilotage port, and section 74 does not apply, in respect of the following vessels:
- (a) a vessel whose master is the holder of a marine pilotage exemption certificate under this Act that applies to that port and vessel,
  - (a1) a vessel whose master is the holder of a certificate of local knowledge under this Act that applies to that port and vessel,
  - (b) a recreational vessel,
  - (c) a vessel less than 30 metres in length,
  - (d) a seaplane,
  - (e) a vessel of any class declared by the regulations to be an exempt vessel for the purposes of this Part,
  - (f) a particular vessel declared to be an exempt vessel for the purposes of this Part by order of the Minister given to the owner or master of the vessel.
- (2) Despite subsection (1), pilotage is compulsory, and section 74 applies, in respect of a vessel (whether or not the master is the holder of a marine pilotage exemption certificate or certificate of local knowledge under this Act) if pilotage is declared to be compulsory by the regulations or by order of the Minister given to the owner or master of the vessel.

**Note—**

Part 4 deals with the licensing of pilots and the issue of pilotage exemption certificates.

**76 Deferral of pilotage generally**

- (1) When a vessel is unable, or will in the opinion of the master of the vessel be unable, to leave its berth or place of anchorage in a pilotage port within 1 hour after the time stated for so leaving in the application by the owner or master for a marine pilot, the

marine pilot attending may defer pilotage and cease attendance.

- (2) When a vessel is unable, or will in the opinion of the master be unable, to enter into a pilotage port, within 1 hour after the time stated for so entering in the application by the owner or master for a marine pilot, the marine pilot attending may defer pilotage and cease attendance.

#### **77 Deferment of pilotage for safety reasons**

- (1) If a marine pilot made available for pilotage considers that a vessel should not enter a pilotage port or should not leave its berth or place of anchorage for any reason related to marine safety, the marine pilot may direct the master of the vessel not to enter the pilotage port or not to leave the berth or place of anchorage pending the decision of the harbour master of the port.
- (2) The master of a vessel must comply with any such direction.  
Maximum penalty: 100 penalty units.
- (3) A marine pilot who gives any such direction may defer pilotage and cease attendance.

#### **78 Duties of master in connection with pilotage**

- (1) Before pilotage of a vessel begins, the master of the vessel must:
  - (a) test the operation of the navigation, propulsion and steering systems of the vessel (including any parts of such systems as the regulations require) and record the results of those tests, and
  - (b) inform the marine pilot of anything of which the master is aware that is likely to affect the safe operation of the vessel.
- (2) The master of a vessel under pilotage must:
  - (a) ensure that any order given with the master's authority by the marine pilot is carried out, and
  - (b) give the marine pilot such information as the marine pilot may require for the safe navigation of the vessel.
- (3) The master of a vessel must not give to a marine pilot who requires information for the navigation of the vessel any information that the master knows is false or misleading.
- (4) The obligation of a master under subsection (1) (a) extends to a vessel that is exempt from pilotage because the master is the holder of a marine pilotage exemption certificate under this Act.

Maximum penalty: 100 penalty units.

## **79 Liability of master and owner of vessel under pilotage**

- (1) A person who is made available as a marine pilot by the pilotage service provider and who has the conduct of a vessel is subject to the authority of the master of the vessel. The master is not relieved from responsibility for the conduct and navigation of the vessel merely because the vessel is under pilotage.
- (2) The master and the owner of a vessel being navigated under circumstances in which pilotage is compulsory are jointly and severally liable for any loss or damage caused by the vessel or by any fault of navigation of the vessel in the same manner as if pilotage were not compulsory.

## **80 Immunity of State, marine pilots, pilotage service provider and others**

- (1) Neither the State, nor the Minister, nor a pilotage service provider is liable for any loss or damage that is attributable to the negligence of any person made available as a marine pilot by the pilotage service provider while the person is acting as a marine pilot.
- (2) A person made available as a marine pilot by the pilotage service provider is not personally liable in pecuniary damages for any loss or damage attributable to the person's negligence while the person is acting as a marine pilot.
- (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.

## **81 Offence for marine pilot to endanger vessel**

A marine pilot of a vessel who, by any wilful act or omission, endangers the vessel or its crew is guilty of an offence.

Maximum penalty: 100 penalty units.

### **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.

## **82 Provisions to apply when vessel under pilotage at request of owner**

If a vessel (not required to be under pilotage) is under pilotage at the request of its owner, this Division applies to that vessel and its master and owner for the purposes of that pilotage.

### **83 Regulations**

- (1) The regulations may make provision for or with respect to pilotage and, in particular, for or with respect to:
  - (a) the administration of the pilotage service of a pilotage service provider and the duties of marine pilots and other officers in that service, and
  - (b) the specification of when inward, outward and harbour pilotage begins and ends, and
  - (c) the duties of masters of vessels in connection with pilotage (including the duties of masters of vessels who are exempt from compulsory pilotage in connection with the movement of the vessels), and
  - (d) the records and reports in connection with pilotage to be made and furnished by masters of vessels and marine pilots.
- (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 Transport for NSW as in force at a particular time or as in force from time to time.

**Note—**

The website of Transport for NSW is [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).

## **Part 7 Harbour masters**

### **84 Definition of “port”**

In this Part, **port** includes any particular area of navigable waters that the Minister considers requires a harbour master for the purposes of marine safety.

### **85 Appointment of harbour masters**

- (1) The Minister may appoint a person to be the harbour master for any port.
- (2) Two or more persons cannot be appointed as harbour masters for the same port.
- (3) The Minister may revoke the appointment of a harbour master at any time.

### **86 Appointment of persons to exercise functions of harbour masters**

- (1) A harbour master may appoint any person to exercise, in relation to the port for which he or she is the harbour master, the harbour master's functions under the marine legislation. The power to make an appointment under this section is subject to any directions given to the harbour master by the Minister.
- (2) An appointment under this section may be general or may apply only to the exercise of such functions as are specified in the instrument of appointment.

- (3) A person appointed under this section has all the functions specified in the instrument of appointment.
- (4) The appointment under this section of a person to exercise any of the functions of a harbour master does not prevent that harbour master from exercising those functions.
- (5) The Minister may also appoint a person to exercise the functions of a harbour master under the marine legislation in relation to a port (whether or not a harbour master has been appointed for the port).
- (6) More than one person may be appointed at any one time under this section to exercise the functions of a harbour master.

### **87 General functions of harbour master**

- (1) A harbour master has, in relation to the port for which he or she is the harbour master, such functions as are conferred by the marine legislation.
- (2) The functions of a harbour master may be limited by regulation or by the Minister (in and by the instrument of appointment or by a subsequent instrument given to the harbour master).
- (3) The exercise of the functions of a harbour master are subject to any directions given from time to time to the harbour master by the Minister.

### **88 General powers of harbour master in relation to vessels**

- (1) The harbour master of any port may direct and control the following:
  - (a) the time and manner in which any vessel may enter or leave the port,
  - (b) the navigation and other movements of any vessel within the port or any part of the port,
  - (c) the position where and the manner in which any vessel may anchor or be secured within the port,
  - (d) the time and manner of the taking in or discharging by any vessel within the port of cargo, stores, fuel, fresh water or water ballast,
  - (e) the securing or removal of any vessel within the port in, from or to any position as the harbour master thinks fit.
- (2) The harbour master of any port may, as a condition of allowing a vessel to be anchored or secured within a pilotage port, direct that a marine pilot remain on board the vessel while it is so berthed or anchored (whether or not pilotage is compulsory).
- (3) A harbour master must not give any direction under this section that would result in a contravention of any law relating to the area or vessel concerned or that would

impede the proper administration of the customs or quarantine services within the port.

**89 Powers of harbour master to direct dangerous vessels not to enter or move within, or to leave, port or part of port**

(1) The harbour master of any port may give directions:

- (a) prohibiting the entry into, or movement out of, the port or any part of the port, or
- (b) requiring the removal from the port or any part of the port,

of any vessel that the harbour master has reasonable cause to believe is in imminent danger of sinking in the port and causing an obstruction to navigation or is in imminent danger of causing serious damage to the marine environment or property in the port.

(2) A harbour master is not to give a direction under this section that would endanger the life of any person on the vessel.

(3) A direction under this section may be revoked by order of the Minister or the Supreme Court.

**90 Harbour master may carry out direction**

(1) If:

- (a) there is no person on board any vessel to whom a harbour master may give a direction under this Part and there are reasonable grounds for the harbour master to act urgently without giving the direction, or

- (b) a direction under this Part is not complied with,

the harbour master may cause the vessel to be dealt with as required by the harbour master.

(2) For that purpose, the harbour master (or a person authorised by the harbour master) may board a vessel and move, secure or otherwise operate the vessel.

(3) The Minister may recover from the master or owner of a vessel referred to in subsection (1) as a debt in any court of competent jurisdiction the reasonable charges and expenses incurred in the exercise of the harbour master's functions under that subsection.

**91 Offence for failing to comply with direction, or obstructing, harbour master**

(1) The master of a vessel who, without reasonable excuse, refuses or fails to comply with any direction given under this Part to the master by a harbour master is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person who, without reasonable excuse, obstructs a harbour master (or any person acting under the direction of a harbour master) exercising any function under this Part is guilty of an offence.

Maximum penalty (subsection (2)): 50 penalty units.

### **91A Directions of harbour master acting as marine pilot**

- (1) Nothing prevents a harbour master who is acting as a marine pilot for a vessel from giving a direction under this Part in relation to the vessel.
- (2) However, any such direction is taken not to be properly given under this Part unless the person giving the direction has warned the person to whom it is given that it is a direction of the harbour master and that failure to comply with the direction may constitute an offence under section 91.

### **92 Identity cards**

- (1) The Minister is required to give an identity card to each harbour master the Minister appoints.
- (2) The person who appoints another person to exercise the functions of a harbour master is required to give an identity card to that other person.
- (3) An identity card is to be in a form approved by the Minister.
- (4) A harbour master (including a person exercising the functions of a harbour master) is required to produce his or her identity card if requested to do so by an affected person in the course of exercising functions under the marine legislation. This subsection does not apply to a direction given by radio or other communication device.
- (5) A person who has been issued with an identity card must return it to the Minister, or the person who provided it, on demand.

Maximum penalty (subsection (5)): 10 penalty units.

### **93 Protection from liability**

- (1) A harbour master, and any other person exercising the functions of a harbour master, are not personally liable for any act or omission done in good faith for the purposes of the marine legislation.
- (2) If subsection (1) prevents liability attaching to a harbour master, the liability attaches instead to the State.
- (3) In this section, **harbour master** includes a person exercising the functions of a harbour master or a person acting under the direction of a harbour master.

## Part 8 Marine investigation and enforcement

### Division 1 Preliminary

#### 94 Definitions

(1) In this Part:

**Chief Investigator** means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45 of the *Transport Administration Act 1988*.

**ferry** has the same meaning as it has in the *Passenger Transport Act 1990*.

**incompetence** of the holder of a marine safety licence includes the inefficient performance of any lawful duty required of the holder of that licence.

**marine accident** means any of the following events involving a vessel operating in navigable waters:

- (a) the loss of life of, or injury to, any person on board the vessel,
- (b) the loss of a person from the vessel,
- (c) the loss of life or injury to a person that is caused by the vessel,
- (d) the loss, or presumed loss, of the vessel (including the sinking or abandonment of the vessel),
- (e) the capsizing, grounding or flooding of the vessel,
- (f) the collision of the vessel with another vessel or with any object,
- (g) the vessel being disabled at sea (in any case in which it requires assistance),
- (h) any fire on board the vessel,
- (i) any damage being caused to the vessel (including any structural failure),
- (j) any damage to the environment caused by the vessel or by any substance on, or discharged from, the vessel,
- (k) any incident that causes danger of any of the above,

but does not include anything excluded from this definition by the regulations.

**misconduct** by the holder of a marine safety licence includes:

- (a) carelessness in carrying out any lawful duty required of that holder, or
- (b) carrying out any duty while under the influence of alcohol or any other drug, or



- (c) any other act or omission that indicates that the person is not a fit and proper person to act in the capacity required by the licence.

**public passenger service** has the same meaning as it has in the *Passenger Transport Act 1990*.

- (2) In this Part, a reference to the **holder** of a marine safety licence includes a reference to a person whose licence is suspended or cancelled or has otherwise ceased to have effect.

## 95 Application

This 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 anywhere outside the State.

## 96 Appointment of authorised officers (other than harbour masters and police officers)

- (1) The Minister may appoint any of the following as an authorised officer for the purposes of the marine legislation:
- (a) a member of staff of RMS,
  - (b) a member of staff of a Port Corporation,
  - (c) a member of the Transport Service,
  - (d) a member of staff of a government department or other public or local authority,
  - (e) the Chief Investigator or a member of staff of the Chief Investigator,
  - (f) an officer, employee or agent of the port operator of a private port under the *Ports and Maritime Administration Act 1995*.
- (2) The authorisation of such a person as an authorised officer can be given generally, or subject to conditions and restrictions or only for limited purposes. If the authorisation is subject to conditions or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the condition or restriction or for other purposes.

### Note—

An **authorised officer** is defined in section 4 as a harbour master, a police officer or a person appointed under this section.

## 97 Identity cards for authorised officers

- (1) The Minister is required to give an identity card to each authorised officer appointed under section 96 (including an investigator appointed under Division 3).

- (2) An identity card is to be in a form approved by the Minister.
- (3) An authorised officer when exercising the functions of the officer is required to produce his or her identity card if requested to do so by an affected person. This subsection does not apply if the officer gives a direction by radio or other communication device.
- (4) A person who has been issued with an identity card must return it to the Minister on demand.

Maximum penalty: 10 penalty units.

- (5) Until an authorised officer is given an identity card, the officer's instrument of appointment is taken to be an identity card for the purposes of subsection (3).

#### **97A Obstruction of authorised officers and others**

A person must not, without reasonable excuse, prevent or obstruct any authorised officer or other person in the exercise of a function under this Act.

Maximum penalty: 50 penalty units.

## **Division 2 Duties of masters and owners in case of marine accidents**

### **98 Requirements of masters in case of accident involving vessels**

- (1) The master of a vessel involved in a marine accident involving 2 or more vessels or the death of or injury to any person:
  - (a) must stop the vessel, and
  - (b) must give any necessary assistance that the master is able to give to any person injured or vessel damaged in the accident.
- (2) The master of a vessel involved in a marine accident, if required to do so by any person having reasonable grounds for so requiring:
  - (a) must produce any marine safety licence required under this Act to be held by the master, and
  - (b) must give particulars of his or her name and place of residence, the name and address of the owner of the vessel, the name of the vessel and any distinguishing number that is, or is required to be, displayed on the vessel by law.
- (3) The master of a vessel involved in a marine accident, if required so to do by any authorised officer, must give such particulars of the marine accident as the officer requires and the master is able to give.

**Note—**

A failure to comply with the requirements of this section or of any other provision of this Division does not constitute an offence if there was a reasonable excuse for that failure—see section 102.

### **99 Duty to report marine accidents to Minister**

- (1) When a marine accident occurs in connection with a vessel, the master of that vessel (and the owner of the vessel if aware of the accident) must send a report to the Minister containing particulars of the accident as soon as practicable by the quickest means available.
- (2) A report is not required to be sent:
  - (a) if a report of the marine accident has already been sent by the owner or master, or
  - (b) in any other case prescribed by the regulations.
- (3) After receiving a report of a marine accident, the Minister may require further information from the owner or master of a vessel involved in the accident to determine whether an investigation should be ordered into the marine accident.

### **100 Marine accident particulars**

The particulars of a marine accident required to be furnished or reported under this Division are as follows:

- (a) the time, place and nature of the marine accident,
- (b) the name and distinguishing number (if any) of each vessel involved in the marine accident,
- (c) the name and address of each person who was involved in or was a material witness to the marine accident,
- (d) any loss of life or the estimated extent of any injury or damage resulting from the marine accident.

### **101 Preservation of evidence**

The owner or master of a vessel involved in a marine accident (or other person concerned in the accident) must take all reasonable measures to preserve any evidence relating to the marine accident (including nautical charts, log books and other documents) if he or she has reason to believe that the evidence may be required for an investigation into the marine accident.

**Note—**

The [Interpretation Act 1987](#) provides that documents include computer and other electronic records.

## **102 Offence**

A person who:

- (a) without reasonable excuse fails to comply with any provision or requirement of this Division, or
- (b) furnishes any particulars or information under this Division that the person knows to be false or misleading,

is guilty of an offence.

Maximum penalty: 50 penalty units.

## **Division 3 Investigation of marine accidents and other marine safety matters**

### **103 Ordering of investigation**

- (1) The Minister may order an investigation into any of the following:
  - (a) a marine accident that has been reported under Division 2 or that the Minister believes may have occurred,
  - (b) any situation that has the potential to cause marine accidents,
  - (c) any alleged incompetence or misconduct of the holder of a marine safety licence,
  - (d) a vessel that has been provisionally detained as an unsafe vessel,
  - (e) any incident in connection with a port facility that has caused, or has the potential to cause, a danger to life or serious damage to property.
- (2) An inquiry may be carried out and a report provided under this section whether or not:
  - (a) an investigation is being, or has been, conducted under the *Passenger Transport Act 1990* or any other Act or law relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings.

### **104 Principal purposes of investigation**

The principal purposes of an investigation under this Division are:

- (a) to determine the circumstances of or concerning the marine accident or other incident as they affect marine safety, and
- (b) to make recommendations to prevent the recurrence of any similar marine accident or other incident.

### **105 Appointment of investigator**

- (1) The Minister may appoint as the investigator for the purposes of an investigation:
  - (a) an authorised officer, or
  - (b) any other person possessing qualifications or experience relevant to the investigation.
- (1A) If an investigation concerns or is related to a public passenger service provided by a ferry, the Minister may appoint the Chief Investigator as the investigator or any person of a kind referred to in subsection (1).
- (2) The Minister may appoint 2 or more persons as joint investigators for the purposes of an investigation.
- (3) An investigator is subject to the control and direction of the Minister, except in relation to the contents of any report made by the investigator.

### **106 Powers of investigator**

For the purpose of conducting an investigation, an investigator is an authorised officer and has all the powers and other functions of an authorised officer under this Part.

### **107 Conduct of investigations**

- (1) An investigator is to conduct the investigation in such manner as the investigator considers appropriate having regard to the principal purposes of the investigation.
- (2) An investigation may extend to all relevant events and circumstances preceding the marine accident or other incident.
- (3) At any time during the course of an investigation the Minister may determine that the investigation be discontinued and that a report be prepared and submitted by the investigator.
- (4) For the purposes of an investigation, the investigator may rely on any evidence relating to the matter under investigation given in any criminal or civil proceedings or in any coronial or other judicial inquiry.

### **108 Report to Minister of investigation**

- (1) On the completion of the investigation, the investigator must prepare and submit a report to the Minister.
- (2) The report must include:
  - (a) findings as to the facts of the marine accident or other incident, and where the facts cannot be established with certainty, an opinion as to the most probable

facts, and

(b) in the case of a marine accident, the cause or most probable cause of the accident, and

(c) any observations and recommendations to prevent the recurrence of similar marine accidents or incidents that the investigator considers should be made.

(3) The investigator may, at any time during an investigation, prepare an interim report and submit it to the Minister.

### **109 Representations by persons affected by report**

(1) If a report, or any part of a report, relates to a person's affairs to a material extent, the investigator must, if it is reasonable to do so, serve that person with a copy of the report or the relevant part of that report.

(2) Any such person may, within 14 days after receiving it, make written representations relating to the report or the relevant part of the report to the investigator.

(3) The investigator is to consider any such representations.

(4) The investigator:

(a) may make further investigations and:

(i) amend the report, or

(ii) make no change to the report, and

(b) is to notify the person who made the representations of the result of the person's representations, and

(c) is to submit a final report to the Minister (setting out the substance of the representations and the conclusions and action taken by the investigator with respect to them).

### **110 Suspension of marine safety licence pending investigation**

(1) If the Minister has ordered an investigation under this Division that involves any alleged incompetence or misconduct of the holder of a marine safety licence, the Minister may suspend the licence pending the investigation and determination of the matter if the Minister has reason to believe that it would be dangerous for the holder of the licence to continue the activities authorised by the licence.

(2) A suspension under this section may not exceed 14 days.

(3) The Minister may only extend the suspension beyond that period if authorised to do so by order of a Magistrate. A Magistrate may, on application by the Minister, make

such an order if satisfied there is reasonable cause to do so.

**111 Action by Minister following report of investigation**

- (1) The Minister may take any action that is available to the Minister in connection with a report submitted by an investigator.
- (2) In particular, the Minister may do any of the following:
  - (a) take no action,
  - (b) take action to improve marine safety procedures,
  - (c) reprimand the holder of a marine safety licence for any incompetence or misconduct,
  - (d) suspend or cancel a marine safety licence, or impose conditions on any such licence, for any incompetence or misconduct of the holder,
  - (d1) disqualify a person from holding or obtaining a marine safety licence for a specified period,
  - (e) downgrade a marine safety licence for any incompetence or misconduct of the holder (that is, replace the licence held by the holder with a licence of a lower class),
  - (f) inform any other marine safety authority that has granted any similar licence to the person concerned of the report and action taken by the Minister on the report,
  - (g) recommend to the Director of Public Prosecutions or other law enforcement agency that criminal or other legal proceedings be taken against a person,
  - (h) in the case of an investigation concerning or related to a public passenger service provided by a ferry, inform RMS, Transport for NSW or the Chief Investigator of the report and the action taken by the Minister on the report.
- (3) Before taking action under this section, the Minister may conduct a further investigation of the matter or refer the matter to the same or a different investigator for further investigation and report under this Division.
- (4) Any action taken under this section may extend to more than one marine safety licence held by a person.
- (5) The Minister must give written notice to the holder of a marine safety licence of any action taken under this section against that holder, together with a copy of the final investigation report.

### **112 Public release of report**

- (1) The investigator may, at any time during the course of an investigation, make recommendations to the Minister. The Minister may cause them to be made public if the Minister considers that it is in the interests of marine safety to do so.
- (2) The Minister may publicly release a report (or parts of any report) made to the Minister by an investigator.
- (3) The Minister is not to publicly release a report or any part of it if it might prejudice the rights of any person in any criminal proceedings instituted in connection with the matter.

### **113 Protection from liability**

Civil proceedings may not be brought against the State, the Minister, an investigator or any person who has supplied any information to the Minister or to an investigator in connection with an investigation under this Division in respect of any matter contained in that information that is or is alleged to be defamatory or a breach of confidence.

## **Division 4 Investigative powers of authorised officers**

### **114 Application of Division**

- (1) This Division applies to the following investigations:
  - (a) investigations to determine whether the marine legislation has been or may be contravened,
  - (b) investigations under Division 3.
- (2) A power conferred by this Division in respect of a vessel (other than a power to detain the vessel) may be exercised for the purpose of conducting random investigations of compliance with marine safety requirements.
- (3) This Division does not limit any function exercisable under the [Marine Pollution Act 1987](#) in connection with an investigation to which this Division applies.

### **115 Power to stop and board vessels**

- (1) For the purpose of conducting an investigation, an authorised officer may at any reasonable time:
  - (a) stop any vessel, and
  - (b) board any vessel, and
  - (c) enter any land for the purpose of boarding any vessel (other than land used for residential purposes), and



(d) take along any assistants or equipment required to assist the investigation.

(2) For the purpose of boarding the vessel, the authorised officer may direct the person operating the vessel to manoeuvre it in a specified manner or to a specified place or to secure it in a specified manner.

### **116 Other powers of entry**

(1) For the purpose of conducting an investigation, an authorised officer may, at any reasonable time in the daytime or at any time when work is carried on there, enter any premises (other than premises used for residential purposes).

(2) The authorised officer is to give the occupier of premises reasonable notice of an intention to enter premises under this section unless:

(a) the entry is made with the consent of the occupier, or

(b) the entry is made to a part of the premises that is open to the public, or

(c) the entry is required urgently, or

(d) the giving of notice would defeat the purpose for which it is intended to exercise the power of entry.

(3) In this section, **premises** includes any vehicle.

### **117 General investigative powers**

For the purposes of conducting an investigation, the authorised officer may do any of the following on any vessel boarded or premises entered under this Division (or in connection with any vessel stopped but not boarded under this Division):

(a) search the vessel or premises,

(b) make inquiries of any person,

(c) take measurements and photographs and make recordings or gather information or evidence,

(d) examine or test any equipment or substance,

(e) take possession of any equipment or substance and detain it:

(i) for examination and testing, or

(ii) to ensure that it is available for use in evidence in any proceedings for an offence,

(f) require the production of any relevant document, and take possession or copies of, or examine, the document or any entry in that document,

- (g) require any person to give the investigator any facilities and assistance within that person's control that are necessary to facilitate the conduct of the investigation.

### **118 Detention of vessel for purposes of investigation**

- (1) An authorised officer may detain a vessel for the purposes of an investigation, but only for so long as is necessary for the purposes of the investigation.
- (2) An authorised officer may not detain a vessel for more than 48 hours unless authorised to do so by order of a Magistrate. A Magistrate may, on application by an authorised officer, make such an order if satisfied there is reasonable cause for doing so.
- (3) The authorised officer may give the master or owner (or any other person) any directions required for the purpose of detaining the vessel.

### **119 Production of marine safety licences**

- (1) The holder of a boat driving licence is required to carry the licence when doing anything for which the licence is required.
- (2) An authorised officer may require the holder of a marine safety licence who is doing anything for which the licence is required to produce the holder's licence.
- (3) The holder of a marine safety licence (other than a boat driving licence) is not required to produce the licence at the time the requirement is made if the holder does not have the licence in his or her possession at the time. In that case, the holder is required to produce the licence to an authorised officer within 24 hours or within any longer period approved by an authorised officer.
- (4) An authorised officer may seize any marine safety licence that has been cancelled or otherwise ceased to have effect or that the officer has reason to believe is false.

### **120 Identification of person suspected of committing offence**

An authorised officer may require a person whom the authorised officer has reason to suspect has committed an offence against the marine legislation to state his or her full name and residential address.

### **121 Identification of owner and master of vessel**

- (1) An authorised officer may require information about the owner or master of a vessel under this section for the purpose of an investigation.
- (2) A person must, if an authorised officer requires the person to do so, supply all the information the person has regarding the identity and address of the owner or the master of a vessel.
- (3) Without limiting subsection (2), an authorised officer may require the owner of a

vessel to supply a written statement containing the identity and address of the master of the vessel. Any such written statement is admissible in any proceedings as evidence (without proof of signature) of the identity and address of the master of the vessel concerned.

- (4) Without limiting subsection (2), an authorised officer may require the master of a vessel to supply a written statement containing the identity and address of the owner of the vessel. Any such written statement is admissible in any proceedings as evidence (without proof of signature) of the identity and address of the owner of the vessel concerned.

### **122 Power to require persons to attend to answer questions or produce documents or other things**

- (1) An authorised officer may, by notice in writing, require either or both of the following:
  - (a) the attendance of any person at any place to answer questions at an inquiry for the purposes of an investigation,
  - (b) the production of any documents or other things required by the authorised officer for the purposes of the investigation.
- (2) At any such inquiry, the authorised officer:
  - (a) is not bound by the rules of evidence, and
  - (b) may conduct the inquiry without regard to legal forms, and
  - (c) may inform himself or herself in such manner as the officer thinks fit.
- (3) At any such inquiry, the authorised officer may administer an oath or require any statement to be verified by statutory declaration.
- (4) A person is not required under this section to travel more than 16 kilometres from the person's residence at the time of receiving the notice, unless such reasonable allowances for expenses incidental to attendance to give evidence is tendered to the person on the scale allowed for a witness attending on subpoena to give evidence before the District Court.

### **123 Limitation on self-incrimination**

- (1) A person who is required under this Division to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that the answer to the question or the production of the thing might tend to incriminate the person or make the person liable to a penalty.
- (2) The answer to the question or production of the thing, or any information obtained as a direct consequence of the answer or production is not admissible in evidence

against the person in any criminal proceedings except proceedings for an offence against section 125.

#### **124 General provisions relating to functions under this Division**

- (1) In the exercise of a function under this Division, an authorised officer is to do as little damage as possible.
- (2) A requirement that an authorised officer may make under this Division may specify a reasonable time within which it is to be complied with. If no such time is specified, the requirement is to be complied with as soon as practicable after it is made.
- (3) A function exercisable by an authorised officer under this Division to make inquiries of any person or to require a person to supply information, answer questions or produce documents or other things extends to making any such inquiries or requirements to determine whether a vessel is a commercial vessel.

#### **125 Offences**

- (1) (Repealed)
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this Division.
- (3) A person must not give any information or make a statement pursuant to any requirement made under this Division that the person knows is false or misleading.

Maximum penalty: 50 penalty units.

### **Division 5 Regulation of public ferry wharves**

#### **125A Public ferry wharves**

In this Division:

**public ferry wharf** means a wharf or any associated facilities used for the purposes of public passenger services provided by ferries.

**Note—**

The terms **ferry** and **public passenger service** are defined in section 94 (1) to have the same meanings as they have in the [Passenger Transport Act 1990](#).

#### **125B Inspections of public ferry wharves**

- (1) The Minister may cause inspections to be carried out of public ferry wharves.
- (2) The Minister may appoint a person who may be appointed as an investigator under Division 3 to carry out any such inspection.

- (3) For the purposes of an inspection under this section, a person carrying out an inspection has all the powers and other functions of an authorised officer under this Part.
- (4) (Repealed)
- (5) Nothing in this section limits any functions of the Minister under Division 3.
- (6) Section 97 applies to a person appointed under this section.

#### **125C Improvement notices**

- (1) The Minister may give an improvement notice to the owner of a public ferry wharf, or a person responsible for the maintenance of any such wharf, if the Minister is of the opinion that it is necessary to do so to ensure the safety of persons using, or operating, public passenger services provided by ferries.
- (2) An improvement notice may require the person to undertake remedial safety work with respect to the public ferry wharf.
- (3) The period within which a person is required by an improvement notice to undertake remedial safety work must be at least 7 days after the notice is given.
- (4) However, the Minister may specify a period that is less than 7 days after the improvement notice is given if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of the period.
- (5) An improvement notice must:
  - (a) state that the Minister is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) include information about obtaining a review of the notice under this Division.
- (6) An improvement notice may be varied at the request of, or with the consent of, the person to whom it is given.

#### **125D Failure to comply with improvement notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed on the person by an improvement notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units.

### **125E Prohibition notices**

- (1) If an authorised officer is of the opinion that, at any public ferry wharf, there is occurring or is about to occur any activity that involves or will involve an immediate risk to the health or safety of persons using, or operating, public passenger services provided by ferries, the authorised officer may give to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters that give or will give rise to the risk are remedied.
- (2) A prohibition notice must:
  - (a) state that the authorised officer is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the activity in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice under this Division.
- (3) A person who is given a prohibition notice who, without reasonable excuse, fails to comply with a requirement imposed by the notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units.

### **125F Notices may include directions**

- (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to comply with the notice.
- (2) Any such direction may:
  - (a) adopt, by reference, the requirements of any industry or other code of practice or standard, and
  - (b) offer the person to whom it is issued a choice of ways in which to comply with the notice.

### **125G Review of notices by Minister**

- (1) A person who is given a notice under this Division may apply in writing to the Minister for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is given, or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.

- (4) The Minister is to review a notice that is the subject of a duly made application for review.
- (5) The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the Minister until the Minister gives notice to the applicant of the result of the review.
- (6) The Minister may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (7) Regulations may be made with respect to reviews under this section.

**125H Application to Civil and Administrative Tribunal for stay of prohibition notice**

- (1) A person who applies for a review of a prohibition notice under section 125G may apply to the Civil and Administrative Tribunal for a stay of the notice.
- (2) A stay may be granted for the period considered appropriate by the Tribunal, but not so as to extend past the time when notice of the result of the review is given to the applicant by the Minister.
- (3) A stay may be granted on such conditions as the Tribunal thinks appropriate and may be revoked or amended by the Tribunal.

**125I Administrative review by Civil and Administrative Tribunal**

A person who is aggrieved by a decision of the Minister under section 125G may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.

**125J Withdrawal and revocation of notices**

- (1) An improvement notice or a prohibition notice may be withdrawn at any time by the Minister or the authorised officer who gave the notice.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was given.
- (3) The withdrawal or revocation of an improvement notice or a prohibition notice does not prevent the giving of any other improvement notice or prohibition notice.

**125K Proceedings for offences not affected by notices**

The giving, variation, revocation or withdrawal of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations or any other Act or law in connection with any matter in respect of which the notice was issued.

### **125L Certificates relating to public ferry wharves**

- (1) For the purposes of carrying out functions under this Division in relation to public ferry wharves, the Minister may, by notice in writing, direct the owner or person responsible for the maintenance of any such wharf to provide to the Minister a report from an appropriately qualified person as to the condition of the wharf within the time specified in the notice.
- (2) If a person is directed under this section to provide a report within a specified time and the report is not provided within that time, the Minister may obtain such a report and may recover from the person as a debt in any court of competent jurisdiction the reasonable charges and expenses incurred in obtaining the report.

### **125M Regulations relating to public ferry wharves**

- (1) The regulations may make provision for or with respect to any of the following:
  - (a) the inspection of public ferry wharves under this Division,
  - (b) the methodology or standards with which inspections must comply,
  - (c) the provision of inspection reports to persons,
  - (d) the procedures with respect to responses to inspection reports,
  - (e) requirements relating to the maintenance and standards of construction of public ferry wharves,
  - (f) requirements relating to the preparation of maintenance plans for public ferry wharves and the reporting on and keeping of records in respect of such plans.
- (2) The regulations under this section 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 RMS as in force at a particular time or as in force from time to time.

## **Part 9 Legal proceedings**

### **126 Penalty notices**

- (1) A law enforcement officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against the marine legislation, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.



- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **law enforcement officer** means a police officer or, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

## **127 Offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

## **128 Time within which proceedings may be commenced**

Despite the [Criminal Procedure Act 1986](#) or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

## **129 Persons who may bring proceedings**

Proceedings for an offence against the marine legislation may be brought by any person,

including a police officer or an authorised officer.

### **130 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **131 Proof of lawful or reasonable excuse**

If an act or omission is, by the marine legislation, made an offence when done or omitted without lawful or reasonable excuse, proof of the lawful or reasonable excuse lies on the accused.

### **132 Act presumed to apply to vessels**

If the application of a provision of the marine legislation to a vessel is in question in any proceedings under the marine legislation, that provision is taken (in the absence of evidence to the contrary) to apply to the vessel.

### **133 Proof of certain matters not required**

- (1) A certificate signed or purporting to be signed by the Minister or an officer prescribed by the regulations and stating that:
  - (a) a person named in the certificate was or was not at a specified time the holder of a marine safety licence or exemption under the marine legislation of a specified kind, or
  - (b) any such licence or exemption held by a specified person was or was not subject to a specified condition, or
  - (c) any such licence that had been suspended or cancelled has not been delivered to the Minister,is admissible in any legal proceedings and is evidence of the matters stated in the certificate.
- (2) In any legal proceedings under the marine legislation, proof is not required (until evidence is given to the contrary) of the following:

- (a) any order of the Minister,
  - (b) the fact that a vessel is subject to a provision of the marine legislation in question,
  - (c) the fact that the defendant is, or at any relevant time was, the master or operator of any vessel in question,
  - (d) the fact that the defendant is, or at any relevant time was, the owner or agent of any vessel in question,
  - (e) the fact that, at any relevant time, any vessel was not used solely for recreational or sporting purposes or was used for commercial purposes,
  - (f) the fact that any vessel was, at any relevant time, of such a tonnage or length that any provision of the marine legislation applied to it,
  - (g) the appointment of any person under the marine legislation,
  - (h) the particular or general appointment of a member of staff of RMS to take proceedings against a person for an offence against the marine legislation,
  - (i) the particular or general appointment of a person to recover any amount payable to the Minister or RMS,
  - (j) the fact that the defendant is, or at any relevant time was, the owner or occupier of, or in possession, control or charge of, any land or other thing in question,
  - (k) the fact that any land in question is, or at any relevant time was, vested in the Crown, any Minister or any statutory body,
  - (l) the times of sunrise and sunset on any day as published in a statement in a newspaper circulating throughout New South Wales.
- (3) In any legal proceedings under the marine legislation, evidence that:
- (a) a message or signal was transmitted, given or made by an authorised officer or a delegate of the Minister in the course of his or her duties, and
  - (b) the vessel to which the message or signal was transmitted, given or made was so located as to be able to receive the message or signal,
- is evidence that the message or signal was received by the master of the vessel concerned.

### **134 Service of instruments (except in proceedings for offences)**

- (1) Any notice or other instrument issued, made or given for the purposes of the marine legislation may be served:
  - (a) by delivering it personally to the person to whom it is addressed, or

- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person for him or her, or
  - (c) by posting it to the person addressed to the place last shown in the records of the Minister as his or her place of residence or business, or
  - (d) in any manner in which any court attendance notice or other process in any proceedings for an offence under the marine legislation may be served, or
  - (e) if it is to be served on a person on board a vessel—by transmitting its contents to the master of the vessel in any manner or by any other manner authorised by this section.
- (2) For the purposes of this section, a person's place of residence or business includes a vessel on which the person resides or works.
- (3) This section does not apply to the service of any court attendance notice or other process in any proceedings for an offence under the marine legislation or to the service of any notice or other instrument for which provision is specifically made in the marine legislation.

### **135 Service of court attendance notice and other process in legal proceedings**

- (1) Any court attendance notice or other process to be served on the owner or master of a vessel in any proceedings for an offence under the marine legislation may be sufficiently served by serving it on the agent of the vessel in any manner in which it might otherwise have been served on the owner or master.
- (2) A court attendance notice or other process so served on the agent of the vessel is taken to have been served on the owner or master of the vessel.
- (3) In this section, **agent** of a vessel includes:
- (a) the agent for the berthing or working of the vessel while it is in port, or
  - (b) if the vessel has left port—that agent or, if there was another agent for the vessel when it left port, that other agent.

### **135A Suspension or cancellation of licences by court in connection with offence**

- (1) A court may recommend to the National Regulator or a delegate of the National Regulator that the National Regulator take any of the following actions in relation to a person convicted of an offence against this Act:
- (a) suspend for a specified period or cancel a National licence that the person holds,
  - (b) disqualify the person from holding or obtaining a National licence for a specified period.

- (2) A recommendation may be made under this section only if similar action could be taken under this Act to cancel or suspend a marine safety licence of a person convicted of the same offence or disqualify such a person from holding a marine safety licence.
- (3) A court may make a recommendation under this section in addition to imposing any penalty for the offence concerned.

## **Part 10 Miscellaneous**

### **136 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **136A Reliance on advice**

- (1) In exercising any function under this Act or the regulations, the Minister, TfNSW or RMS is entitled to rely (wholly or partly) on a certificate, report or other form of advice obtained from an appropriately qualified person engaged for that purpose.
- (2) The Minister, the State, TfNSW, RMS and any person acting on behalf of the Minister, the State, TfNSW or RMS do not incur any liability as a consequence of the Minister, TfNSW or RMS being satisfied of a matter by relying on advice referred to in this section.

### **137 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (1A) The regulations may make provision for or with respect to fees and charges for services provided under this Act, including prescribing the basis on which any such fee or charge is to be determined and the waiver of any such fees or charges.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.
- (3) The Minister is not to recommend the making of a regulation containing provisions that provide for an application to be made to the Civil and Administrative Tribunal for the administrative review under the *Administrative Decisions Review Act 1997* of a decision unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

### **138 Adoption of codes, standards, treaties and other documents**

- (1) The regulations may incorporate by reference, wholly or in part and with or without

modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by whatever means by an authority or body (whether or not it is a New South Wales authority or body).

- (2) Without limiting subsection (1), a regulation may adopt, wholly or in part and with or without modification any of the following documents as in force at a particular time or as in force from time to time:
  - (a) the *National Standard for Commercial Vessels* within the meaning of the National law,
  - (b) the *Uniform Shipping Laws Code* within the meaning of the National law or any other code,
  - (c) any Australian Standard or any standard of another country,
  - (d) any treaty, convention or international agreement.
- (3) The regulations may prescribe a person or body who is to be taken to be the statutory marine authority for New South Wales for the purposes of all or specified provisions of the *National Standard for Commercial Vessels* referred to in subsection (2) (a).

### **139 Exemptions**

- (1) The regulations may exempt, or provide for the exemption of, any person or vessel from any requirement of the regulations.
- (2) If this Act confers a power to make regulations to exempt any person or vessel from a requirement of this Act or the regulations, the power extends to making a regulation authorising the Minister or other person to grant the exemption.
- (3) An exemption granted by the regulations, by a licence or approval as referred to in section 18 or by an order of the Minister or other person may be made subject to any condition specified in the regulation, licence, approval or order.
- (4) The exemption does not apply during any period that any such relevant condition is not complied with.

#### **Note—**

Sections 11, 18, 50 and 75 make provision for the granting of exemptions. Schedule 4 contains provisions for the preservation of exemptions granted under the Acts repealed by this Act.

### **140 (Repealed)**

### **141 Repeals**

- (1) Schedule 2 has effect.

- (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.

#### **142 Amendment of other Acts**

Schedule 3 has effect.

#### **143 Savings, transitional and other provisions**

Schedule 4 has effect.

#### **144 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the [Marine Safety Amendment Act 2008](#).
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 Alcohol and drug use—random breath testing and related matters**

(Section 28C)

## **Part 1 Interpretation**

### **1 Definitions**

- (1) In this Schedule:

**analyst** has the same meaning as in Schedule 3 to the [Road Transport Act 2013](#).

**authorised sample taker** has the same meaning as in Schedule 3 to the [Road Transport Act 2013](#).

**breath analysis** has the same meaning as in Schedule 3 to the [Road Transport Act 2013](#).

**hospital** means:

- (a) any public hospital within the meaning of the [Health Services Act 1997](#) controlled by a local health district or the Crown, and
- (b) a statutory health corporation or affiliated health organisation within the meaning of the [Health Services Act 1997](#), and

(c) any private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

**prescribed laboratory** means a laboratory prescribed by statutory rules under the *Road Transport Act 2013* for the purposes of any of the provisions of Schedule 3 to that Act.

**prescribed place** has the same meaning as in Schedule 3 to the *Road Transport Act 2013*.

- (2) A reference in this Schedule to a police officer authorised by the Commissioner of Police to operate breath analysing instruments includes a reference to a police officer so authorised under the *Road Transport Act 2013*.
- (3) For the purposes of this Schedule, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

## Part 2 Random breath testing and breath analysis

### 2 Power to conduct random breath testing

- (1) A police officer may require a person to undergo a breath test in accordance with the officer's directions if the officer has reasonable cause to believe that the person is or was operating a vessel.
- (2) An authorised officer (other than 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:
  - (a) the person is or was operating a vessel while there is or was alcohol in the person's breath or blood, or
  - (b) the person was operating a vessel concerned in an accident which has resulted in the death of, or injury to, any person, or
  - (c) the person was operating a vessel concerned in an accident which has resulted in damage to a vessel that affects the seaworthiness of the vessel or the safety of persons on board the vessel, or has resulted in damage to other property apparently in excess of \$1,000 (or, if another amount is prescribed by the regulations, the prescribed amount).
- (3) An authorised officer to whom subclause (2) 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.
- (4) A person must not, when required by a police officer to undergo a breath test under subclause (1) or required by an authorised officer to undergo a breath test under



subclause (2), refuse or fail to undergo the breath test in accordance with the directions of the officer.

Maximum penalty: 10 penalty units.

- (5) It is a defence to a prosecution for an offence under subclause (4) if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to undergo a breath test.
- (6) Before requiring a person to undergo a breath test under subclause (1) or (2), and for the purpose of determining whether to conduct such a test, an authorised officer may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.

### **3 Arrest following failed breath test**

- (1) An authorised officer may exercise the powers referred to in subclause (2) in respect of a person if:
  - (a) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of more than zero grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is under 18 years of age, or
  - (b) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.02 grammes in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is under 18 years of age or is operating the vessel for commercial purposes, or
  - (c) it appears to the officer from a breath test carried out under clause 2 (1) or (2) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.05 grammes in 210 litres of breath or 100 millilitres of blood, or
  - (d) the person refused to undergo a breath test required by an authorised officer under clause 2 (1) or (2) or fails to undergo that test in accordance with the directions of the officer.
- (2) An authorised officer may:
  - (a) arrest a person referred to in subclause (1) without warrant, and

- (b) take the person, or cause the person to be taken, with such force as may be necessary, to a police station or some other place as the officer considers desirable, and
- (c) detain the person, or cause the person to be detained, at that police station or other place for the purposes of this Part.

#### **4 Breath analysis following arrest**

- (1) An authorised officer may require a person who has been arrested under clause 3 to submit to a breath analysis in accordance with the directions of the officer.
- (2) A breath analysis must be carried out by a police officer authorised to do so by the Commissioner of Police at or near a police station or such other place as that officer considers desirable.
- (3) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysing instrument must deliver a written statement to that person signed by that officer specifying the following:
  - (a) the concentration of alcohol determined by the analysis to be present in that person's breath or blood and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood,
  - (b) the day on and time of the day at which the breath analysis was completed.
- (4) A person who is required by an authorised officer under subclause (1) to submit to a breath analysis must not refuse or fail to submit to that analysis in accordance with the directions of the officer.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (5) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to submit to a breath analysis.

#### **5 Offence—wilfully altering alcohol concentration following request for breath test or breath analysis**

A person must not wilfully do anything to alter the concentration of alcohol in the person's breath or blood:

- (a) between the time of the event referred to in clause 2 (1) or (2) in respect of which the person has been required by an authorised officer to undergo a breath test and the time when the person undergoes that test, or
- (b) if the person is required by an authorised officer to submit to a breath

analysis—between the time of the event referred to in clause 2 (1) or (2) in respect of which the person has been required by an authorised officer to undergo a breath test and the time when the person submits to the breath analysis.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

## **6 When breath test or breath analysis not permitted**

An authorised officer cannot require a person to undergo a breath test or to submit to a breath analysis:

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his or her treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person, or
- (b) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis, or
- (c) at any time after the expiration of 2 hours from the occurrence of the event by reason of which an authorised officer was entitled under clause 2 (1) or (2) to require that person to undergo a breath test, or
- (d) at that person's home.

## **7 Procedure to be followed for breath analysis**

- (1) A person who is required under clause 4 (1) to submit to a breath analysis may request the authorised officer making the requisition to arrange for a medical practitioner to take, in the presence of an authorised officer, a sample of that person's blood, for analysis in accordance with this clause at that person's own expense.
- (2) A request by a person under subclause (1), or the taking of a sample of that person's blood, does not absolve that person from the obligation imposed on the person to submit to a breath analysis in accordance with clause 4 (1).
- (3) A medical practitioner by whom a sample of a person's blood is taken under an arrangement referred to in subclause (1) must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and

- (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (e) (Repealed)
- (4) The medical practitioner must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a laboratory prescribed by the regulations for analysis by an analyst to determine the concentration of alcohol in the blood.
- (5) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (5A) An authorised officer may make the arrangements referred to in subclause (4). The making of such arrangements under this subclause operates to discharge the duty provided for in subclause (4) to make those arrangements.
- (6) An analyst at the laboratory to which a sample of blood is submitted for analysis under this clause may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (7) An analysis referred to in subclause (6) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood to be analysed and the breaking of any seal securing the sample) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

### **Part 3 Blood analysis of accident patients following accidents**

#### **8 Hospitals to which this Part applies**

In this Part, a reference to a **hospital** includes a reference to any premises, institution or establishment prescribed by the statutory rules under the [Road Transport Act 2013](#) as a hospital for the purposes of Division 4 of Part 2 of Schedule 3 to that Act.

#### **9 Blood samples to be taken in hospitals from accident patients**

- (1) In this clause, **accident patient** means a person at least 15 years of age who attends at or is admitted into a hospital for examination or treatment because the person has been involved in an accident while operating a vessel.
- (2) Any medical practitioner by whom an accident patient is attended at a hospital is under a duty to take a sample of the patient's blood for analysis as soon as

practicable.

- (3) The medical practitioner is under a duty to take the sample whether or not the accident patient consents to the taking of the sample.
- (4) If there is no medical practitioner present to attend the accident patient at the hospital, the blood sample is to be taken by a registered nurse who is attending the patient and who is accredited by a hospital as competent to perform the sampling procedures.
- (5) An authorised sample taker is not required by this clause to take a sample of an accident patient's blood:
  - (a) if a sample of the accident patient's blood has already been taken in accordance with this clause by another authorised sample taker, or
  - (b) if the authorised sample taker has been informed by a police officer (or has reasonable grounds to believe) that the sample is required to be taken for the purposes of Part 5 of this Schedule.

#### **10 Offence—failure to take blood sample**

- (1) An authorised sample taker must not fail to take a person's blood sample as required under this Part.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence under subclause (1) if the authorised sample taker satisfies the court that:
  - (a) he or she believed on reasonable grounds that the taking of blood from the person from whom he or she was required by clause 9 to take a sample of blood would be prejudicial to the proper care and treatment of the person, or
  - (b) he or she did not believe that the person was at least 15 years of age and it was reasonable for him or her not to have so believed, or
  - (c) he or she did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a vessel that the person was operating, or
  - (d) without limiting paragraph (c)—he or she did not believe that the person was a person from whom he or she was required by clause 9 to take a sample of blood and it was reasonable for him or her not to have so believed, or
  - (e) the requirement that he or she take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or he or she believed on reasonable grounds that the requirement so arose, or

- (f) he or she did not know, and could not with reasonable diligence have ascertained, which of 2 or more persons involved in an accident on a vessel was or were a person or persons from whom he or she was required by clause 9 to take a sample or samples of blood, or
- (g) he or she was, by reason of the behaviour of the person, unable to take a sample of blood from the person at the time the person attended at or was admitted into the hospital or a reasonable time after so attending or being admitted, or
- (h) there was reasonable cause for him or her not to take a sample of blood from the person in accordance with this Part.

### **11 Offence—hindering or obstructing authorised sample taker taking blood sample**

- (1) A person must not hinder or obstruct an authorised sample taker in attempting to take a sample of the blood of any other person in accordance with this Part.

Maximum penalty: 20 penalty units.

- (2) A person must not:

- (a) by reason of the person's behaviour, prevent an authorised sample taker from taking a sample of the person's blood in accordance with this Part, or
- (b) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with this Part, wilfully do anything to alter the concentration of alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional).

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution of a person for an offence under subclause (2) of wilfully doing anything to alter the concentration of alcohol in the person's blood if he or she satisfies the court that he or she did the thing after the expiration of 2 hours after the accident concerned occurred.

- (4) In this clause:

***appropriate health professional*** means:

- (a) a medical practitioner or registered nurse, or a person of a class or description prescribed by the regulations under this Act, for the proper care and treatment of the person, or
- (b) a person belonging to a class of persons prescribed by the statutory rules under the [Road Transport Act 2013](#) as being an appropriate health professional for the

purposes of clause 18 of Schedule 3 to that Act.

## **12 Analysis of samples of blood taken under this Part**

- (1) The authorised sample taker by whom a sample of a person's blood is taken in accordance with this Part must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and
  - (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (2) The authorised sample taker must, as soon as reasonably practicable after the sample is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine the concentration of alcohol in the blood.

Maximum penalty: 20 penalty units.

- (3) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

- (4) A medical practitioner who, in another State or Territory, takes a sample of blood:
  - (a) from a person attended by the medical practitioner in consequence of an accident in New South Wales, and
  - (b) in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of clause 9,

may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.

- (5) An authorised officer may arrange for a sample of a person's blood taken in accordance with this Part to be submitted to a prescribed laboratory for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood.

- (5A) The making of arrangements under subclause (5) for analysis of a blood sample to determine the concentration of alcohol in the blood operates to discharge the duty referred to in subclause (2) to make those arrangements.

- (6) An authorised officer may not make arrangements under subclause (5) for analysis of a blood sample to determine the concentration in the blood of a drug other than alcohol unless:
- (a) the following circumstances apply:
    - (i) the accident that caused the person to attend at or be admitted to hospital was a fatal accident,
    - (ii) the person from whom the sample was taken was operating a vessel involved in the accident, or
  - (b) the following circumstances apply:
    - (i) the authorised officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol,
    - (ii) no authorised officer attended the scene of the accident that led to the taking of the sample or, although an authorised officer or authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with Part 5, to an assessment of his or her sobriety.
- (7) An analyst to whom a sample of blood, or a portion of a sample of blood (under subclause (4)), is submitted for analysis under this clause may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (8) An analysis referred to in subclause (7) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample of blood, or the portion of the sample of blood, to be analysed and the breaking of any seal securing the sample or portion) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

### **13 Supervisee may perform functions of medical practitioner under this Part**

- (1) Any duty of a medical practitioner under this Part and any relevant provisions of the regulations may be performed by a person acting under the supervision of the medical practitioner.
- (2) A duty performed by any such person is taken to have been performed by the medical practitioner.

## **Part 4 Blood and urine analysis of persons who are not accident**



## patients following fatal accidents

### 14 Power to arrest persons involved in fatal accidents for blood and urine tests

- (1) This clause applies to a person who:
  - (a) is at least 15 years old, and
  - (b) at the time of an accident was operating a vessel involved in the accident, and
  - (c) is not an accident patient within the meaning of clause 9.
- (2) An authorised officer may exercise the powers referred to in subclause (3) in relation to a person to whom this clause applies if the officer believes that:
  - (a) the accident is a fatal accident, or
  - (b) it is more likely than not that a person will die within 30 days as a consequence of the accident.
- (3) An authorised officer may:
  - (a) arrest the person without warrant, and
  - (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or prescribed place, and
  - (c) detain the person, or cause the person to be detained, at the hospital or other prescribed place to enable the person to provide blood and urine samples in accordance with this Part.
- (4) In this Part, **accident** means an accident involving a vessel.

### 15 Procedure for taking samples following arrest

- (1) Except as provided by clause 16, an authorised officer may require a person who has been arrested under clause 14 to provide samples of the person's blood and urine (whether or not the person consents to the samples being taken) in accordance with the directions of an authorised sample taker.
- (2) The authorised officer must inform any such authorised sample taker that the samples are required to be taken for the purposes of this Part.
- (3) The authorised sample taker by whom or under whose directions a sample of blood is taken in accordance with this Part must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and

- (c) mark or label the container for future identification, and
  - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (4) The authorised sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the blood contains a drug.
- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.
- (5A) An authorised officer may make the arrangements referred to in subclause (4). The making of such arrangements under this subclause operates to discharge the duty provided for in subclause (4) to make those arrangements.
- (6) The authorised sample taker under whose directions a sample of urine is provided in accordance with this Part must:
- (a) divide the sample into 2 approximately equal portions, and
  - (b) place each portion into a container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (7) Of the 2 sealed containers:
- (a) one must be handed by the authorised sample taker to the person from whom it was taken or to some other person on behalf of that person, and
  - (b) the other must be handed by the authorised sample taker to the authorised officer present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug.
- (8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this clause may carry out an analysis of the blood or urine to determine whether it contains a drug, but only if an authorised officer has notified the analyst in writing that a person involved in the accident that led to the sample of blood or urine being submitted for analysis:
- (a) has died within 30 days of the accident, or
  - (b) has died during the period beginning 30 days after the accident and ending 12 months after the accident and a medical practitioner has given advice that the

person died as a result of the accident.

- (9) Any duty of an authorised sample taker under this Part and any relevant provisions of the regulations may be performed by a person acting under the supervision of the authorised sample taker. A duty performed by any such person is taken to have been performed by the authorised sample taker.
- (10) An analysis under this clause may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.
- (11) A blood or urine sample that has been provided under this clause must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no authorised officer has made a notification relating to a death under subclause (8).

#### **16 When taking of samples not permitted**

An authorised officer cannot require a person to provide a sample under this Part:

- (a) if an authorised sample taker has objected on the grounds that compliance would be dangerous to the person's health, or
- (b) if it appears to that officer that it would, because of any injuries to the person, be dangerous to the person's medical condition to provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the accident concerned.

#### **17 Offences related to testing for drugs**

- (1) A person must not:
  - (a) on being required under this Part by an authorised officer to provide samples of blood and urine:
    - (i) refuse or fail to submit to the taking of the sample of blood, or
    - (ii) refuse or fail to provide the sample of urine,in accordance with the directions of an authorised sample taker, or
  - (b) between the time of the fatal accident concerned and the time when the person provides a sample that the person is required to provide under this Part, wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine (except at the direction or under the supervision of an appropriate health professional).

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) It is a defence to a prosecution for an offence under subclause (1) (a) if the defendant satisfies the court that the defendant was unable, on medical grounds, to provide a sample when the defendant was required to do so.
- (3) It is a defence to a prosecution of a person for an offence under subclause (1) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the fatal accident concerned.
- (4) If an authorised sample taker is informed by an authorised officer in accordance with this Part that a sample is required to be taken for the purposes of this Part, the authorised sample taker must not:
  - (a) fail to take the sample, or
  - (b) fail to comply with any requirement made by clause 15 (3), (4), (6) or (7) in relation to the sample.

Maximum penalty: 20 penalty units.

- (5) It is a defence to a prosecution for an offence under subclause (4) if the authorised sample taker satisfies the court that:
  - (a) the authorised sample taker believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
  - (b) the authorised sample taker believed on reasonable grounds that the person was less than 15 years of age, or
  - (c) the authorised sample taker was, because of the behaviour of the person, unable to take the sample, or
  - (d) there was other reasonable cause for the authorised sample taker not to take the sample.
- (6) A person must not hinder or obstruct an authorised sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Part.

Maximum penalty: 20 penalty units.

## **Part 5 Sobriety assessments and related drug analysis**

### **18 Authorised officer may require sobriety assessment**

- (1) An authorised officer may require a person to submit to an assessment of his or her sobriety in accordance with the directions of the officer if:
  - (a) the person has undergone a breath test in accordance with Part 2 of this Schedule, and
  - (b) the result of the test does not permit the person to be required to submit to a breath analysis.
- (2) A person cannot be required to submit to a sobriety assessment unless:
  - (a) an authorised officer has a reasonable belief that, by the way in which the person is or was operating a vessel the person may be under the influence of a drug, and
  - (b) the assessment is carried out by an authorised officer at or near the place where the person underwent the breath test.

### **19 Arrest following failure to submit to (or pass) sobriety assessment**

If the person refuses to submit to a sobriety assessment under this Part or, after the assessment has been made, an authorised officer has a reasonable belief that the person is under the influence of a drug, the officer may:

- (a) arrest that person without warrant, and
- (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purposes of this Part.

### **20 Procedure for taking samples following arrest**

- (1) Except as provided by clause 21, an authorised officer may require a person who has been arrested under clause 19 to provide samples of the person's blood and urine (whether or not the person consents to them being taken) in accordance with the directions of an authorised sample taker.
- (2) The authorised officer must inform any such authorised sample taker that the samples are required to be taken for the purposes of this Part.
- (3) The authorised sample taker by whom or under whose directions a sample of blood is taken in accordance with this Part must:
  - (a) place the sample into a container, and
  - (b) fasten and seal the container, and

- (c) mark or label the container for future identification, and
- (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.

Maximum penalty: 20 penalty units.

- (4) The authorised sample taker must, as soon as reasonably practicable after the sample of blood is taken, arrange for the sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the blood contains a drug.

Maximum penalty: 20 penalty units.

- (5) The person from whom the sample of blood was taken may, within 12 months after the taking of the sample, apply to the prescribed laboratory for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by the person.

- (5A) An authorised officer may make the arrangements referred to in subclause (4). The making of such arrangements under this subclause operates to discharge the duty provided for in subclause (4) to make those arrangements.

- (6) The authorised sample taker by whom or under whose directions a sample of urine is taken in accordance with this Part must:

- (a) divide the sample into 2 approximately equal portions, and
- (b) place each portion into a container, and
- (c) fasten and seal each container, and
- (d) mark or label each container for future identification.

- (7) Of the 2 sealed containers:

- (a) one must be handed by the authorised sample taker to the person from whom it was taken or to some other person on behalf of that person, and
- (b) the other must be handed by the authorised sample taker to the authorised officer present when the sample was taken and forwarded to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug.

- (8) An analyst at a prescribed laboratory to whom any blood or urine is submitted for analysis under this clause may carry out an analysis of the blood or urine to determine whether it contains a drug.

- (9) Any duty of an authorised sample taker under this Part and any relevant provisions of the regulations may be performed by a person acting under the supervision of the

authorised sample taker. A duty performed by any such person is taken to have been performed by the authorised sample taker.

- (10) An analysis under this clause may be carried out, and anything in connection with the analysis (including the receipt of the blood or urine to be analysed and the breaking of any seal) may be done, by a person acting under the supervision of an analyst and, in that event, is taken to have been carried out or done by the analyst.

## **21 When sobriety assessment and taking of samples not permitted**

An authorised officer cannot require a person to submit to a sobriety assessment or to provide a sample under this Part:

- (a) if the person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement and the medical practitioner does not object on the grounds that compliance would be prejudicial to the proper care and treatment of the person, or
- (b) if it appears to that officer that it would, because of the person's injuries, be dangerous to the person's medical condition to submit to the assessment or provide the sample, or
- (c) at any time after the expiration of 4 hours from the occurrence of the event referred to in clause 18 (2) (a) because of which the officer was entitled to require the person to submit to the assessment or provide the sample, or
- (d) at the person's home.

## **22 Offences related to sobriety assessments and testing for drugs**

- (1) A person must not, when required by an authorised officer to submit to an assessment under clause 18, refuse or fail to submit to the assessment in accordance with the directions of the officer.

Maximum penalty: 10 penalty units.

- (2) A person must not:

- (a) on being required under this Part by an authorised officer to provide samples of blood or urine:
  - (i) refuse or fail to submit to the taking of the sample of blood, or
  - (ii) refuse or fail to provide the sample of urine,in accordance with the directions of an authorised sample taker, or
- (b) wilfully do anything to introduce, or alter the amount of, a drug in the person's

blood or urine between the time of the event referred to in clause 18 (2) (a) in respect of which the person has been required by an authorised officer to submit to an assessment and the time when the person undergoes that assessment, or

- (c) wilfully do anything to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in clause 18 (2) (a) in respect of which the person has been required by an authorised officer to submit to an assessment and the time when the person provides a sample that the person is required to provide under this Part.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution for an offence under subclause (1) or (2) (a) if the defendant satisfies the court that the defendant was unable on medical grounds, when the defendant was required to do so, to submit to an assessment or to provide a sample.
- (4) It is a defence to a prosecution of a person for an offence under subclause (2) (b) of wilfully doing anything to introduce, or alter the amount of, a drug in the person's blood or urine if the person satisfies the court that the thing was done more than 4 hours after the time of the event referred to in clause 18 (2) (a).
- (5) If an authorised sample taker is informed by an authorised officer in accordance with this Part that a sample is required to be taken for the purposes of this Part, the authorised sample taker must not:
- (a) fail to take the sample, or
- (b) fail to comply with any requirement made by clause 20 (3) or (4) in relation to the sample.

Maximum penalty: 20 penalty units.

- (6) It is a defence to a prosecution for an offence under subclause (5) if the authorised sample taker satisfies the court that:
- (a) the authorised sample taker believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person, or
- (b) the authorised sample taker did not believe that the person was of or above the age of 15 years and it was reasonable for the authorised sample taker not to have so believed, or
- (c) the authorised sample taker was, because of the behaviour of the person, unable



to take the sample, or

(d) there was other reasonable cause for the authorised sample taker not to take the sample.

(7) A person must not hinder or obstruct an authorised sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Part.

Maximum penalty: 20 penalty units.

## **Part 6 Powers of authorised officers**

### **23 Powers of authorised officers**

(1) An authorised officer may, for the purposes of Part 3 of this Act and this Schedule, exercise the following powers:

(a) direct or signal a person who is operating a vessel to manoeuvre the vessel in a specified manner or to a specified place,

(b) direct or signal a person to stop the vessel and secure it in a specified manner,

(c) board a vessel for the purpose of investigating an offence the authorised officer reasonably suspects to have been committed while the vessel was underway,

(d) require any person whom the authorised officer reasonably suspects of having committed an offence against this Schedule or the regulations or who, in the opinion of the authorised officer, is in a position to give evidence relating to the commission of an offence, to state his or her full name and residential address.

(2) A person who:

(a) fails or refuses to comply with a requirement under this clause, or

(b) hinders an authorised officer acting in the exercise of the officer's powers under this clause, or

(c) when required to state his or her name and residential address, states a false name or address,

is guilty of an offence.

Maximum penalty: 10 penalty units.

(3) A person is not guilty of an offence of failing or refusing to comply with a requirement under subclause (1) (c) or (d) unless it is established that the authorised officer:

(a) warned the person that a failure or refusal to comply with the requirement is an offence, and

(b) identified himself or herself as an authorised officer.

#### **24 Identification of offender**

- (1) If a person is reasonably suspected by an authorised officer to have committed an offence against Part 3 of this Act, or this Schedule, the owner of the vessel concerned or person in charge of the vessel at the time of the alleged offence may be required to give information as to the full name and residential address of the person suspected of committing the offence and any other person may be required to give any information that may lead to the identification of the person.
- (2) The owner or person in charge may be required to give the information in the form of a written statement signed by the owner or person in charge.
- (3) A person who fails to comply with a requirement under this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

- (4) A person is not guilty of an offence under this clause if it is established that the person did not know and could not with reasonable diligence have established the name and address of the person.
- (5) A written statement purporting to be furnished under this clause and to contain particulars of the name and residential address of a person at the time of commission of an alleged offence against Part 3 of this Act or this Schedule is evidence in proceedings against the person that he or she was the operator of the vessel at the time of commission of the alleged offence without proof of signature if the person does not appear before the court.

#### **25 Detention of vessel in certain cases**

- (1) An authorised officer may take charge of and remove any vessel in respect of which an offence under Division 2 or 3 of Part 3 has been committed to any convenient place for safe keeping.
- (2) The court adjudicating may, if it is of the opinion that there was reasonable cause for any such taking charge, removal and safe keeping, order the costs, charges and expenses of it to be paid by the offender.

### **Part 7 Evidentiary and other procedural matters**

#### **26 Evidence of alcohol concentration revealed by breath or blood analysis in proceedings for offence under section 24**

- (1) In proceedings for an offence under section 24, evidence may be given of the concentration of alcohol present in the breath or blood of the person charged as determined by:

- (a) a breath analysing instrument operated by a police officer authorised to do so by the Commissioner of Police, or
  - (b) an analysis of the person's blood under this Schedule.
- (2) In proceedings for an offence under section 24, the concentration of alcohol so determined is taken to be the concentration of alcohol in the person's breath or blood at the time of the occurrence of the relevant event referred to in clause 2 (1) or (2) if the breath analysis was made, or blood sample taken, within 2 hours after the event unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time concerned was:
- (a) in the case of an offence under section 24 (1)—zero grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (b) in the case of an offence under section 24 (2)—less than 0.02 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (c) in the case of an offence under section 24 (3)—less than 0.05 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (d) in the case of an offence under section 24 (4)—less than 0.08 grammes of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (e) in the case of an offence under section 24 (5)—less than 0.15 grammes of alcohol in 210 litres of breath or 100 millilitres of blood.
- (3) Nothing in subclause (2) affects the operation of section 25.

**27 Certificate evidence about breath or blood analysis in proceedings for offences under section 24**

- (1) In proceedings for an offence under section 24 a certificate purporting to be signed by a police officer certifying that:
- (a) the officer is authorised by the Commissioner of Police to operate breath analysing instruments, and
  - (b) a person named in the certificate submitted to a breath analysis, and
  - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of this Act, and
  - (d) the analysis was made on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol determined by that breath analysing instrument and expressed in grammes of alcohol in 210 litres of breath or 100 millilitres of blood was present in the breath or blood of that person on the day and at the time

stated in the certificate, and

(f) a statement in writing required by clause 4 (3) was delivered in accordance with that subclause,

is admissible and is prima facie evidence of the particulars certified in and by the certificate.

- (2) In proceedings for an offence under section 24 or Part 2 of this Schedule a certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is admissible and is prima facie evidence of the particulars certified in and by the certificate.
- (3) In proceedings for an offence under section 24 or Part 2 of this Schedule, evidence of the condition of a breath analysing instrument, or of the manner in which it was operated, is not required unless evidence sufficient to raise doubt that the instrument was in proper condition and properly operated has been adduced.
- (4) In proceedings for an offence under section 24, a certificate purporting to be signed by an authorised sample taker certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that he or she was an authorised sample taker who attended a specified person who attended at or was admitted into a hospital as referred to in clause 9,
  - (b) that he or she took a sample of the person's blood in accordance with Part 3 of this Schedule, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
  - (c) that he or she dealt with the sample in accordance with clause 12 (1) and any relevant provisions of the regulations,
  - (d) that he or she used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container was sealed, and marked or labelled, in a specified manner.
- (5) In proceedings for an offence under section 24, a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:
  - (a) that the officer received a sample of a specified person's blood taken in accordance with Part 3 of this Schedule,
  - (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,

(c) that the container was sealed, and marked or labelled, in a specified manner.

(6) In proceedings for an offence under section 24, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

(a) that the analyst received, on a specified day, a sample of a specified person's blood in a container submitted for analysis under this Schedule,

(b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

(c) that on receipt by the analyst of the container, the seal was unbroken,

(d) that the analyst carried out an analysis of the sample to determine the concentration of alcohol in the sample,

(e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Schedule,

is admissible and is prima facie evidence:

(g) of the particulars certified in and by the certificate, and

(h) that the sample was a sample of the blood of that specified person, and

(i) that the sample had not been tampered with before it was received by the analyst.

(7) In proceedings for an offence under section 24, a certificate purporting to be signed by a person who, in another State or Territory:

(a) took a blood sample, or

(b) analysed a blood sample,

in accordance with provisions of a law of that State or Territory that substantially correspond to the provisions of Part 3 of this Schedule is admissible and is prima facie evidence of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under that Part.

## **28 Evidence of drugs revealed by blood or urine analysis in proceedings for offence under section 28**

In proceedings for an offence under section 28 (1):

(a) evidence may be given of:

(i) the presence of a drug, or

(ii) the presence of a particular concentration of a drug,

in the blood or urine of the person charged, as determined pursuant to an analysis under Part 3, 4 or 5 of this Schedule of a sample of the person's blood or urine, and

(b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, is to be taken to have been present in the blood or urine of that person when the event referred to in section 28 (1) occurred,

if the sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

**29 Certificate evidence about blood or urine analysis in proceedings for offences under section 28**

(1) In proceedings for an offence under section 28 (1), a certificate purporting to be signed by an authorised sample taker certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:

(a) that the authorised sample taker was an authorised sample taker who attended a specified person who attended at or was admitted into a hospital or a prescribed place as referred to in Part 3, 4 or 5 of this Schedule,

(b) that the authorised sample taker took a sample of the person's blood or urine in accordance with Part 3, 4 or 5 of this Schedule and any relevant provisions of the regulations, on the day and at the time stated in the certificate,

(c) that the authorised sample taker dealt with the sample in accordance with Part 3, 4 or 5 of this Schedule and any relevant provisions of the regulations,

(d) that the container was sealed, and marked or labelled, in a specified manner.

(2) In proceedings for an offence under section 28 (1), a certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible and is prima facie evidence of the particulars certified in and by the certificate:

(a) that the officer received a sample of a specified person's blood or urine taken in accordance with Part 3, 4 or 5 of this Schedule,

(b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine whether any drug was present in the sample,

(c) that the container was sealed, and marked or labelled, in a specified manner.

(3) In proceedings for an offence under section 28 (1), a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

(a) that the analyst received, on a specified day, a sample of a specified person's blood or urine in a container submitted for analysis under Part 3, 4 or 5 of this Schedule,

(b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

(c) that on receipt by the analyst of the container, the seal was unbroken,

(d) that the analyst carried out an analysis of the sample to determine whether any drug was present in the sample,

(e) that a specified drug ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of this Schedule,

is admissible and is prima facie evidence:

(g) of the particulars certified in and by the certificate, and

(h) that the sample was a sample of the blood or urine of that specified person, and

(i) that the sample had not been tampered with before it was received by the analyst.

(4) Subclauses (1)-(3):

(a) do not apply to proceedings brought on a charge that, by the operation of clause 32 (4), cannot be laid, and

(b) do not enable evidence to be given of or in relation to:

(i) the presence of a drug other than alcohol, or

(ii) the presence of a particular concentration of a drug other than alcohol,

in the blood of a person charged with an offence under section 28 (1), as determined by an analysis under Part 3 of this Schedule, unless the court is satisfied that the analysis was not arranged in contravention of clause 12 (6).

### **30 Certificate evidence may specify minimum concentrations**

If, in any proceedings in which evidence is permitted to be given of the results of an analysis, undertaken for the purposes of this Act, of a sample of a person's blood or urine,

evidence is given by a certificate under this Act to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration:

- (a) the certificate is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration, and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Act.

**31 Evidence of breath test, breath analysis or blood or urine analysis and related facts not admissible in insurance cases to prove intoxication or drug use**

- (1) For the purposes of any contract of insurance, any of the following facts are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of operating or of exercising effective control over a vessel:
  - (a) the fact that a person has undergone a breath test or submitted to a breath analysis under Part 2 of this Schedule,
  - (b) the result of a breath test or breath analysis,
  - (c) the fact that a person has been convicted of an offence under section 24 or clause 2 (4), 4 (4) or 5.
- (2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under Part 3, 4 or 5 of this Schedule are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or other drug or incapable of operating or of exercising effective control over a vessel.
- (3) Nothing in subclause (1) or (2) precludes the admission of any other evidence to show a fact referred to in the subclause.
- (4) The provisions of this clause have effect despite anything contained in any contract of insurance.
- (5) Any covenant, term, condition or provision in any contract of insurance is void:
  - (a) to the extent that the operation of this clause is excluded, limited, modified or restricted, or
  - (b) to the extent that it purports to exclude or limit the liability of the insurer in the event of any person being convicted of an offence under section 24 or Part 2 of this Schedule.



- (6) However, nothing in subclause (5) precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision under which the liability of the insurer is excluded or limited.

### **32 Double jeopardy in relation to alcohol and other drug offences**

- (1) If a person has been convicted of an offence under clause 4 (4), 5, 17 (1) or (6) or 22 (2), the person is not liable to be convicted of an offence under section 28 (1) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.
- (2) If a person has been convicted of an offence under section 28 (1), the person is not liable to be convicted of an offence under clause 4 (4), 5, 17 (1) or (6) or 22 (2) if the offence for which the person has been convicted and the other offence arose directly or indirectly out of the same circumstances.
- (3) If, by reason of the occurrence of an event referred to in clause 2 (1) or (2), a person is required by an authorised officer to undergo a breath test and as a consequence of that test to submit to a breath analysis and the person submits to the breath analysis in accordance with the directions of an authorised officer, the person cannot be charged with an offence under section 28 (1) of operating a vessel, at the time of that event, while the person was under the influence of intoxicating liquor.
- (4) A person who has had a sample of blood taken in accordance with Part 3 of this Schedule because of an accident is not to be charged with an offence under section 28 (1) if it is alleged as a component of the offence that the person was under the influence of alcohol and the offence relates to the same accident.

## **Part 8 Miscellaneous**

### **33 Personal liability for good faith taking of samples**

- (1) An authorised sample taker does not incur any civil or criminal liability in respect of anything properly and necessarily done by the authorised sample taker in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to detect the presence of any drug if the authorised sample taker:
- (a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood or urine from the person, or
- (b) believed on reasonable grounds that the person was involved in an accident on a vessel (whether in New South Wales or elsewhere) and he or she did not know, and could not with reasonable diligence have ascertained, whether or not he or she was required to take the sample from the person under Part 3 or 4 of this Schedule, or
- (c) was informed by an authorised officer that the person was a person from whom

the authorised sample taker was required under this Act to take the sample of blood or urine.

- (2) Subclause (1) extends to any person acting under the supervision of the authorised sample taker as referred to in clause 13, 15 (9) or 20 (9).

### **34 Regulations for the purposes of Part 3 and this Schedule**

- (1) Regulations may be made for the purposes of Part 3 and this Schedule.
- (2) Without limiting subclause (1), the regulations may make provision for or with respect to the following:
- (a) the methods and conditions to be observed by authorised sample takers in taking samples of blood or urine under this Schedule,
  - (b) the storage of samples so taken,
  - (c) the delivery or transmission of samples so taken to the persons from whom they are taken, to authorised officers or to analysts,
  - (d) the destruction of samples so taken.

## **Schedule 2 Repeals**

(Section 141)

### **Part 1 Acts**

*Maritime Services Act 1935 No 47*

*Navigation Act 1901 No 60*

### **Part 2 Regulations**

**Maritime Services Act 1935**

*Management of Waters and Waterside Lands Regulations—N.S.W.*

*Port Authority—Land Traffic Control Regulations—N.S.W.*

## **Schedule 3 Amendment of other Acts**

(Section 142)

### **3.1-3.6**

(Repealed)

### **3.7 Ports and Maritime Administration Act 1995 No 13**

**[1], [2] (Repealed)**

**[3] Section 23 Functions under marine legislation**

Omit the note.

**[4] (Repealed)**

**[5] Section 25 (a)**

Omit the paragraph. Insert instead:

- (a) to provide or arrange for the provision of marine safety infrastructure and services,
- (a1) to provide or arrange for the provision of other infrastructure and services for use by vessels,

**[6] Section 25**

Insert at the end of the section:

- (2) Examples of the infrastructure and services that may be provided under this section are as follows:
  - (a) the installation and maintenance of navigation aids,
  - (b) vessel traffic control within ports,
  - (c) pilotage services within ports,
  - (d) the dredging and maintenance of navigation channels (including the improvement of river banks and other land for navigation),
  - (e) hydrographic services,
  - (f) moorings for vessels,
  - (g) wharves, piers, jetties and boat ramps,
  - (h) waste pump-out facilities for vessels,
  - (i) fire-fighting and rescue services relating to vessels and navigable waters.
- (3) The exercise of a function under this section is subject to any applicable provisions of the marine or other legislation.

**[7] (Repealed)**

**[8] Section 42 Waterways Fund**

Insert after section 42 (4) (a):

(aa) payments authorised by the Minister to fund the Minister's functions relating to marine safety and the provision of infrastructure and services for vessels, and

**[9] (Repealed)**

**[10] Section 48 Meaning of "owner" of vessel or cargo**

Insert "and has exclusive possession of the vessel" after "vessel" in section 48 (2) (b).

**[11]-[14] (Repealed)**

**[15] Part 7A**

Insert before Part 8:

## **Part 7A Occupation of navigable waters**

### **99A Definition of "occupation"**

In this Part:

**occupation** of waters includes the use of moorings in any waters.

### **99B Regulation of occupation of navigable waters by vessels, floating objects and structures**

- (1) The regulations may prohibit or regulate the occupation of navigable waters by vessels, floating objects or structures.
- (2) Any such regulation may prohibit any such occupation of navigable waters without a licence or other approval from the Minister.
- (3) Any such regulation may be made for the purposes of marine safety or for the purposes of the management of the occupation of navigable waters by vessels, floating objects and structures.

### **99C Administrative reviews by NCAT**

- (1) The regulations may provide that a person may apply to the Civil and Administrative Tribunal for the administrative review under the *Administrative Decisions Review Act 1997* of a decision made in respect of the person under the regulations under this Part in relation to matters requiring a licence or other

approval from the Minister.

- (2) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (2) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

## Schedule 4 Savings, transitional and other provisions

(Section 143)

### Part 1 Regulations

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

*Road Transport (Safety and Traffic Management) Amendment (Blood Sampling) Act 2000*

*Transport Legislation Amendment (Safety and Reliability) Act 2003* (but only to the extent that it amends this Act)

*Marine Safety Amendment (Random Breath Testing) Act 2005*

*Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005* (but only to the extent that it amends this Act)

*Marine Safety Amendment Act 2008*

any other Act that amends this Act

- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State, a Port Corporation or any authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State, a Port Corporation or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

- (4) The regulations may make provision for or with respect to the following:
- (a) providing that a specified provision of this Act or the regulations has no effect until a specified Act or Regulation referred to in Schedule 2, or a specified provision of any such Act or Regulation, is repealed,
  - (b) construing all references in this Act or the regulations, or specified references, to marine safety licences or a particular type of marine safety licence as meaning, or including a reference to, a licence, permit or other authorisation, or a particular type of licence, permit or other authorisation, issued under an Act or Regulation referred to in Schedule 2.
  - (c) construing all references in this Act or the regulations, or specified references, to marine safety licences or a particular type of marine safety licence as meaning, or including a reference to, a certificate or other authorisation, or a particular type of certificate or other authorisation, issued under the National law,
  - (d) continuing on the effect of any specified provision of this Act that has been repealed by the *Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012* and of specified regulations made under any such provision,
  - (e) any matter of a savings or transitional nature that is consequent on the enactment or operation of the National law.
- (5) For the avoidance of doubt, any provision of the regulations made for the purposes of this clause may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Existing speed limit and other notices in navigable waters**

Any notice prohibiting or regulating the operation of vessels in navigable waters that was erected under the *Maritime Services Act 1935* before the commencement of section 11 of this Act is taken to be a notice displayed by the Minister under that section.

### **3 Offences under *Marine (Boating Safety—Alcohol and Drugs) Act 1991***

A reference in Part 3 to a **major offence** includes a reference to an offence against Part 2 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* that was committed before the repeal of that Act by this Act.

### **4 Saving of existing marine safety licences**

- (1) A registration, licence, certificate or other authority that was in force under an Act or regulation repealed by this Act immediately before its repeal (being an authority of the same type as a marine safety licence under this Act) is taken to have been granted

under this Act as a marine safety licence.

- (2) If such a licence is a pilot's licence under section 7 of the *Marine Pilotage Licensing Act 1971*, the licence is taken to have been granted for a period of 5 years after the repeal of that Act.
- (3) This clause is subject to the provisions of this Act and the regulations, including regulations under this Schedule.
- (4) For avoidance of doubt, section 33 applies to a registration, licence, certificate or other authority that is taken to have been granted under this Act as a marine safety licence.

#### **5 Saving of appointments of harbour masters**

A person who, immediately before the repeal of Part 7 of the *Ports and Maritime Administration Act 1995*, was appointed as a harbour master, or to act in the capacity of a harbour master, under that Act is taken to have been so appointed under this Act.

#### **6 Saving of evidentiary provisions**

The provisions of section 34 of the *Maritime Services Act 1935* (Proof of certain matters not required), as in force immediately before the repeal of that section, continue to apply to any prosecution or proceedings that may be instituted or continued despite the repeal of that Act, or any other Act or regulation, by this Act.

#### **7 Investigations into previous matters**

An investigation may be made under Division 3 of Part 8 of this Act into a matter even though the matter occurred before the commencement of that Division.

#### **8 Preservation of exemptions granted under repealed Acts**

The regulations under this Schedule may provide that exemptions granted under an Act repealed by this Act from any provision of or made under the repealed Act is taken to be an exemption granted under this Act from a specified requirement of or made under this Act. Any such exemption may be varied or revoked in accordance with this Act.

#### **9 Staged repeal under *Subordinate Legislation Act 1989* of regulations to be repealed by this Act**

A regulation that is to be repealed by this Act is taken not to be repealed by section 10 of the *Subordinate Legislation Act 1989*.

#### **10 General saving**

Anything done under an Act or regulation repealed by this Act that has any force or effect immediately before its repeal, is taken to have been done under the corresponding provision of this Act.

### **Part 3 Provisions consequent on enactment of [Marine Safety Amendment \(Random Breath Testing\) Act 2005](#)**

#### **11 Definition**

In this Part:

**repealed Act** means the [Marine \(Boating Safety—Alcohol and Drugs\) Act 1991](#).

#### **12 Amendments not to apply to offences occurring before the commencement of amendments**

- (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 [Marine Safety Amendment \(Random Breath Testing\) Act 2005](#) are to be determined as if the amendment had not been enacted.
- (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.

#### **13 References to and in relation to marine safety licences in sections 27 and 40**

- (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.
- (2) A reference in section 27:
  - (a) to the cancellation or suspension of a marine safety licence is taken to include a reference to the withdrawal of 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.

### **Part 4 Provisions consequent on enactment of [Marine Safety Amendment Act 2008](#)**

#### **14 Definitions**

In this clause:

**amending Act** means the [Marine Safety Amendment Act 2008](#).

#### **15 Amendments not to apply to offences occurring before the commencement of**



### **amendments**

- (1) Proceedings for offences committed, or alleged to have been committed, before the substitution of Part 3 and Schedule 1 by the amending Act are to be determined as if the amendments had not been enacted.
- (2) Accordingly, the law (including any relevant provision of this Act) that would have been applicable to the proceedings had the amendments not been enacted continues to apply to the proceedings as if the amendments had not been enacted.

### **16 References to and in relation to marine safety licences in section 28A**

- (1) A reference in section 28A to a marine safety licence is taken to include a reference to a licence to which section 10 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* applied immediately before its repeal.
- (2) A reference in section 28A:
  - (a) to the cancellation or suspension of a marine safety licence is taken to include a reference to the withdrawal of recognition of a recognised licence (within the meaning of section 10 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*), 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.

### **17 Offences relating to disqualification from holding certain marine safety licences**

Section 59A or 63A (as inserted by the amending Act):

- (a) applies only to a disqualification occurring after the commencement of the section, and
- (b) does not apply to any offence committed before the commencement of the section.

### **18 Appointment of harbour masters**

A harbour master whose appointment as harbour master was in force immediately before the substitution of section 85 by the amending Act is taken to have been appointed under section 85 as so substituted.