

# Marine Safety Act 1998 No 121

[1998-121]



New South Wales

## Status Information

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### Notes—

- **Does not include amendments by**  
[Passenger Transport Act 2014 No 46](#) (not commenced)

### Authorisation

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# Marine Safety Act 1998 No 121



New South Wales

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# 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,
- (b1) to provide an effective framework for the enforcement of marine legislation,
- (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.

**defence vessel** has the same meaning as in the National law.

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

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

**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 2012](#).

**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 Authority of New South Wales** means the Newcastle Port Corporation established under the [Ports and Maritime Administration Act 1995](#).

**prescribed illicit drug** has the same meaning as in the [Road Transport Act 2013](#).

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

**regulated Australian vessel** has the same meaning as in the [Navigation Act 2012](#) of the Commonwealth.

**responsible licensing official**, in relation to a marine safety licence, means—

- (a) Transport for NSW, in the case of any of the following kinds of licences—

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

**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 2012](#) defines **State waters** differently for the purposes of that Act. The definition in the [Marine Pollution Act 2012](#) extends to waters within the limits of the State.

**Transport for NSW** or **TfNSW** means Transport for NSW constituted under the [Transport Administration Act 1988](#).

**vessel** is defined in section 5.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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) and 69 and provisions relating to the marine safety licences specified in section 29 (f), (g) and (g1)) do not apply to or in respect of commercial vessels, foreign 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 Act does not apply to defence vessels**

This Act does not apply to or in respect of a defence vessel.

# **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**

### **Division 1 General provisions**

#### **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, wash limits and other restrictions on operation of vessels in navigable waters**

- (1) The Minister may prohibit or regulate the operation of vessels in navigable waters by a notice published in the Gazette or displayed in or in the vicinity of those waters.
- (2) The Minister may, by such a notice, impose any restriction considered appropriate for—

- (a) the safety of the public, or
- (b) the protection of vessels or other property, or
- (c) the protection of the environment, or
- (d) the amenity of other users of the specified waters or occupiers of land adjoining those waters.

(2A) In particular, the Minister may impose restrictions on—

- (a) the speed of vessels, or
- (b) the creation of wash by vessels, or
- (c) the creation of noise by vessels, or
- (d) the mooring or anchoring of vessels, or
- (e) the use of vessels for particular purposes, or
- (f) the use of vessels in particular areas (including the exclusion of vessels from particular areas).

(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 vessels and people in navigable waters during special events**

- (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 notice published in the Gazette.
- (3) The Minister may, without limiting subsection (2), exclude vessels and people by such a notice from specified areas (the **exclusion zone**) during the event concerned and impose any other restrictions of a kind that may be imposed under section 11.
- (4) An authorised officer may direct—
- (a) a person in an exclusion zone, or
  - (b) a person operating a vessel in an exclusion zone,
- to move out of the exclusion zone or comply with any restrictions imposed in accordance with section 11.
- (5) A person who—
- (a) continues to operate a vessel, or
  - (b) allows a vessel to remain in an exclusion zone, or
  - (c) remains in an exclusion zone, or
  - (d) does not comply with restrictions imposed under section 11,
- in contravention of a direction by an authorised officer is guilty of an offence.
- Maximum penalty—10 penalty units.
- (6) 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.
- (7) 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 foreign vessel or regulated Australian vessel), 100 penalty units (where the vessel is any other commercial vessel other than a hire and drive vessel) or 50 penalty units (where the vessel is a hire and drive vessel or 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 foreign vessel or regulated Australian vessel), 100 penalty units (where the vessel is any other commercial vessel other than a hire and drive vessel) or 50 penalty units (where the vessel is a hire and drive vessel or recreational vessel), or imprisonment for 9 months (in the case of a first offence) or 12 months (in the case of a second or subsequent offence), or both.

(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,
- (c) the impact of the alleged offence on others using or near to the waters in which the offence is alleged to have been committed, including nearby swimmers, divers, surfers, fishers and people using any adjacent land.

(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.

**hire and drive vessel** has the same meaning as in the National law.

### **13A Operating vessel in a menacing manner**

- (1) **Offence—intent to menace** A person must not operate a vessel in any navigable waters in a manner that menaces another person with the intention of menacing that other person.

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) **Offence—possibility of menace** A person must not operate a vessel in any navigable waters in a manner that menaces another person if the person ought to have known that the other person might be menaced.

Maximum penalty—20 penalty units or imprisonment for 12 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence).

- (3) **Application of section** This section applies—

(a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property, and

(b) whether or not that person or that property is in or on any navigable waters.

- (4) **Defence** A person is not guilty of an offence against this section if the person could not, in the circumstances, reasonably avoid menacing the other person.

- (5) **Double jeopardy** A person is not liable to be convicted of—

(a) both an offence against subsection (1) and an offence against subsection (2), or

(b) both an offence against this section and an offence against section 13, arising out of a single incident.

### **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—

(i) prevent the operation or other use of a vessel in contravention of section 14, or

(ii) 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.

(1A) Any such direction under subsection (1) may, without limitation, include the following—

(a) a direction to the owner, master or operator of a vessel to cease operating a vessel,

(b) a direction to the owner, master or operator of a vessel to remove the vessel from the water,

(c) a direction to the owner, master or operator of a vessel to moor the vessel in a certain location.

(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—

- (a) if the obstruction is a foreign vessel or regulated Australian vessel that has sunk, is unseaworthy or is likely to cause danger to the public or shipping or property damage—100 penalty units, or
  - (b) in any other case—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 6A of the [Ports and Maritime Administration Act 1995](#) deals with the management of wharves, moorings, port facilities and works.

## **Division 2 Seizure, impoundment or forfeiture of recreational vessels**

### **19A Seizure of vessels**

- (1) An authorised officer may do any one or more of the things set out in this section if the authorised officer reasonably believes that—
  - (a) a recreational vessel has been operated in a way so as to commit an offence under section 13A, or
  - (b) a person has committed an offence involving the death of, or grievous bodily harm to, another person caused by the operation of a vessel, being an offence

that comprises the crime of murder or manslaughter or an offence against the *Crimes Act 1900*, or

(c) a person has committed an offence under section 13 (1) (b) or (c) and a court attendance notice has been issued in relation to the offence.

(2) The authorised officer may—

(a) use reasonable force to seize and take charge of the recreational vessel and cause it to be moved to a place determined by the Commissioner of Police or Transport for NSW and immediately, or as soon as practicable afterwards, give or send the owner of the vessel a receipt relating to the seizure of the vessel, or

(b) give the owner of the vessel a notice (a **recreational vessel production notice**) requiring the owner to move or cause the recreational vessel to be moved to, or to produce the vessel or cause it to be produced to an authorised officer at, a place specified in the notice no later than on the date and time specified in the notice and on production of the vessel, or as soon as practicable afterwards, give or send the owner of the vessel a receipt relating to the production of the vessel.

### **19B Production notices**

(1) The date specified in a recreational vessel production notice for production of a recreational vessel must be a date that is no later than the first working day occurring 5 days after the notice is given.

(2) A production notice may be given personally or by post and must state the ground on which it is being given.

(3) A production notice given by post is taken to have been given on the day that is 7 days after it is posted.

(4) The disposal of a vessel within the period of 5 days after a production notice is given in relation to the vessel does not affect the requirement to produce the vessel in accordance with the notice, except as provided by subsection (5).

(5) A production notice ceases to have effect in relation to a vessel if it is withdrawn by the Commissioner of Police or Transport for NSW by notice in writing given to—

(a) the vessel owner concerned, or

(b) a person who purchased the vessel after the production notice was given who satisfies the Commissioner of Police or Transport for NSW, as the case requires, that the purchase was made in good faith for value and without notice, at the time of the purchase, of the production notice.

**19C Powers and duties relating to seizure of recreational vessels**

- (1) A recreational vessel may be seized under section 19A (2) (a)—
  - (a) in State waters, or
  - (b) on a road or public place, or
  - (c) in any other place, with the consent of the owner or occupier of the place or by a police officer under the authority of a search warrant issued under section 19P.
- (2) For the purpose of exercising the powers conferred by section 19A, an authorised officer may cause any locking device or other feature of the vessel that is impeding the seizure and movement of the vessel to be removed, dismantled or neutralised and may, if the owner or any other person will not surrender the keys to the vessel, start the vessel by other means.
- (3) A vessel may be moved under section 19A—
  - (a) by being operated, whether or not under power, or by being towed or pushed, or in any other manner, and
  - (b) by one or more authorised officers or, at the direction of an authorised officer, by persons engaged by the Commissioner of Police or Transport for NSW.
- (4) If a vessel is moved in accordance with this section by a tow truck, the person operating or driving the tow truck may take such action as is reasonable or necessary to facilitate the towing or movement of the vessel in a manner that does the least damage to the vessel. In taking any such action, the person is not liable for any damage to the vessel that the person causes.

**19D Removal, impounding and production of vessel**

- (1) Any recreational vessel moved to, or produced at, a place in accordance with section 19A may, subject to the regulations, be impounded by the Commissioner of Police or Transport for NSW at that place or may be moved to and impounded at any other place determined by the Commissioner or Transport for NSW.
- (2) A certificate in writing given by an authorised officer as to the fact and cost of any such movement is evidence of those matters.

**19E Failure to comply with production notice**

- (1) The owner of a recreational vessel is guilty of an offence if—
  - (a) the owner is given a recreational vessel production notice in relation to the vessel, and
  - (b) without reasonable excuse, the owner fails to move the vessel to or produce it at,



or cause it to be moved to or produced at, the place, on the date and within the time period, specified in the notice.

Maximum penalty—30 penalty units.

- (2) The responsible licensing official may suspend the registration of a vessel for a period not exceeding 3 months if the owner of the vessel—
  - (a) is found guilty of an offence against this section, or
  - (b) pays the whole or part of the amount specified in a penalty notice issued in respect of an offence against this section, or in any process subsequent to such a penalty notice, as the amount that is payable in order to dispose of the alleged offence without having it dealt with by a court, or
  - (c) has not paid the amount so specified, has not elected to have the matter dealt with by a court and the time for electing to have the matter so dealt with has elapsed.
- (3) Any suspension under subsection (2) is in addition to any penalty imposed by a court or prescribed by the regulations for the offence.
- (4) If the owner of a recreational vessel is issued with a second recreational vessel production notice after failing to comply with subsection (1) and the owner fails to comply with subsection (1) in relation to the second production notice, the vessel is forfeited to the Crown unless already forfeited under section 19F or the court otherwise directs under section 19G.

#### **19F Forfeiture of vessel**

- (1) A vessel that is used in connection with an offence specified in section 19A (1) that is a second or subsequent offence under that section within a 5-year period is, by the finding of guilt by the court, forfeited to the Crown unless already forfeited under section 19E or the court otherwise directs under section 19G.
- (2) Any forfeiture under this section is in addition to any other penalty that may be imposed for the offence concerned, but for the purposes of any rights of appeal against a penalty so imposed by the court finding the offence to be proven, the forfeiture is taken to be, or to be part of, that penalty.

#### **19G Commutation of forfeiture**

- (1) The court that finds a person guilty of an offence referred to in section 19E (4) or 19F (1) may, at the time of making that finding, by order direct that the forfeiture that would otherwise be imposed under the relevant provision by that finding be commuted to a period of impounding specified in the order, if the court is satisfied that the forfeiture of the vessel will cause extreme hardship to the owner of the vessel or any other person.

- (2) The period for which a vessel was impounded under section 19D is to be reckoned as counting towards a period of impounding imposed under this section.
- (3) A vessel impounded by an order of a court under this section is to be retained by the Commissioner of Police or Transport for NSW for the time required by the order, unless it is sooner released under this Division.

#### **19H Interested persons to be notified**

- (1) The owner of a vessel is to give the holder of any registered interest in the vessel notice of the imposition of any sanction in relation to the vessel operated in connection with the offence concerned under section 19A.
- (2) The Commissioner of Police is to notify Transport for NSW of any offence under this Division.
- (3) Transport for NSW is to notify the owner of a vessel of the imposition of any action taken in relation to the vessel operated in connection with any offence under this Division.
- (4) In this section, **registered interest**, in relation to a vessel, means a security interest in the vessel with respect to which a financing statement (within the meaning of the [Personal Property Securities Act 2009](#) of the Commonwealth) has been registered under that Act.

#### **19I Retention of vessel impounded under this Division**

The Commissioner of Police or Transport for NSW is to retain a vessel impounded under section 19D for the period of 3 months after its impoundment, unless it is sooner released under this Division or in accordance with the regulations.

#### **19J Early release of vessel on application to Local Court**

- (1) A person may apply to the Local Court for an order for the release into the person's custody of a vessel impounded under this Division before the end of the period of impounding imposed on the vessel.
- (2) An order cannot provide for release on a day that is less than 5 working days after the vessel was impounded.
- (3) In determining whether to make an order under this section, the Local Court is entitled to have regard to the following—
  - (a) the safety of the public and the public interest in preventing the use of a vessel that the Court considers is reasonably likely in all the circumstances to be used for further offences specified in section 19A (1),
  - (b) any alleged extreme hardship to a person other than the owner of the vessel

arising from the impoundment of the vessel.

- (4) The vessel is to be released by order of the Local Court only after the applicant has paid in full any applicable movement, towing and storage fees under section 19K.
- (5) An applicant into whose custody a vessel is released by an order under this section must acknowledge in writing receipt of the vessel from the custody of the Commissioner of Police or Transport for NSW.

#### **19K Release of impounded vessel**

- (1) The regulations may prescribe the fees (if any) payable in respect of the movement, towage and storage of an impounded vessel and the persons responsible for payment of those fees.
- (2) It is the duty of the Commissioner of Police or Transport for NSW to endeavour to cause any impounded vessel to be available for collection by the owner of the vessel as soon as the person is entitled to it.
- (3) However, the Commissioner of Police or Transport for NSW is not required to release any vessel under this section unless all movement, towing and storage fees payable under this section in respect of the impounded vessel have been paid in full.
- (4) An applicant to whom a vessel is released under this section must in writing acknowledge receipt of the vessel from the custody of the Commissioner of Police or Transport for NSW.
- (5) The Commissioner of Police or Transport for NSW may waive the whole or any part of the prescribed fees for movement, towage and storage of a vessel.

#### **19L Safe keeping of vessels**

The Commissioner of Police or Transport for NSW has (in their official capacity) a duty to take all reasonable steps to secure an impounded vessel against theft or damage while impounded.

#### **19M Disposal of vessels**

- (1) The Commissioner of Police or Transport for NSW may cause an impounded or forfeited vessel to be offered for sale in the circumstances prescribed by the regulations. The sale is to be by public auction or public tender.
- (2) The vessel may be disposed of otherwise than by sale if the Commissioner of Police or Transport for NSW believes it is appropriate in the circumstances to dispose of the vessel otherwise than by sale.
- (3) If the vessel offered for sale is not sold, the Commissioner of Police or Transport for NSW may dispose of the vessel otherwise than by sale.

- (4) The regulations may make provision for or with respect to the disposal of the proceeds of any such sale, including provisions for or with respect to entitling persons to seek to be paid any such proceeds.
- (5) The Commissioner of Police or Transport for NSW may dispose of a vessel that is the subject of forfeiture under section 19F by releasing it to Transport for NSW to be used for the purposes of crash testing and any educational program for operators of vessels established by Transport for NSW.
- (6) Transport for NSW may cause any vessel released to it to be used for the purposes of crash testing and any educational program for operators of vessels established by Transport for NSW.

### **19N Protection from liability with respect to impounding and other matters**

No action lies against the Crown, the Minister, the Commissioner of Police, Transport for NSW or any authorised officer for—

- (a) any damage to, or theft of, a vessel caused by, or arising from, impounding or crash testing a vessel in accordance with this Division, or
- (b) failure by any person to give the holder of a registered interest notice as required by section 19H.

### **19O Failure to prosecute**

- (1) No action lies against the Crown, the Minister, the Commissioner of Police, Transport for NSW or any authorised officer in respect of the seizure or impounding of a vessel under this Division for an alleged offence for which no proceedings or process are taken or issued.
- (2) This section does not protect an authorised officer from liability in respect of the seizure, otherwise than in good faith, of a vessel.

### **19P Search warrants**

- (1) A police officer may apply to an authorised warrants officer for a search warrant if the police officer has reasonable grounds for believing that there is or, within 72 hours, will be on any premises a vessel that has been operated as referred to in section 19A.
- (2) An authorised warrants officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer named in the warrant—
  - (a) to enter the premises, and
  - (b) to search the premises for such a vessel, and
  - (c) to seize such a vessel, and otherwise deal with it, in accordance with this Division.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section—

**authorised warrants officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**premises** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **19Q Appeal against decisions**

- (1) A person may appeal to the Local Court against the decision of a responsible licensing official made in relation to the person under section 19E (2).
- (2) Notice of an appeal is to be lodged with the Local Court within 28 days after the date on which the person was notified of the relevant decision.
- (3) Subject to the rules of court of the Local Court, the notice of appeal must specify the grounds of appeal.
- (4) An appeal does not operate to stay the effect of the official's decision unless the Local Court otherwise orders.
- (5) If the effect of a decision is stayed under this section, it is stayed only for so long as any conditions imposed by the Local Court when ordering the stay are complied with.

### **19R Procedure on notice of appeal**

- (1) The relevant registrar of the Local Court must give notice of the time and place of the hearing of an appeal to the responsible licensing official and to the appellant.
- (2) A notice given under subsection (1) is to inform the person to whom it is given of the grounds of the appeal.
- (3) The hearing of an appeal may proceed regardless of any omission from or error in a notice given under this section or the failure to give the notice if the Local Court is satisfied that the appellant and the responsible licensing official knew of the time and place of the hearing and were not prejudiced by the omission, error or failure to give notice.

### **19S Procedure on appeal**

- (1) An appeal under section 19Q is to be heard before the Local Court.
- (2) The Local Court is to hear and determine the appeal and may confirm (with or without variation) the decision appealed against, set aside the decision, dismiss the appeal or make any other order as seems just to the Court in the circumstances.

- (3) In varying a decision in an appeal under this Division, the Local Court may exercise only such powers as the responsible licensing official could have exercised under this Act when making that decision.
- (4) If the decision that is appealed against was based on an offence committed (or alleged to have been committed) by the appellant under this Act or any other law, the appeal against the decision does not permit review of—
  - (a) the guilt or innocence of the appellant for the offence, or
  - (b) the imposition of a penalty or the level of a penalty imposed on the appellant for the offence.
- (5) The Local Court is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.
- (6) The civil standard of proof applies in proceedings on an appeal.
- (7) Subject to the regulations, any material considered by the responsible licensing official in reaching the decision the subject of the appeal and copies of any notices, documents or letters served on the appellant by the responsible licensing official together with details of their service are admissible in the proceedings.
- (8) The authenticity of any such material, notices, documents, letters and service must be certified by an authorised officer.
- (9) The decision of the Local Court given in any appeal under this Division is final and is taken to be the decision of the responsible licensing official and to be carried into effect accordingly.

**19T Regulations may make provision for appeals and original applications**

The regulations may make provision for or with respect to the following—

- (a) the matters that the Local Court may or must take into account (or not take into account) when determining an appeal under this Division,
- (b) the manner of notification of specified decisions by a responsible licensing official or any other person to persons affected by the decisions,
- (c) the notification of appeal rights concerning specified decisions to persons affected by the decision,
- (d) the giving of reasons for specified decisions,
- (e) the grounds on which the Local Court may (or may not) allow an appeal against specified decisions,
- (f) the adjournment of appeals under this Division,

- (g) the internal review of specified decisions as a precondition to appeals against such decisions under this Division,
- (h) the actions that may be taken by the Local Court, or must be taken by a responsible licensing official or any other person, after the determination of an appeal under this Division,
- (i) the circumstances in which specified decisions are or are not stayed (or may or may not be stayed) by the Local Court pending the determination of an appeal under this Division,
- (j) the admission of specified certified documents in evidence in an appeal under this Division as prima facie evidence of the matters stated in the document.

#### **19U References to vessels include trailers**

In this Division, a reference to a vessel includes a reference to any trailer used to carry the vessel.

### **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) **novice 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 alcohol or other drugs**

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

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

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, while there is present in the person's breath or blood the middle range prescribed concentration of alcohol, operate a vessel in any waters.

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, while there is present in the person's breath or blood the high range prescribed concentration of alcohol, operate a vessel in any waters.

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) **Alternative verdicts for lesser offences** If the court on a prosecution of a person for an offence against any subsection of this section is not satisfied that the offence is proven but is satisfied that the person has committed an offence against any other subsection of this section of a less serious nature, the court may acquit the person of the offence with which the person is charged and find the person guilty of an offence against the other subsection. The person is liable to be punished accordingly.

- (7) For the purposes of subsection (6)—

- (a) an offence against subsection (1), (2), (3) or (4) is of a less serious nature than an offence against subsection (5), and
- (b) an offence against subsection (1), (2) or (3) is of a less serious nature than an offence against subsection (4), and
- (c) an offence against subsection (1) or (2) is of a less serious nature than an offence against subsection (3), and

(d) an offence against subsection (1) is of a less serious nature than an offence against subsection (2).

(8) **Presence of higher concentration of alcohol not defence** It is not a defence to a prosecution for an offence against a subsection of this section if the defendant proves that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, a greater concentration of alcohol was present in the defendant's breath or blood than the prescribed concentration of alcohol referred to in the subsection.

(9) **Defence for offence relating to novice range prescribed concentration of alcohol** It is a defence to a prosecution for an offence against subsection (1) if the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, the presence in the defendant's breath or blood of the novice 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.

## **25 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine**

(1) **Presence of prescribed illicit drug in person's oral fluid, blood or urine** A person must not, while there is present in the person's oral fluid, blood or urine any prescribed illicit drug, operate a vessel in any waters.

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) If a person is charged with an offence against subsection (1)—

(a) the court attendance notice may allege that more than one prescribed illicit drug was present in the oral fluid, blood or urine of the person and the proceedings are 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 there was present in the oral fluid, blood or urine of the defendant—

(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.

(3) **Presence of morphine in person's blood or urine** A person must not, while there is

present in the person's blood or urine any morphine, operate a vessel in any waters.

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) If a person is charged with an offence against subsection (3), the offence is proved if the court is satisfied beyond reasonable doubt that morphine was present in the blood or urine of the defendant (whether or not in combination with any other drugs).
- (5) **Defence for offence relating to presence of morphine in person's blood or urine** It is a defence to a prosecution for an offence against subsection (3) if the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, the presence in the defendant's blood or urine of morphine was caused by the consumption of a substance for medicinal purposes.
- (6) **Meaning of "consumption for medicinal purposes"** For the purposes of this section, a substance is consumed for medicinal purposes only if it is—
  - (a) a drug prescribed by a medical practitioner taken in accordance with a medical practitioner's prescription, or
  - (b) a codeine-based medicinal drug purchased from a pharmacy that has been taken in accordance with the manufacturer's instructions.

## **26 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—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).

- (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—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).

- (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 1 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.

**27, 28**

## **Division 3 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 against a provision specified in the Table to this subsection is automatically disqualified from holding or obtaining such a licence for—
  - (a) the period specified in Column 1 of the Table for that offence—if during the period of 5 years before the conviction the person had not been convicted of any other major offence, or
  - (b) the period specified in Column 2 of the Table for that offence—if during the period of 5 years before the conviction the person has been convicted of any other major offence.

#### **Table Disqualification periods**

<b>Offence</b>	<b>Column 1</b>	<b>Column 2</b>
Section 24 (1), (2) or (3)	3 months	6 months
Section 24 (4)	6 months	12 months
Section 24 (5)	12 months	2 years
Section 25 (1)	6 months	12 months
Section 25 (3)	6 months	12 months
Section 26 (1)	6 months	12 months

- (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.
- (5) The court is to cause particulars of any cancellation, suspension or disqualification under this section to be forwarded to Transport for NSW.

**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 26 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 responsible licensing official.
- (2) The responsible licensing official may approve or refuse applications for marine safety licences in accordance with this Act and the regulations.
- (3) Without limiting subsection (1) or (2), a boat driving licence may be granted by including it on a driver licence granted in accordance with statutory rules made under the [Road Transport Act 2013](#).

**Note—**

Section 57A of the [Road Transport Act 2013](#) enables the statutory rules under that Act to make provision for the granting of driver licences under that Act that include boat driving licences. The section provides that such combined licences have effect as both driver licences and boat driving licences for the purposes of the road transport legislation and marine legislation.

### **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 responsible licensing official 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 responsible licensing official 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.

(1A) If a boat driving licence is to be included on a driver licence granted under the [Road Transport Act 2013](#), Transport for NSW (as the responsible licensing official for a boat driving licence) may alter the period during which the boat driving licence is in force so as to align it with the period during which the driver licence is in force.

(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 responsible licensing official 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 responsible licensing official may at any time remove the suspension of a marine safety licence, or a disqualification, imposed by the responsible licensing official 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.
- (2A) The court is to cause particulars of any cancellation, suspension or disqualification under this section to be forwarded to Transport for NSW.
- (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 responsible licensing official 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 overloading of the vessel, or
- (c) any other reason,

the operation of the vessel is likely to endanger any person.

#### **45 Person not to operate unsafe vessel**

A person must not operate a vessel if the person knows, or ought reasonably to know, that it is an unsafe vessel.

Maximum penalty—50 penalty units.

#### **46 Repair and disposal of unsafe vessels**

- (1) An authorised officer may board and inspect a vessel that the authorised officer reasonably suspects may be an unsafe vessel.
- (2) An authorised officer may board and inspect a vessel only if it is in, or in the immediate vicinity of, State waters.
- (3) If an authorised officer inspects a vessel and determines that the vessel is an unsafe vessel, the authorised officer may, by notice in writing given to the owner or operator of the vessel, require the owner or operator to take the measures specified in the notice to repair the vessel or otherwise make the vessel safe within a specified period.
- (4) If the owner or operator of the vessel to whom a notice is given under this section fails to comply with any of the requirements of the notice, within the period specified in the notice, the owner or operator is guilty of an offence.

Maximum penalty—50 penalty units.

- (5) If the owner or operator of the vessel to whom a notice is given under this section fails to comply with any of the requirements of the notice within the period specified in the notice, an authorised officer may do any of the following—
- (a) take the measures specified in the notice,
  - (b) detain the vessel (either on or off the water) provided such action is considered by the Minister to be reasonable in the circumstances,
  - (c) dispose of the vessel provided such action is considered by the Minister to be reasonable in the circumstances.
- (6) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt from a person to whom a notice has been given under this section the costs incurred in taking action under subsection (5).

**47, 48 (Repealed)**

## **Division 2 Vessel registration**

### **49 Vessels requiring State registration**

- (1) All vessels 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 responsible licensing official exempts it from registration by order in writing given to the owner or master of the vessel.

## **51 Offence to enter or operate unregistered vessel in State waters**

- (1) The owner of a State registrable vessel must not allow the vessel to enter, or 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 allow the vessel to enter, or 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 in such an area or being so operated.

Maximum penalty—20 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 responsible licensing official may refuse to register a vessel or may suspend or cancel its registration, the responsible licensing official may do so on the following grounds—

- (a) the responsible licensing official 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 responsible licensing official 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,
- (c) the responsible licensing official may do so on grounds that the vessel is subject to sanctions under Division 2 of Part 2.

## **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—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) 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.
- (4A) The court is to cause particulars of any disqualification under subsection (4) to be forwarded to Transport for NSW.
- (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 responsible licensing official 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 the Port Authority of New South Wales under an operating licence under Division 3 of Part 2 of the [Ports and Maritime Administration Act 1995](#)—that Authority (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 the Port Authority of New South Wales, means a body corporate that would be a subsidiary (as determined by the [Corporations Act 2001](#) of the Commonwealth) of that Authority if that Authority 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) (Repealed)
  - (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 Deferment 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,
  - (f) watchkeeping requirements on vessels in ports,
  - (g) the period of advance notification required for a shipping berth,
  - (h) the turning of a propeller of a vessel at a wharf.
- (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.
- (4) A direction given under this section may be given in relation to a particular vessel or a particular class of vessels.

### **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.

### **91B Information to be provided to harbour master on request**

- (1) The master of a vessel in a port must, on enquiry from the harbour master of the port, whether by voice, sound or visual signal or radio or electronic communication, indicate his or her immediate intentions regarding the navigation or securing of the vessel.
- (2) The master of a vessel who, without reasonable excuse, fails to respond to an enquiry from a harbour master under this section (either immediately or within such time as the harbour master may allow) is guilty of an offence.

Maximum penalty—50 penalty units.

### **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 Compliance and investigation

### 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 Transport for NSW,
  - (b) a member of staff of the Port Authority of New South Wales,
  - (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 or assault of authorised officers and others**

- (1) A person must not, without reasonable excuse, prevent or obstruct any authorised officer or other person in the exercise of a function under the marine legislation.
- (2) A person must not assault or threaten, or use abusive language to, an authorised officer or other person in the exercise of a function under the marine legislation, or cause any other person to do so.
- (3) A person must not impersonate an authorised officer.

Maximum penalty—100 penalty units or imprisonment for 3 months, or both.

**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.

**98A Requirements of masters of recreational vessels to render assistance**

The master of a recreational vessel who has reason to believe that 1 or more persons are in distress on a vessel at sea—

- (a) must cause the vessel to proceed as fast as practicable to the assistance of the person or persons, and
- (b) must, where practicable, inform the person or persons that the vessel is proceeding to their assistance, and
- (c) must give any necessary assistance that the master is able to give to any person or persons in distress.

**Note 1—**

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.

**Note 2—**

Similar requirements apply to masters of commercial vessels—see section 85 of the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth as applied by section 9C of this Act.

**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 sections 98 (3) and 99 are as follows—

- (a) the time, place and nature of the marine accident,
  - (a1) an explanation of the circumstances 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 investigations**

- (1) The Minister may order an investigation into any one or more 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) an incident in connection with a port facility that have caused, or has the potential to cause, a danger to life or serious damage to property.
- (2) An investigation may be carried out and a report provided to the Minister whether or not—
  - (a) an investigation is being, or has been, conducted under the *Passenger Transport Act 2014* 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, or
  - (c) the matter is or may be subject to an inquest or inquiry under the *Coroners Act 2009*.

### **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 provide a copy of a draft report, or proposed recommendations in a report, on a confidential basis, to the Minister or any other person before completing the report—
  - (a) if the investigator thinks that it is desirable or necessary to do so for the purposes

of transport or marine safety, or

(b) to allow the making of submissions about the draft report, or

(c) to give advance notice of the likely form of the report.

(4) The investigator may include in a report any submissions made in response to a draft report or draft recommendations.

### **109 Obligations of persons who receive draft reports or recommendations**

(1) A person must not copy, or disclose to a person or a court, the contents of a draft report or draft recommendations provided to the person under this Division except—

(a) as required or authorised by or under this or any other Act, or

(b) where necessary to take steps to remedy safety issues identified in the draft report, or

(c) where necessary to prepare submissions on the draft report or draft recommendations.

Maximum penalty—100 penalty units.

(2) A person who is provided with a draft report under this Division—

(a) cannot be required to disclose it to a person or a court, and

(b) is not entitled to take any disciplinary action against an employee of the person on the basis of the report.

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

(1) If an investigation has been ordered under this Division that involves any alleged incompetence or misconduct of the holder of a marine safety licence, the responsible licensing official may suspend the licence pending the investigation and determination of the matter if the responsible licensing official 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 responsible licensing official 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 responsible licensing official, 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) suspend or cancel a marine safety licence, or impose conditions on any such licence,
  - (d) disqualify a person from holding or obtaining a marine safety licence for a specified period,
  - (e) 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,
  - (f) in the case of an investigation concerning or related to a public passenger service provided by a ferry, inform Transport for NSW or the Chief Investigator of the report and the action taken by the Minister on the report.
- (3) If Transport for NSW is the responsible licensing official for a marine safety licence rather than the Minister, the Minister may require Transport for NSW to take action for the purposes of subsection (2) in connection with that licence.
- (4) Any action taken under this section may extend to more than 1 marine safety licence held by a person.
- (5) The Minister or Transport for NSW (as the case requires) must give written notice to the holder of a marine safety licence of any action taken under this section against that holder.

### **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 2012* 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 72 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.
- (5) In this section, a reference to a boat driving licence includes a reference to an authorisation to operate a power-driven vessel issued under the law of another jurisdiction.

### **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, operator 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, operator or 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 or operator 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 or operator 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 or operator 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 or operator of the vessel concerned.

- (5) Without limiting subsection (2), an authorised officer may require the operator of a vessel to supply a written statement containing the identity and address of the owner or 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 owner or master 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) This section does not apply to investigations under section 114 (1) (a) or (2).

**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.
- (3) This section does not apply to investigations under section 114 (1) (a) or (2).

**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) An authorised officer may carry out any such inspection.
- (3) (Repealed)
- (4) (Repealed)
- (5) Nothing in this section limits any functions of the Minister under Division 3.
- (6) (Repealed)



### **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 Transport for NSW 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 issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations, or the [Marine Pollution Act 2012](#) or the regulations made under that Act, that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

- (6) 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.

#### **126A Camera recorded offences**

Schedule 1A makes provision for camera recorded offences.

#### **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, Transport for NSW 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 or Transport for NSW, or
  - (d) any such licence was or was not suspended or cancelled, or
  - (e) a person named in the certificate is or was disqualified from holding a marine safety licence and the circumstances of any such disqualification, or
  - (f) a vessel named in the certificate was or was not registered under this Act,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, Transport for NSW or Port Authority of New South Wales,
  - (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 Transport for NSW 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 Transport for NSW,
- (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 and the relevant location, as specified for that day on the website of Geoscience Australia.

(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 or Transport for NSW 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.
- (4) The court is to cause particulars of any recommended suspension, cancellation or disqualification under this section to be forwarded to Transport for NSW.



## **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 or TfNSW 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 and any person acting on behalf of the Minister, the State or TfNSW do not incur any liability as a consequence of the Minister or TfNSW 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, Transport for NSW 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, Transport for NSW 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 Testing for alcohol and drug use

(Section 28C)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule—

**accident** means an accident involving a vessel.

**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 analysing instrument** 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](#).

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

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

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

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

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

## Part 2 Powers to test and take samples

### Division 1 Introduction

#### 2 When testing, analysis, assessment or sample taking not permitted

- (1) An authorised officer cannot require a person to submit to a test, analysis or assessment, or to provide a sample, under this Schedule—
  - (a) if the person has been admitted to hospital for medical treatment unless—
    - (i) the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement, and
    - (ii) 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) in relation to the taking of a sample under clause 12—if an authorised sample taker has objected on the grounds that compliance would be dangerous to the person's health, or
  - (c) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to the person's medical condition to submit to the test, analysis or assessment or provide the sample, or
  - (d) at any time after the expiration of the relevant period (if any) for the test, analysis, assessment or sample concerned, or
  - (e) at the person's home.
- (2) The **relevant period** for the purposes of subclause (1) (d) is—
  - (a) for a breath test or breath analysis under Division 2—the period of 2 hours from the occurrence of the event by reason of which the officer was entitled under clause 3 (1) to require the person to submit to a breath test, or
  - (b) for a blood sample taken under clause 6—at any time after the expiration of 4 hours from the occurrence of the event that entitled the officer under clause 3 (1) to require the person to submit to a breath test, or
  - (c) for an oral fluid test given or an oral fluid sample taken under Division 3—at any time after the expiration of 2 hours from the occurrence of the event that entitled the officer under clause 7 (1) to require the person to undergo an oral fluid test or provide a sample, or
  - (d) for a blood sample taken under clause 10—at any time after the expiration of 4 hours from the occurrence of the event that entitled the officer under clause 7 (1) to require the person to submit to an oral fluid test, or

- (e) for a blood or urine sample taken under clause 13—at any time after the expiration of 4 hours from the occurrence of the accident concerned, or
- (f) for a blood or urine sample taken under Division 5—at any time after the expiration of 4 hours from the occurrence of the event that entitled an authorised officer under clause 3 (1) to require the person to submit to the breath test that entitled an authorised officer under clause 14 (1) to require the person to submit to a sobriety assessment.

- (3) This clause has effect despite any other provision of this Schedule that confers a power on an authorised officer to require a person to submit to a test, analysis or assessment, or to provide a sample, under this Schedule.

**Note—**

This clause does not limit or otherwise affect the duty of a medical practitioner to take a sample from an accident hospital patient under clause 12.

## **Division 2 Random breath testing and breath analysis**

### **3 Power to conduct random breath testing**

- (1) An authorised officer may require a person to submit to 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) Before requiring a person to submit to a breath test under subclause (1), 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) Without limiting any other power or authority, an authorised officer may, for the purposes of this clause, request or signal the operator of a vessel to stop the vessel.
- (4) A person must comply with any request or signal made or given to the person by an authorised officer under subclause (3).

Maximum penalty—10 penalty units.

### **4 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 3 (1) 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 grams 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 3 (1) 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 grams 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 3 (1) 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 grams in 210 litres of breath or 100 millilitres of blood, or
- (d) the person refused to submit to a breath test required by an authorised officer under clause 3 (1) or fails to submit to 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 such 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 submitting to a breath analysis in accordance with this Division, and
- (d) if clause 6 permits the taking of a blood sample from the person—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 purpose of the person providing such a blood sample in accordance with clause 6.

## **5 Breath analysis following arrest**

- (1) An authorised officer may require a person who has been arrested under clause 4 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 grams 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.

## **6 Taking blood sample following arrest**

- (1) An authorised officer may require a person to provide a sample of the person's blood (whether or not the person consents to the provision of the sample) in accordance with the directions of an authorised sample taker if the person has been physically unable to submit to a breath analysis as directed under this Division.
- (2) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the authorised officer that the sample is required to be taken for the purposes of this clause.

### **Note—**

A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 21.

- (3) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.

### **Note—**

Part 4 provides for the procedures relating to the taking and analysis of samples taken under this clause.

## **Division 3 Random oral fluid testing for prescribed illicit drugs**

### **7 Power to conduct random oral fluid testing**

- (1) A police officer may require a person to submit to one or more oral fluid tests for prescribed illicit drugs 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) Without limiting any other power or authority, a police officer may, for the purposes of this clause, request or signal the operator of a vessel to stop the vessel.
- (3) A person must comply with any request or signal made or given to the person by a police officer under subclause (2).

Maximum penalty—10 penalty units.

- (4) A police officer may direct a person who has submitted to an oral fluid test under subclause (1) to remain at or near the place of testing in accordance with the police officer's directions for such period as is reasonable in the circumstances to enable the test to be completed.

- (5) A person must comply with any direction given to the person under subclause (4).

Maximum penalty—10 penalty units.

### **8 Arrest following failed oral fluid test or refusal or inability to submit to test**

- (1) A police officer may exercise the powers referred to in subclause (2) in respect of a person if—
- (a) it appears to the officer from one or more oral fluid tests carried out under clause 7 (1) by the officer that the device by means of which the test was carried out indicates that there may be one or more prescribed illicit drugs present in the person's oral fluid, or
  - (b) the person refused to submit to an oral fluid test required by an officer under clause 7 (1) or fails to submit to that test in accordance with the directions of the officer.

- (2) A police 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 such other place as the officer considers desirable and there detain the person (or cause the person to be detained) for the purpose of the person providing oral fluid samples in accordance with clause 9, and
- (c) if clause 10 permits the taking of a blood sample from the person—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 purpose of the person providing such a blood sample in accordance with clause 10.

### **9 Providing an oral fluid sample for oral fluid analysis following arrest**

- (1) A police officer may require a person who has been arrested under clause 8 to provide an oral fluid sample in accordance with the directions of the officer.
- (2) An oral fluid sample taken under this clause may be used for the purpose of conducting an oral fluid analysis.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

### **10 Taking blood sample following arrest**

- (1) A police officer may require a person to provide a sample of the person's blood (whether or not the person consents to the provision of the sample) in accordance with the directions of an authorised sample taker if the person—



- (a) has attempted to provide an oral fluid sample as directed under clause 9 (1), but
- (b) has been physically unable to comply with that direction (for example, because no oral fluid was physically able to be produced).

- (2) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the police officer that the sample is required to be taken for the purposes of this clause.

**Note—**

A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 21.

- (3) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood contains any prescribed illicit drugs.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

## **Division 4 Accidents**

### **11 Interpretation**

- (1) In this Division—

***accident hospital patient*** means a person who—

- (a) attends at, or is admitted into, a hospital for examination or treatment because the person has been involved in an accident (whether occurring in New South Wales or elsewhere), and

- (b) is at least 15 years of age.

- (2) A reference in this Division to a ***hospital*** includes a reference to any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

### **12 Blood samples to be taken in hospitals from certain accident hospital patients**

- (1) Any medical practitioner by whom an accident hospital 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.
- (2) The medical practitioner is under a duty to take the sample whether or not the accident hospital patient consents to the taking of the sample.
- (3) If there is no medical practitioner present to attend the accident hospital 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.

- (4) This clause does not require the taking of a sample of blood from an accident hospital patient unless, at the time of the accident concerned, the accident hospital patient was operating a vessel or in the water at the time of the accident.
- (5) A medical practitioner or registered nurse is not required by this clause to take a sample of an accident hospital patient's blood if—
  - (a) a sample of the accident hospital patient's blood has already been taken in accordance with this clause by another medical practitioner or nurse, or
  - (b) the medical practitioner or nurse 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 clause 13.
- (6) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

**13 Power to arrest persons involved in fatal accidents for blood and urine tests**

- (1) An authorised officer may exercise the powers referred to in subclause (2) in relation to an accident participant if—
  - (a) the accident participant is not an accident hospital patient, and
  - (b) the authorised officer believes that—
    - (i) the accident is a fatal accident, or
    - (ii) it is more likely than not that a person will die within 30 days as a consequence of the accident.
- (2) An authorised officer may—
  - (a) arrest the accident participant without warrant, and
  - (b) take the accident participant (or cause the accident participant to be taken) with such force as may be necessary to a hospital or prescribed place, and
  - (c) detain the accident participant (or cause the accident participant to be detained) at the hospital or other prescribed place to enable the person to provide blood and urine samples in accordance with this clause.
- (3) An authorised officer may require an accident participant who has been arrested under subclause (2) to provide samples of the participant's blood and urine (whether

or not the participant consents to the samples being taken) in accordance with the directions of an authorised sample taker.

- (4) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the authorised officer that the sample is required to be taken for the purposes of this clause.

**Note—**

A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 21.

- (5) A blood or urine sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood or urine contains a drug.

- (6) In this clause—

**accident participant** means a person who—

- (a) at the time of an accident, was operating a vessel involved in the accident, and  
(b) is at least 15 years of age.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

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

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

- (1) An authorised officer may require a person to submit to an assessment of the person's sobriety in accordance with the directions of the officer if—
- (a) the person has submitted to a breath test in accordance with Division 2 by reason of the occurrence of an event referred to in clause 3 (1), 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 the person may be under the influence of a drug—
- (i) by the way in which the person is or was operating a vessel, or
- (ii) by the behaviour, condition or appearance of the person at the time of or after the relevant event referred to in subclause (1) (a), and
- (b) the assessment is carried out by an authorised officer at or near the place where the person underwent the breath test.

**Note—**

Clause 2 (2) (f) provides for the period after the expiration of which an authorised officer cannot require a person who has been required to submit to a sobriety assessment, to provide a blood or urine sample under clause 16.

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

If the person refuses to submit to a sobriety assessment under this Division 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 authorised 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 purpose of providing a blood or urine sample in accordance with this Division.

**16 Taking samples following arrest**

- (1) An authorised officer may require a person who has been arrested under clause 15 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) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the authorised officer that the sample is required to be taken for the purposes of this clause.

**Note—**

A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 21.

- (3) A blood or urine sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood or urine contains a drug.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

**Division 6 Offences relating to testing and sample taking**

**17 Offences—refusal or failure to submit to test, analysis or assessment**

- (1) A person must not, when required to do so by an authorised officer under this Part, refuse or fail—
  - (a) to submit to a breath test under Division 2 in accordance with the officer's directions, or
  - (b) to submit to a breath analysis under Division 2 in accordance with the officer's directions, or

(c) to submit to an oral fluid test under Division 3 in accordance with the officer's directions, or

(d) to submit to a sobriety assessment under Division 5 in accordance with the officer's directions.

Maximum penalty—

(a) in the case of a breath test, oral fluid test or sobriety assessment—10 penalty units, or

(b) in the case of a breath analysis—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 against subclause (1) if the defendant proves to the court's satisfaction that the defendant was unable on medical grounds, at the time the defendant was required to do so, to submit to the test, analysis or assessment concerned.

#### **18 Offences—refusal or failure to provide samples or preventing sample taking**

(1) A person must not, when required to do so by an authorised officer under this Part, refuse or fail—

(a) to submit to the taking of a blood sample under clause 6 in accordance with the directions of the sample taker, or

(b) to submit to the taking of a blood sample under clause 10, 13 or 16 in accordance with the directions of the sample taker, or

(c) to provide an oral fluid sample under Division 3 for an oral fluid analysis in accordance with the directions of the officer, or

(d) to provide a urine sample in accordance with the directions of the sample taker.

Maximum penalty—

(a) in the case of an offence against subclause (1) (b) in relation to a requirement to provide a sample under clause 10 or of an offence against subclause (1) (c)—30 penalty units (in the case of a first offence) or 50 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence), or

(b) in any other case—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) A person must not, by reason of the person's behaviour, prevent a sample taker from taking a sample of the person's blood for the purposes of clause 12.

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 against subclause (1) if the defendant proves to the court's satisfaction that the defendant was unable on medical grounds, at the time the person was required to do so, to submit to the taking of the sample or to provide the sample concerned.

(4) In this clause—

**sample taker**, in relation to a sample, means an authorised sample taker who is required to take the sample concerned under this Part.

### **19 Offences—wilful introduction or alteration of concentration or amount of alcohol or other drugs**

(1) A person must not wilfully do anything—

- (a) to alter the concentration of alcohol in the person's breath or blood between the time of the event referred to in clause 3 (1) in respect of which the person has been required by an authorised officer to submit to a breath test under Division 2 and the time when the person submits to that test, or
- (b) to alter the concentration of alcohol in the person's breath or blood between the time of the event referred to in clause 3 (1) in respect of which the person has been required by an authorised officer to submit to a breath test under Division 2 and the time when the person submits to a breath analysis or provides a sample of the person's blood under that Division, or
- (c) to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid between the time of the event referred to in clause 7 (1) in respect of which the person has been required by an authorised officer to submit to an oral fluid test under Division 3 and the time when the person submits to that test, or
- (d) to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid or blood between the time of the event referred to in clause 7 (1) in respect of which the person has been required by an authorised officer to submit to an oral fluid test under Division 3 and the time when the person provides a sample of the person's oral fluid or blood under that Division, or
- (e) in the case of an accident involving the person—to alter the concentration of alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with Division 4, or
- (f) to introduce, or alter the amount of, a drug in the person's blood or urine between

the time of the event that entitled an authorised officer under clause 3 (1) to require the person to submit to the breath test that entitled an authorised officer under clause 14 (1) to require the person to submit to a sobriety assessment and the time when the person submits to that assessment, or

- (g) to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event that entitled an authorised officer under clause 3 (1) to require the person to submit to the breath test that entitled an authorised officer under clause 14 (1) to require the person to submit to a sobriety assessment and the time when the person provides a sample that the person is required to provide under Division 5.

Maximum penalty—

- (a) in the case of an offence against subclause (1) (a), (b), (e), (f) or (g)—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), or
- (b) in the case of an offence against subclause (1) (c) or (d)—30 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).

(2) It is a defence—

- (a) in the case of the prosecution of a person for an offence against subclause (1) (c)—if the person proves to the court's satisfaction that the thing that the person is accused of doing was done more than 2 hours after the time of the event referred to in clause 7 (1), or
- (b) in the case of the prosecution of a person for an offence against subclause (1) (d) in relation to oral fluid—if the person proves to the court's satisfaction that the thing that the person is accused of doing was done more than 2 hours after the time of the event referred to in clause 7 (1), or
- (c) in the case of the prosecution of a person for an offence against subclause (1) (d) in relation to blood—if the person proves to the court's satisfaction that the thing that the person is accused of doing was done more than 4 hours after the time of the event referred to in clause 7 (1), or
- (d) in the case of the prosecution of a person for an offence against subclause (1) (e) in relation to a non-fatal accident—if the person proves to the court's satisfaction that the thing that the person is accused of doing was done more than 2 hours after the accident occurred, or
- (e) in the case of the prosecution of a person for an offence against subclause (1) (e) in relation to a fatal accident—if the person proves to the court's satisfaction that

the thing that the person is accused of doing was done more than 4 hours after the accident occurred, or

- (f) in the case of the prosecution of a person for an offence against subclause (1) (f)—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 4 hours after the time of the event that entitled an authorised officer under clause 3 (1) to require the person to submit to the breath test that entitled an authorised officer under clause 14 (1) to require the person to submit to the sobriety assessment.

- (3) In this clause—

**appropriate health professional** means a medical practitioner or registered nurse (or a person belonging to a class or description or persons prescribed by the regulations) who is responsible for the proper care and treatment of the person.

## **20 Offences—hindering or obstructing authorised officers or sample takers**

- (1) A person must not hinder or obstruct an authorised officer in attempting to administer an oral fluid test on, or take a sample of oral fluid from, any other person in accordance with Division 3.

Maximum penalty—20 penalty units.

- (2) A person must not hinder or obstruct a 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.

- (3) In this clause—

**sample taker**, in relation to a sample, means an authorised sample taker who is required to take the sample concerned under this Part.

## **21 Offences—refusal or failure to take sample**

- (1) An authorised sample taker must not refuse or fail to take a blood or urine sample that the authorised sample taker is required to take under this Part.

Maximum penalty—20 penalty units.

- (2) It is a defence to a prosecution for an offence against subclause (1) if the defendant proves to the court’s satisfaction that—

(a) the defendant believed on reasonable grounds that the taking of the sample from the person from whom the sample was to be taken would be prejudicial to the proper care and treatment of the person, or

(b) the defendant believed on reasonable grounds that the person was less than 15 years of age, or



- (c) the defendant was, because of the behaviour of the person, unable to take the sample, or
  - (d) there was other reasonable cause for the defendant not to take the sample.
- (3) Without limiting subclause (2), it is also a defence to a prosecution for an offence against subclause (1) in relation to a failure to take a sample under clause 12 from a person involved in an accident if the defendant proves to the court's satisfaction that—
- (a) the defendant did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a vessel, or
  - (b) without limiting paragraph (a), the defendant did not believe on reasonable grounds that the person was a person from whom the defendant was required under clause 12 to take a sample of blood, or
  - (c) the requirement that the defendant take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or the defendant believed on reasonable grounds that the requirement arose after the expiration of that period, or
  - (d) the defendant did not know (and could not with reasonable diligence have ascertained) which of 2 or more persons involved in an accident involving a vessel was or were a person or persons from whom the defendant was required by clause 12 to take a sample or samples of blood.

### **Part 3 Requests and applications for additional analysis of samples**

#### **22 Request for blood sample to be taken for analysis when person required to submit to breath analysis**

- (1) A person who is required by an authorised officer under Division 2 of Part 2 to submit to a breath analysis may request the authorised officer to arrange for an authorised sample taker to take, in the presence of an authorised officer, a sample of that person's blood, for analysis in accordance with Part 4 to determine the concentration of alcohol in the blood at the person's own expense.

**Note—**

Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this subclause.

- (2) A request by a person under subclause (1), or the taking of a sample of that person's blood, does not excuse that person from the obligation imposed on the person to submit to a breath analysis in accordance with Division 2 of Part 2.

#### **23 Application for additional analysis of blood or oral fluid sample that has already been**

**taken**

- (1) A person from whom a blood, urine or oral fluid sample was taken under this Schedule may apply to an authorised 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.
- (2) An application under subclause (1) must be made—
  - (a) in the case of a blood or urine sample—within 12 months after the sample was taken, or
  - (b) in the case of an oral fluid sample—within 6 months, or such longer period as may be prescribed by the regulations, after the sample was taken.
- (3) In this clause—

**authorised laboratory** means a laboratory prescribed by the regulations for the purposes of this clause.

## **Part 4 Procedures for taking and analysing samples**

### **Division 1 Preliminary**

#### **24 Definitions**

In this Part—

**prescribed laboratory** means a laboratory prescribed by the regulations for the purposes of this Part.

**security box** means a locked security box of a type approved by the Commissioner of Police.

### **Division 2 Procedures for sample taking**

#### **25 Procedures for the taking of blood samples**

- (1) This clause applies in relation to the taking of a blood sample under this Schedule by an authorised sample taker (a **blood sample taker**).
- (2) A blood sample taker 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.

- (3) The blood sample must be placed in a security box (whether by the blood sample taker, an authorised officer or a person acting under the direction of the sample taker or officer) as soon as is reasonably practicable after the procedures in subclause (2) have been completed.
- (4) The blood sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
- (5) Subject to subclause (7), the blood sample taker must make arrangements for the blood sample to be submitted to a prescribed laboratory for analysis by an analyst to determine—
  - (a) the concentration of alcohol in the blood if that is a purpose for which the sample may be used, or
  - (b) whether the blood contains a prescribed illicit drug if that is a purpose for which the sample may be used, or
  - (c) whether the blood contains another drug if that is a purpose for which the sample may be used.

**Note—**

See Part 2 for the purposes for which samples taken under that Part may be used.

- (6) A medical practitioner of another jurisdiction who, under a law of the other jurisdiction that substantially corresponds to clause 12, takes a sample of blood from a person attended by the medical practitioner in consequence of an accident in New South Wales 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.
- (7) An authorised officer may make the arrangements referred to in subclause (5) instead of the blood sample taker. The making of such arrangements under this subclause operates to discharge the duty of the blood sample taker under subclause (5) to make those arrangements.
- (8) The following additional provisions apply in relation to a sample taken under clause 12—
  - (a) an authorised officer may arrange for a blood sample taken from a person under clause 12 to be submitted to a prescribed laboratory for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood,
  - (b) an authorised officer may not make arrangements under paragraph (a) for analysis of a blood sample to determine the concentration in the person's blood of

a drug (other than alcohol) unless—

- (i) the accident that caused the person to attend at or be admitted to hospital was fatal and the person was a person referred to in clause 12 (4), or
- (ii) the officer has reasonable grounds to believe that, at the time of the accident concerned, the person was under the influence of a drug (other than alcohol) and either no authorised officer attended the scene of the accident or there was no reasonable opportunity for authorised officers attending the scene to require the person to submit to a sobriety assessment under Division 5 of Part 2.

## **26 Procedures for the taking of urine samples**

- (1) This clause applies in relation to the taking of a urine sample under this Schedule by an authorised sample taker (a **urine sample taker**).
- (2) A urine sample taker 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 urine, and
  - (e) make appropriate arrangements for the urine sample to be submitted to a prescribed laboratory for analysis by an analyst.
- (3) The urine sample must be placed in a security box (whether by the urine sample taker, an authorised officer or a person acting under the direction of the sample taker or officer) as soon as is reasonably practicable after the procedures in subclause (2) have been completed.
- (4) The urine sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
- (5) Subject to subclause (6), the urine sample taker must make arrangements for the urine sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug if that is a purpose for which the sample may be used.

### **Note—**

See Part 2 for the purposes for which samples taken under that Part may be used.

- (6) An authorised officer may make the arrangements referred to in subclause (5) instead

of the urine sample taker. The making of such arrangements under this subclause operates to discharge the duty of the urine sample taker under subclause (5) to make those arrangements.

## **27 Procedures for the taking of oral fluid samples**

- (1) A police officer who is provided with an oral fluid sample under clause 9 (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 oral fluid.
- (2) The oral fluid sample must be placed in a security box (whether by the police officer or a person acting under the direction of the officer) as soon as is reasonably practicable after the procedures in subclause (1) have been completed.
- (3) The oral fluid sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
- (4) The police officer must make arrangements for the oral fluid sample to be submitted to a prescribed laboratory for an oral fluid analysis.
- (5) A police officer may carry out an oral fluid test on a portion of an oral fluid sample provided under clause 9 (1) before dealing with the remaining portion of the sample in accordance with subclause (1).
- (6) If an oral fluid test is carried out under subclause (5) on a portion of an oral fluid sample, a reference in this clause and clauses 33 and 37 to the sample that is required under subclause (4) to be submitted to a laboratory is taken to be a reference to the remaining portion of the sample.

## **Division 3 Analysis procedures**

### **28 Conduct of analysis**

- (1) Subject to subclause (2), an analyst at the laboratory to which a sample is submitted under this Part may carry out an analysis of the sample, or of a portion of the sample, to determine—
  - (a) in the case of a blood sample submitted for alcohol analysis—the concentration of alcohol in the blood, or
  - (b) in the case of a blood sample submitted for drug analysis—whether the blood

- contains a prescribed illicit drug or other drug (as the case requires), or
- (c) in the case of an oral fluid sample submitted for an oral fluid analysis—whether the oral fluid contains a prescribed illicit drug, or
  - (d) in the case of a urine sample—whether the urine contains a drug.
- (2) In the case of a blood or urine sample taken for the purposes of clause 13 that has been submitted for analysis, the analyst may carry out an analysis of the sample only if a police officer has notified the laboratory 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.
- (3) A blood or urine sample of the kind referred to in subclause (2) 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 police officer has made a notification relating to a death under subclause (2).
- (4) An analysis referred to in subclause (1) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample to be analysed and the breaking of any seal securing the sample) may be done, by a person acting at the direction or under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

## **Division 4 Offences in relation to sample handling**

### **29 Offences—destroying or tampering or interfering with samples**

A person must not destroy or otherwise interfere or tamper with a sample, or a portion of a sample, of a person's blood or urine taken under Part 2 except as follows—

- (a) after the expiration of 13 months (in the case of a sample taken under clause 13) or 12 months (in any other case) commencing on the day the sample was taken,

**Note—**

Clause 28 (3) provides that a blood or urine sample that has been provided under clause 13 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 police officer has made a notification relating to a death.

- (b) in the case of a sample—by or at the direction of an analyst—
  - (i) so as to permit a portion of the sample to be sent for analysis by a medical practitioner or laboratory nominated under clause 23, in an application made

under that clause by the person from whom the sample was taken, or

(ii) in the course of, or on completion of, an analysis of the sample,

(c) in the case of a portion of a sample—by or at the direction of the medical practitioner or laboratory nominated under clause 23 by the person from whom the sample was taken.

Maximum penalty—20 penalty units.

### **30 Offence—failure to comply with sample handling procedures**

An authorised sample taker who takes a blood or urine sample for the purposes of a provision of this Schedule must—

(a) in the case of a blood sample—comply with the requirements of clause 25 (2) and (3),  
or

(b) in the case of a urine sample—comply with the requirements of clause 26 (2) and (3).

Maximum penalty—20 penalty units.

### **31 Offence—use of samples for non-drug testing purposes**

(1) A person must not intentionally or recklessly—

(a) supply a drug testing sample (or cause or permit a drug testing sample to be supplied) to a person for analysis for a non-drug testing purpose, or

(b) carry out an analysis (or cause or permit an analysis to be carried out) of a drug testing sample for a non-drug testing purpose, or

(c) include information on a DNA database (or cause information to be included on a DNA database) if that information has been derived from an analysis of a drug testing sample for a non-drug testing purpose.

Maximum penalty—30 penalty units.

#### **Note—**

For example, deriving a DNA profile from the sample is a non-drug testing purpose.

(2) In this clause—

**DNA database** means any database containing DNA data that is kept under a law of New South Wales or any other jurisdiction, and includes any DNA database system within the meaning of the *Crimes (Forensic Procedures) Act 2000*.

**drug testing sample** means a sample of oral fluid or blood taken from, or furnished or provided by, a person under Division 3 of Part 2.

***non-drug testing purpose***, in relation to the analysis of a drug testing sample, means a purpose other than determining whether any prescribed illicit drugs are present in the sample.

## **Part 5 Evidential matters**

### **Division 1 Admission of evidence concerning presence of alcohol or other drugs**

#### **32 Evidence of alcohol concentration in proceedings for offences against section 24**

- (1) This clause applies to any proceedings for an offence against section 24 (Presence of prescribed concentration of alcohol in person's breath or blood).
- (2) Evidence may be given in proceedings to which this clause applies of the concentration of alcohol present in the breath or blood of the person charged as determined by—
  - (a) a breath analysis carried out 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.
- (3) In any such proceedings, 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 event referred to in clause 3 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 against section 24 (1)—zero grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (b) in the case of an offence against section 24 (2)—less than 0.02 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (c) in the case of an offence against section 24 (3)—less than 0.05 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (d) in the case of an offence against section 24 (4)—less than 0.08 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
  - (e) in the case of an offence against section 24 (5)—less than 0.15 grams of alcohol in 210 litres of breath or 100 millilitres of blood.
- (4) Nothing in subclause (3) affects the operation of section 24 (6) and (7).



### **33 Evidence of presence of drugs in proceedings for offences against section 25**

- (1) This clause applies to any proceedings for an offence against section 25 (Presence of certain drugs (other than alcohol) in oral fluid, blood or urine).
- (2) In proceedings to which this clause applies in relation to a prescribed illicit drug—
  - (a) evidence may be given of the presence of a prescribed illicit drug in the oral fluid of the person charged as determined by an oral fluid analysis under this Schedule of a sample of the person's oral fluid, and
  - (b) the presence of a prescribed illicit drug in a person's oral fluid so determined is taken to show the presence of the drug at the time of the occurrence of the relevant event referred to in section 25 (1) if the oral fluid sample analysed was provided within 2 hours after the event, unless the defendant proves the absence of the drug when the event occurred.
- (3) In proceedings to which this clause applies—
  - (a) evidence may be given of the presence of a prescribed illicit drug or morphine in the blood or urine of the person charged as determined by an analysis of the person's blood or urine under this Schedule, and
  - (b) the drug the presence of which is so determined is taken to be so present at the time of the occurrence of the relevant event referred to in section 25 (1) or (3) if the blood or urine sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug when the event occurred.

### **34 Evidence of presence of drugs in proceedings for offences against section 26**

- (1) This clause applies to any proceedings for an offence against section 26 (1) (Operating vessel under influence of alcohol or other drug).
- (2) In proceedings to which this clause applies—
  - (a) evidence may be given of the presence of a drug, or the presence of a particular concentration of drug, in the blood or urine of the person charged, as determined pursuant to an analysis under 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 26 (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.

### **35 Evidence of test or 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 submitted to a breath test or breath analysis under this Schedule,
  - (b) the result of a breath test or breath analysis,
  - (c) the fact that a person has submitted to an oral fluid test or provided a sample for oral fluid analysis under this Schedule,
  - (d) the result of an oral fluid test or oral fluid analysis,
  - (e) the fact that a person has been convicted of an offence against any of the following provisions—
    - (i) section 24,
    - (ii) section 25,
    - (iii) clause 17,
    - (iv) clause 18,
    - (v) clause 19.
- (2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under 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 any 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 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—
    - (i) an offence against section 24 or 25 (1) or (3), or

(ii) an offence against a provision of Part 2.

(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.

## **Division 2 Certificate evidence**

### **36 Certificate evidence about breath analysing instruments**

(1) This clause applies to any of the following proceedings—

- (a) proceedings for an offence against section 24 (Presence of prescribed concentration of alcohol in person's breath or blood),
- (b) proceedings for an offence against clause 3 (4), 17 (1) (a) or (b) or 19 (1) (a) or (b).

(2) A certificate purporting to be signed by a police officer certifying the following particulars is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in or by the certificate—

- (a) the officer is authorised by the Commissioner of Police to carry out a breath analysis,
- (b) a person named in the certificate submitted to a breath analysis,
- (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of this Act,
- (d) the analysis was made on the day and completed at the time stated in the certificate,
- (e) a concentration of alcohol determined by that breath analysing instrument and expressed in grams 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,
- (f) a statement in writing required by clause 5 (3) was delivered in accordance with that subclause.

(3) 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 carry out a breath analysis is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate.

(4) Evidence of the condition of a breath analysing instrument, or of the manner in which it was operated, is not required in proceedings to which this clause applies unless

evidence sufficient to raise doubt that the instrument was in proper condition and properly operated has been adduced.

### **37 Certificate evidence about the taking and analysis of samples**

- (1) **Proceedings to which clause applies** This clause applies to any of the following proceedings—
- (a) proceedings for an offence against section 24 (Presence of prescribed concentration of alcohol in person's breath or blood),
  - (b) proceedings for an offence against section 25 (Presence of certain drugs (other than alcohol) in oral fluid, blood or urine),
  - (c) proceedings for an offence against section 26 (Operating vessel under influence of alcohol or other drug),
- (2) **Certificates from sample takers** A certificate purporting to be signed by an authorised sample taker (the **certifier**) certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate—
- (a) that the certifier was an authorised sample taker who attended a specified person,
  - (b) that the certifier took a sample of the person's blood or urine in accordance with this Schedule, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
  - (c) that the certifier dealt with the sample in accordance with this Schedule and any relevant provisions of the regulations,
  - (d) that the certifier 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.
- (3) A certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate—
- (a) that the officer took a sample of the oral fluid of the person named in the certificate in accordance with this Schedule, and any relevant provisions of the regulations, on the day and at the time stated in the certificate,
  - (b) that the officer dealt with the sample in accordance with this Schedule and any relevant provisions of the regulations,
  - (c) that the container was sealed, and marked or labelled, in a specified manner,

(d) that the officer arranged for the sample to be submitted for oral fluid analysis to determine the presence of any prescribed illicit drugs in the oral fluid.

(4) **Certificates from police officers about arrangements for analysis** A certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible in proceedings to which this clause applies 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 in accordance with this Schedule for submission to a prescribed laboratory for analysis,

(b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the sample or the presence or concentration of another drug in the sample (as the case requires),

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

(5) **Certificates from analysts** A certificate purporting to be signed by an analyst certifying any one or more of the following matters—

(a) that a sample of a specified person's blood, urine or oral fluid was received, on a specified day, in a container submitted for analysis under this Schedule,

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

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

(d) in the case of an analysis of a blood sample carried out to determine the concentration of alcohol in the blood of the specified person—

(i) that an analysis of the sample was carried out to determine the concentration of alcohol in the sample, and

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

(e) in the case of an analysis of a blood or urine sample carried out to determine the presence or concentration of a prescribed illicit drug or other drug in the blood or urine of the specified person—

(i) that an analysis of the sample was carried out to determine whether any prescribed illicit drug or other drug (as the case requires) was present in the sample, and

- (ii) that a specified prescribed illicit drug or other drug (as the case requires) ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,
  - (f) in the case of an oral fluid analysis carried out on the oral fluid of the specified person—
    - (i) that an oral fluid analysis of the sample was carried out to determine the presence of any prescribed illicit drugs in the sample, and
    - (ii) that a specified prescribed illicit drug was determined pursuant to the oral fluid analysis to be present in that sample,
  - (g) 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—
- (h) of the particulars certified in and by the certificate, and
  - (i) that the sample was a sample of the blood, urine or oral fluid of that specified person, and
  - (j) that the sample had not been tampered with before it was received.

(6) **Certificates from interstate sample takers and analysts** A certificate purporting to be signed by an interstate sample taker or interstate analyst in accordance with a provision of a law of another jurisdiction that substantially corresponds to the relevant provisions of this Schedule concerning sample taking or analysis is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate.

(7) An analysis to which a certificate referred to in subclause (6) relates is taken to be an analysis under this Schedule.

(8) **Special provisions regarding proceedings for offences against section 26** Subclauses (1)–(3) do not apply to proceedings for an offence against section 26 (1) brought on a charge that, by the operation of clause 41 (1), cannot be laid.

(9) **Definitions** In this clause—

***interstate analyst*** means a person (however described) who analyses, or who supervised or directed the analysis of, a blood, urine or oral fluid sample in another jurisdiction.

***interstate sample taker*** means a person (however described) who takes, or who supervised or directed the taking of, a blood, urine or oral fluid sample in another jurisdiction.

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

- (1) This clause applies to a certificate under this Part if—
  - (a) evidence is given by the certificate in 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, and
  - (b) the certificate is 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.
- (2) A certificate to which this clause applies 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.
- (3) Evidence given by a certificate to which this clause applies 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.

## **Part 6 Miscellaneous**

### **39 Police may conduct random breath and oral fluid testing at same time**

- (1) Nothing in this Act prevents a police officer requiring a person to submit to both breath testing and oral fluid testing.
- (2) If a police officer requests or signals an operator of a vessel to stop for the purpose of both clause 3 (Power to conduct random breath testing) and clause 7 (Power to conduct random oral fluid testing) and the operator fails to comply with the request or signal, the operator may be convicted of an offence against clause 3 (4) or an offence against clause 7 (3), but not both.

### **40 Use of samples for accident research**

- (1) If a sample of blood is provided in accordance with clause 12—
  - (a) the sample or any part of it, and
  - (b) any sample of saliva voluntarily provided at the same time,may be used in any research program that is related to safety and has been approved by the Minister.
- (2) The results of research carried out under this clause with respect to the blood or saliva of a person are not admissible as evidence of the presence of any drug in the blood or saliva of the person.
- (3) A person who carries out research under this clause with respect to blood or saliva

must not carry out the research in such a way as identifies the person who provided the blood or saliva.

Maximum penalty—20 penalty units.

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

(1) A person is not liable to be convicted of both an offence against section 26 (1) and a related alcohol or drug offence if the offences arose directly or indirectly out of the same circumstances.

(2) A person who—

(a) is required by an authorised officer to submit to a breath test by reason of the occurrence of an event referred to in clause 3 (1) and, as a consequence, to submit to a breath analysis or to provide a sample of the person's blood under Division 2 of Part 2, and

(b) submits to the breath analysis in accordance with the directions of an authorised officer, or to the taking of a blood sample in accordance with the directions of an authorised sample taker,

cannot be charged with an offence against section 26 (1) of operating a vessel, at the time of that event, while the person was under the influence of alcohol.

(3) A person who has had a sample of blood taken in accordance with clause 12 because of an accident is not to be charged with an offence against section 26 (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.

(4) A person—

(a) who submits to the taking of a blood sample under clause 6, or

(b) who is prosecuted for failing or refusing to submit to the taking of a blood sample under clause 6 but who is able to establish the defence under clause 18 (3) in relation to the prosecution,

is not liable to be convicted of an offence against clause 17 (1) (b) in relation to the person's inability to submit to a breath analysis that gave rise to the requirement to provide a blood sample.

(5) A person is not liable to be convicted of both an offence against clause 17 (1) (b) and an offence against clause 18 (1) (a) if the offences arose directly or indirectly out of the same circumstances.

(6) In this clause—

***related alcohol or drug offence*** means an offence against any of the following



provisions—

- (a) section 24,
- (b) section 25,
- (c) clause 17,
- (d) clause 18,
- (e) clause 19.

#### **42 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 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 determine the concentration of alcohol or detect the presence of any drug if the authorised sample taker—
  - (a) believed on reasonable grounds that the authorised sample taker was required under this Schedule 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 (whether in this jurisdiction or elsewhere) and the authorised sample taker did not know, and could not with reasonable diligence have ascertained, whether or not the authorised sample taker was required to take the sample from the person under Division 4 of Part 2 of this Schedule, or
  - (c) was informed by an authorised officer that the person was a person from whom the sample taker was required under this Schedule to take the sample of blood or urine.
- (2) Subclause (1) extends to any person acting at the direction or under the supervision of the sample taker as referred to in clause 43.

#### **43 Supervisee may perform functions of medical practitioner, nurse or prescribed sample taker**

- (1) Any duty of an authorised sample taker under this Schedule and any relevant provisions of the regulations may be performed by a person acting at the direction or under the supervision of the authorised sample taker.
- (2) A duty performed by any such person is taken to have been performed by the authorised sample taker.

## Schedule 1A Camera recorded offences

### Part 1 Interpretation

(Section 126A)

#### 1 Interpretation

(1) In this Schedule—

**approved enforcement device** means a device of a type (or a combination of types of devices) approved under clause 2.

**camera device** means a device that is capable of taking photographs (whether or not in the form of digitised, electronic or computer-generated images).

**detectable offence** means any of the following—

- (a) a speeding offence,
- (b) an offence against section 11, 13, 13A or 51,
- (c) an offence against clause 11 (2), 40, 51, 52 or 125 of the [Marine Safety Regulation 2016](#),
- (d) an offence against section 85A of the [Ports and Maritime Administration Act 1995](#),
- (e) any other offence prescribed by the regulations.

**speeding offence** means an offence against section 11 or any other provision prescribed by the regulations where the speed limit is alleged to have been exceeded.

- (2) In this Schedule, a reference to a photograph includes reference to a video recording and a reference to a photograph taken includes a reference to the making of a video recording.
- (3) The regulations may amend the definition of **detectable offence** in subclause (1) by inserting, altering or omitting anything in that definition.

### Part 2 Approval of enforcement devices and areas

#### 2 Approval of devices by Governor

- (1) The Governor may, by order published in the Gazette, approve types of devices (or combinations of types of devices) as being designed for any one or more of the following uses—
  - (a) measuring the speed at which a vessel is travelling (whether or not the vessel concerned is also photographed),

(b) photographing or recording a vessel that is operated in excess of a speed limit applicable in any waters,

(c) photographing or recording a vessel that is operated in contravention of a detectable offence.

**Note—**

The Governor may amend, rescind, revoke or repeal an order made under this clause. See section 43 of the [Interpretation Act 1987](#) and the definition of **repeal** in that Act.

(2) A camera device may not be approved for use under this clause unless the device is capable of recording the following information on or with any photograph taken by the device—

(a) the date on which the photograph is taken,

(b) the time and location at which the photograph is taken,

(c) in the case of a device that photographs a vessel that is operated in excess of the speed limit at a particular point, the speed limit that applies in the waters at which the photograph is taken,

(d) such other information as may be prescribed by the regulations (whether generally or for a specified kind of device or enforcement use).

(3) The Minister may not recommend the making of an order by the Governor under this clause approving the use of a device for measuring the speed at which a vessel is travelling without the concurrence of the Attorney General.

### **3 Approval of areas by Minister**

(1) The Minister may, by order published in the Gazette, approve areas in which approved enforcement devices may be used.

**Note—**

The Minister may amend, rescind, revoke or repeal an order made under this clause. See section 43 of the [Interpretation Act 1987](#) and the definition of **repeal** in that Act.

(2) An approved enforcement device may not be approved for use in an area unless the Minister believes there is significant non-compliance with marine legislation in the area.

(3) Parts 3 and 4 of this Schedule apply only in respect of approved enforcement devices located in an area approved under this clause.

## Part 3 Use of evidence obtained from approved enforcement devices

### 4 Definitions

(1) In this Part—

**appropriate inspection officer** means—

- (a) in relation to an approved enforcement device that measures the speed at which a vessel is travelling but is not used in conjunction with, or as part of, a digital camera device—
  - (i) an authorised officer, or
  - (ii) a person authorised by the Commissioner of Police or Transport for NSW to test a device of that kind, or
- (b) in relation to any other kind of approved enforcement device—a person (or a person belonging to a class of persons) authorised by the Commissioner of Police or Transport for NSW to install and inspect devices of the kind concerned.

**digital camera device** means a camera device that is capable of recording photographs in the form of digitised, electronic or computer-generated images.

(2) For the purposes of this Schedule—

- (a) an approved enforcement device is **approved for excess speed imaging** if it is approved under clause 2 for the use referred to in clause 2 (1) (b), and
- (b) an approved enforcement device is **approved for speed measurement** if it is approved under clause 2 for the use referred to in clause 2 (1) (a).

### 5 Evidence of speed recorded by speed measurement devices

Evidence may be given in proceedings for a speeding offence of a measurement of speed obtained and recorded by an approved enforcement device that is approved for speed measurement.

### 6 Certificates concerning reliability of speed measurement devices

In proceedings for a speeding offence in which evidence is given of a measurement of speed obtained from an approved enforcement device that is approved for speed measurement, a certificate purporting to be signed by an appropriate inspection officer for the device certifying the following matters is admissible and is prima facie evidence of those matters—

- (a) that the device is an approved enforcement device that is approved for speed measurement,
- (b) that on a day specified in the certificate (being within the period prescribed by the

regulations before the alleged time of the offence) the device was tested in accordance with the regulations and sealed by an appropriate inspection officer for the device,

(c) that on that day the device was accurate and operating properly.

## **7 Admissibility of photographs taken by devices—generally**

(1) In proceedings for a detectable offence, any one or more photographs that are tendered in evidence on any of the following bases are admissible in the proceedings—

(a) in the case of proceedings for a speeding offence detected by a device approved under clause 2 (1) (b)—a photograph that is tendered as—

(i) being taken by an approved enforcement device that is approved for excess speed imaging on a day and at a location specified on the photograph, and

(ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the regulations,

(b) in the case of proceedings for any other detectable offence (including any speeding offence detected by a device approved under clause 2 (1) (c))—a photograph that is tendered as—

(i) being taken by means of the operation, on a day specified on the photograph, of an approved enforcement device that is approved for the particular detectable offence at a location specified on the photograph, and

(ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the regulations.

(2) If one or more photographs are tendered in evidence as referred to in subclause (1), a certificate purporting to be signed by an appropriate inspection officer in relation to the approved enforcement device concerned that certifies the following matters is also to be tendered in evidence—

(a) that the person is an appropriate inspection officer in relation to the device,

(b) that on a day and at a time specified in the certificate (being within the period prescribed by the regulations, whether for a specified kind of device or generally, before the time recorded on the photograph or the earliest photograph as the time at which that photograph was taken), the person carried out the inspection specified in the certificate on the approved enforcement device by means of which the photograph was taken,

(c) that on that inspection the device was found to be operating correctly.

- (3) If a photograph is tendered in evidence in proceedings for a speeding offence detected by a device approved under clause 2 (1) (b) and involving a vessel, a certificate referred to in clause 6 concerning the accuracy and reliability of the device used to measure the speed at which the vessel was travelling must also be tendered along with the certificate required by subclause (2) in relation to the camera device that took the photograph.
- (4) A photograph tendered in evidence as referred to in subclause (1)—
  - (a) is to be presumed to have been taken by the approved enforcement device concerned unless evidence sufficient to raise doubt that it was so taken is adduced, and
  - (b) if it is tendered on the basis that it bears a security indicator—is to be presumed to bear such a security indicator unless evidence that is sufficient to raise doubt that it does so is adduced, and
  - (c) is prima facie evidence of the matters shown or recorded on the photograph.
- (5) Evidence that a photograph tendered in evidence as referred to in subclause (1) bears a security indicator of a kind prescribed by the regulations is prima facie evidence that the photograph has not been altered since it was taken.

#### **8 Evidence of accuracy and reliability not required if certificate tendered**

If a certificate under this Part is tendered in proceedings for a detectable offence, evidence—

- (a) of the accuracy or reliability of the approved enforcement device concerned, or
- (b) as to whether or not the device operated correctly or operates correctly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating correctly is adduced.

#### **9 Rebuttal of evidence concerning operation of approved enforcement devices**

- (1) This clause applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, as referred to in clause 6, 7 or 8 and for the purposes of proceedings to which those clauses apply.
- (2) An assertion that contradicts or challenges—
  - (a) the accuracy or reliability, or the correct or proper operation, of an approved enforcement device, or
  - (b) the accuracy or reliability of information (including a photograph) derived from

such a device,

is capable of being sufficient, in proceedings to which this clause applies, to rebut such evidence or such a presumption, or to raise such doubt, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

## Part 4 Liability for camera recorded offences

### 10 Definitions

In this Part—

**camera recorded offence** means any of the following—

- (a) a speeding offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the approved enforcement device for the offence,
- (b) a detectable offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an approved enforcement device for the offence.

**court attendance notice** means—

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice within the meaning of the [Criminal Procedure Act 1986](#) issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the [Criminal Procedure Act 1986](#) in respect of the person alleged to have committed the offence.

**prosecutor** has the same meaning as in the [Criminal Procedure Act 1986](#).

**relevant nomination document** means—

- (a) in the case of a responsible person served with a penalty notice in relation to a camera recorded offence—an approved nomination document under clause 15 (1), or
- (b) in the case of a responsible person served with a court attendance notice in relation to a camera recorded offence—a statutory declaration.

**responsible person**, in relation to a vessel, means each of the following persons—

- (a) the owner of the vessel, except where the vessel has been disposed of by that owner,
- (b) if the vessel has been disposed of by a previous owner—a person who has acquired the vessel from the operator,

- (c) a person who has a legal right to possession of the vessel (including any person who has the use of the vessel under a lease or hire-purchase agreement, but not the lessor while the vessel is being leased under any such agreement),
- (d) any other person (or class of persons) prescribed by the regulations for the purposes of this definition.

#### **11 Responsible person for vessel taken to have committed camera recorded offences**

If a camera recorded offence occurs in relation to any vessel, the person who at the time of the occurrence of the offence is the responsible person for the vessel is taken to be guilty of an offence against the provision concerned in all respects as if the responsible person were the actual offender guilty of the camera recorded offence unless—

- (a) in any case where the offence is dealt with under section 126—the person satisfies the law enforcement officer under section 126 that—
  - (i) the vessel was at the relevant time a stolen vessel or a vessel illegally taken or used, or
  - (ii) the actual offender would have a defence to any prosecution for the camera recorded offence brought against the offender, or
- (b) in any other case—the person proves to the satisfaction of the court hearing the proceedings for the offence that—
  - (i) the vessel was at the relevant time a stolen vessel or a vessel illegally taken or used, or
  - (ii) the actual offender would have a defence to any prosecution for the camera recorded offence brought against the offender.

#### **12 Duty to inform if person not operator of vessel committing camera recorded offence**

- (1) A person who—
  - (a) is served with a penalty notice or a court attendance notice in respect of a camera recorded offence, and
  - (b) was not the operator of the vessel to which the offence relates at the time the offence occurred,

must, within 21 days after service of the notice, supply by relevant nomination document to the law enforcement officer under section 126 (in the case of a penalty notice) or the prosecutor (in the case of a court attendance notice) the name and address of the person operating the vessel at the time the offence occurred.

- (2) For the purposes of this clause, it is presumed that a penalty notice served on a person by post is served on the person 7 days after it is posted, unless the person



establishes that it was not received by the person, or was not received by the person within the 7-day period.

- (3) Despite any other provision of this Act, a relevant nomination document may be provided by a person served with a penalty notice for a camera recorded offence within 90 days of the notice being served on the person if the relevant nomination document is provided in the circumstances specified in section 23AA or 23AB of the [Fines Act 1996](#).

### **13 When responsible person for vessel not liable for camera recorded offence**

Despite clause 11, the responsible person for a vessel who is served with a penalty notice or a court attendance notice in respect of a camera recorded offence is not guilty of that offence by operation of that clause if the person—

- (a) complies with clause 12 in relation to the offence, or
- (b) satisfies the law enforcement officer (in the case of a penalty notice) or the court (in the case of a court attendance notice) that the responsible person did not know and could not with reasonable diligence have ascertained the name and address of the person who was operating the vessel at the time the offence occurred.

### **14 Offences relating to nominations**

- (1) **Offence—failure to comply with clause 12** A person must comply with clause 12 unless the person satisfies—

- (a) in the case of a penalty notice—the law enforcement officer, or
- (b) in the case of a court attendance notice—the court dealing with the camera recorded offence, or
- (c) in either case—the court dealing with the offence of failing to comply with clause 12,

that the person did not know and could not with reasonable diligence have ascertained that name and address.

Maximum penalty—50 penalty units.

- (2) **Offence—false nomination of person operating vessel** A person must not, in a relevant nomination document supplied under clause 12, falsely nominate another person as the person who was operating the vessel at the time the offence occurred.

Maximum penalty—100 penalty units.

- (3) A person falsely nominates another person as the person operating a vessel for the purposes of subclause (2) if either a false name or address (or both a false name and address) for the other person is supplied in a relevant nomination document.

## 15 Nominations by responsible persons

- (1) Transport for NSW may approve one or more documents (**approved nomination documents**) for use by responsible persons when nominating other persons under this clause as persons operating vessels for which they are the responsible persons.
- (2) Without limiting subclause (1), Transport for NSW may approve documents under that subclause to be provided in printed or electronic form (or both).
- (3) If a responsible person for a vessel supplies an approved nomination document to a law enforcement officer for the purposes of clause 12, a law enforcement officer may, by written notice served on the person (a **verification notice**), require the person to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the approved nomination document as are specified in the verification notice.
- (4) A person served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).

Maximum penalty—50 penalty units.

## 16 Use of statutory declarations as evidence

- (1) A statutory declaration supplied for the purposes of clause 12 or 15 (3), if produced in any proceedings against the person named in the declaration and in respect of the camera recorded offence concerned, is admissible and is prima facie evidence that the person was the operator of the vessel at the time the offence occurred.
- (2) A statutory declaration that relates to more than one camera recorded offence does not constitute a statutory declaration under, or for the purposes of, clause 12 or 15 (3) unless each of the offences is a camera recorded offence detected by the same camera device at approximately the same time.
- (3) A court or law enforcement officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of clause 12 or 14 (1), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person operating the vessel.
- (4) If a statutory declaration is provided by a person under subclause (3), it must include the matters (if any) prescribed by the regulations.

## 17 Further identity information from nomination information provider

- (1) A law enforcement officer or prosecutor to whom a relevant nomination document is supplied for the purposes of clause 12 may, by written notice served on the nomination information provider, require the provider to do one or both of the following—

- (a) provide such relevant identity information that is in the provider's power to provide (including, if so required, by means of a written statement signed by the provider), as may be specified in the notice, within the period specified in the notice,
  - (b) appear before the law enforcement officer or prosecutor at a specified time and place and provide (either orally or in writing) such relevant identity information that is in the provider's power to provide as may be specified in the notice.
- (2) The period or time specified in a notice under subclause (1) for information to be provided, or an appearance to be made, must be no earlier than 7 days after the date of service of the notice.
- (3) A person served with a notice under subclause (1) must not, without lawful or reasonable excuse, refuse or fail to comply with the notice.

Maximum penalty—20 penalty units.

- (4) In this clause—

***nomination information provider***, in relation to a relevant nomination document, means—

- (a) in the case of a document supplied by a responsible person for the vessel concerned who is a natural person—the person who supplies the document, or
- (b) in the case of a document supplied by a responsible person for the vessel concerned that is a corporation—a person who prepares or supplies the document on behalf of the corporation.

***relevant identity information*** means any information that may assist in confirming or establishing the identity of the person operating the vessel when a camera recorded offence to which a relevant nomination document relates was committed.

## **18 Liability of actual offender unaffected**

- (1) Nothing in this Part affects the liability of the actual offender.
- (2) However, if a penalty has been imposed on or recovered from any person in relation to any camera recorded offence, no further penalty may be imposed on or recovered from any other person in relation to the offence.

## **19 Interfering with an approved enforcement device**

A person who interferes with, damages or destroys an approved enforcement device is guilty of an offence.

Maximum penalty—100 penalty units.

## **20 Part does not derogate from any other law**

The provisions of this Part are in addition to, and not in derogation of, any other provisions of this or any other Act.

## **Schedules 2, 3 (Repealed)**

## **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.

## **Part 5 Provisions consequent on enactment of *Maritime and Transport Licensing Legislation Amendment Act 2014***

### **19 Application of amendments transferring licensing functions to RMS**

- (1) The **transfer day** for the purposes of this clause is the day on which RMS becomes the responsible licensing official for a boat driving licence and vessel registration



certificate (a **relevant licence**) by virtue of the amendments made to this Act by the *Maritime and Transport Licensing Legislation Amendment Act 2014*.

- (2) The following provisions have effect on and from the transfer day—
- (a) any application for the grant of a relevant licence made (but not yet determined) before the transfer day is to be determined by RMS,
  - (b) any right or liability of the Minister in relation to a relevant licence (or an application for such a licence) becomes by virtue of this clause a right or liability of RMS,
  - (c) all proceedings relating to a right or liability of the Minister in relation to a relevant licence (or an application for such a licence) commenced before the transfer day by or against the Minister that are pending immediately before the transfer day are taken to be proceedings pending by or against RMS,
  - (d) any act, matter or thing done or omitted to be done in relation to a relevant licence (or an application for such a licence) before the transfer day by, to or in respect of the Minister is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of RMS,
  - (e) RMS has all the entitlements and obligations of the Minister in relation to a relevant licence (or an application for such a licence) that the Minister would have had but for the transfer of the Minister's functions to RMS, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
  - (f) a reference in any instrument made under any Act or in any document of any kind to the Minister is (to the extent that it relates to a relevant licence or an application for such a licence, but subject to this clause) to be read as, or as including, a reference to RMS.
- (3) The Minister is authorised to provide RMS with any documents or other information obtained or held by or on behalf of the Minister in connection with relevant licences (or applications for such licences) for the purpose of facilitating the exercise by RMS of functions that are conferred or imposed on it by subclause (2).
- (4) The operation of this clause (or the provision of documents or other information under this clause) is not to be regarded as—
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) giving rise to any remedy by a party to a contract or instrument, or as causing or

permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) an event of default under any contract or instrument.

(5) In this clause—

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

## **Part 6 Provisions consequent on enactment of Road Transport Amendment (Alcohol and Drug Testing) Act 2014**

### **20 Definition**

In this Part—

**amending Act** means the *Road Transport Amendment (Alcohol and Drug Testing) Act 2014*.

### **21 Application of certain amendments relating to procedures for taking urine samples**

The amendments made to clauses 15 (5) and 20 (5) of Schedule 1 by the amending Act apply only in relation to a sample of urine taken after the commencement of those amendments.

### **22 Notification by authorised officer before analysis of sample relating to fatal accident**

A notification under clause 15 (8) of Schedule 1, before its amendment by the amending Act, is taken to be a notification under that provision as amended, in relation to an analysis of a sample to which the notification relates carried out after the commencement of the amendment.

### **23 Application of amendment relating to sobriety assessments**

Clause 22 (4) of Schedule 1, as substituted by the amending Act, applies only in relation to an offence committed after the commencement of that substitution.

### **24 Application of certain amendments relating to certificate evidence by analysts and authorised sample takers**

(1) The amendments made to clauses 27 (6) and 29 (3) of Schedule 1 by the amending Act apply to a certificate in relation to a sample regardless of whether the sample was received by or on behalf of an analyst before or after the commencement of those amendments.

- (2) Clause 27 (7)–(9) of Schedule 1, as inserted by the amending Act, apply in relation to a certificate regardless of whether the sample to which the certificate relates was taken before or after the commencement of those provisions.

## **Part 7 Provisions consequent on enactment of [Marine Legislation Amendment Act 2016](#)**

### **25 Definition**

In this Part—

**amending Act** means the [Marine Legislation Amendment Act 2016](#).

### **26 Application of seizure, impoundment and forfeiture powers**

Division 2 of Part 2, as inserted by the amending Act, applies only in relation to behaviour and offences that occur after the commencement of that Division.

### **27 Investigations**

Part 8, as in force immediately before its amendment by the amending Act, continues to apply in relation to any investigation ordered by the Minister before that amendment.

### **28 Use of existing document for transitional periods**

- (1) The regulations may make provision for or with respect to the use of existing documents for the purposes of this Act for transitional periods.
- (2) A document is an **existing document** for the purposes of subclause (1) if it is a document prepared before commencement of the amending Act for use in connection with the administration or enforcement of this Act.

## **Part 8 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2019](#)**

### **29 Alcohol and drug offences**

The reference to section 26 in the definition of **alcohol or drug offence** in section 28B of the Act is taken to include a reference to section 28 of the Act as in force immediately before the repeal of section 28 by the [Marine Legislation Amendment Act 2016](#).