

**MARINE (BOATING SAFETY-ALCOHOL AND DRUGS)  
BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to encourage the safe operation of vessels by:

- (a) specifying the permissible blood alcohol concentrations for persons operating vessels and creating offences of operating a vessel while exceeding the permissible concentrations; and
- (b) providing for the breath testing of a person operating a vessel if there is reasonable cause to believe the person is operating the vessel while under the influence of alcohol or was operating a vessel that was involved in an accident causing the death of or injury to any person or damage to another vessel or other property; and
- (c) providing for breath analysis following testing or assessment indicating that more than the permissible concentration of alcohol may be present in a person's blood; and
- (d) providing for the testing of blood and urine samples for the presence of alcohol from the operators of vessels involved in accidents on State waters; and
- (e) enabling those samples to be used in some cases to detect the presence of other drugs in the blood of the person concerned; and
- (f) providing for the use of certificate evidence relating to concentration of alcohol in blood and presence of other drugs in proceedings; and
- (g) transferring a provision relating to navigating under the influence of alcohol or other drugs from the Water Traffic Regulations—N.S.W. to the proposed Act; and
- (h) amending the Crimes Act 1900 in relation to the admissibility in criminal proceedings of certificates prepared for the purposes of the proposed Act.

The provisions are based on the provisions of the Traffic Act 1909 relating to prescribed concentration of alcohol offences, breath testing and analysis, the procedures for taking samples of blood and urine and the proof of these matters.

---

*Marine (Boating Safety—Alcohol and Drugs) 1991*

---

**PART 1—PRELIMINARY**

**Clause 1** sets out the short title of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** contains definitions of various expressions used in the proposed Act. “Commercial purpose” is defined to mean the use of a vessel for the carriage of persons or goods for money or any other valuable consideration or the use of the vessel in connection with a business or in trade or commerce. “Recreational purpose” means the use of the vessel wholly for the purpose of recreation or sport and not for a commercial purpose. “Operate” is defined to mean determine or exercise control over the course or direction of a vessel, or over the means of propulsion of the vessel, while the vessel is under way.

**Clause 4** provides that the Act does not apply in relation to the operation of certain vessels (for example, those belonging to the armed forces of a foreign country).

**Clause 5** defines the various ranges of prescribed concentrations of alcohol for the purposes of the proposed Act.

**PART 2—OFFENCES RELATING TO ALCOHOL OR OTHER DRUGS**

**Clause 6** restates the offence of operating a vessel while under the influence of alcohol or another drug that is at present contained in Regulation 3 (2) of the Water Traffic Regulations—N.S.W. and creates an offence of the master of a vessel permitting a person the master is aware (or has reason to believe) is under the influence of alcohol or other drugs to operate a vessel. The proposed section also provides that if a person is charged with such an offence the information will not be liable to be dismissed on the grounds of duplicity because it alleges that the person was under the influence of more than one drug.

**Clause 7** creates certain offences relating to operation of a vessel or supervision of a juvenile operator while having a specified concentration of alcohol in the blood. In general, it is an offence to operate a vessel with a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood. In the case of a person who is 18 years or more of age and who is operating a vessel for recreational purposes, the concentration is 0.05 grammes or more. If a person is required by marine legislation to supervise a person between 12 and 16 years of age who is operating a motor vessel the person commits an offence if he or she has a concentration of 0.05 grammes or more of alcohol in 100 millilitres of blood. The levels of penalties are differentiated according to whether the concentration of alcohol in the concerned person’s blood falls in a low, medium or high range. These are based on the provisions of section 4E of the Traffic Act 1909.

**Clause 8** prevents a person being charged with two offences in relation to the same incident. For example, a person is not liable to be convicted of both an offence of operating a vessel while under the influence and an offence of operating a vessel while the prescribed concentration of alcohol is present in the blood.

---

*Marine (Boating Safety—Alcohol and Drugs) 1991*

---

**Clause 9** restricts the use of section 556A (Power to permit release of offenders) of the Crimes Act 1900 in cases where a person is charged with the offences relating to prescribed concentrations of alcohol or of refusing to take a breath analysis test if the section has been applied in the previous 5 years in respect of a similar offence committed by the person.

**Clause 10** provides for the cancellation and suspension of a licence relating to the operation of a vessel held by a person who is convicted of an offence under the proposed Act. Provision is made for automatic disqualification for a specified period from holding a licence where the person has been convicted of certain offences in the preceding 5 years. The provisions extend to certificates of competency issued under the Commercial Vessels Act 1979 and provide for the withdrawal of recognition of comparable documents issued outside New South Wales.

### **PART 3—PROVISIONS RELATING TO BREATH ANALYSIS ETC.**

#### **Division 1—Preliminary**

**Clause 11** contains a number of provisions to assist interpretation of the proposed Part.

#### **Division 2—Testing for alcohol**

**Clause 12** provides that a police officer may require a person to undergo a breath test if the officer has reasonable cause to believe that the person is operating a vessel, or supervising its operation by a juvenile, while there is alcohol in the person's blood. Testing will be required where the police officer has reasonable cause to believe that the person was operating a vessel involved in an accident which resulted in the death of or injury to a person or certain damage to a vessel or other property.

**Clause 13** provides for breath analysis after a positive breath test or when a person refuses a breath test. A person may be arrested and force may be used to take the person to a police station or other place considered desirable by a police officer for the purposes of a breath analysis. A written statement of the results of the analysis must be provided to the person.

**Clause 14** provides that blood or urine samples may be taken from a person admitted to hospital as a result of an accident while operating a vessel.

**Clause 15** provides that a police officer may require a person acting in a way to cause a reasonable belief that the person might be under the influence of drugs to submit to an assessment of his or her sobriety. The person may then be required to provide a sample of blood or urine for detection of drugs.

**Clause 16** creates restrictions on requirements to undergo a breath test, submit to an assessment or a breath analysis, or provide a sample of blood or urine, including if it would be dangerous to do so and where two hours or more have passed since the time of the alleged offence.

**Clause 17** describes the procedure to be followed when a sample of blood or urine is taken, including a request to hand one of the samples back to the person from whom it was taken.

---

*Marine (Boating Safety—Alcohol and Drugs) 1991*

---

**Clause 18** provides for the analysis of samples of a person's blood or urine taken under Part 3 of the proposed Act. Additional requirements apply where the sample was taken at a hospital from a person involved in an accident.

**Clause 19** makes it an offence to wilfully destroy certain portions of blood samples except in the course of analysis or other specified circumstances.

**Clause 20** protects a medical practitioner or nurse from any civil or criminal liability arising in respect of proper and necessary actions in the course of taking a sample of blood or urine.

**Division 3—Offences relating to testing for alcohol or other drugs**

**Clause 21** creates an offence of refusing or failing to undergo a breath test, submit to an assessment or breath analysis or provide a sample of blood or urine. It will be a defence to prosecution for such an offence that the person was unable to comply with a requirement on medical grounds.

**Clause 22** creates an offence of interfering with any blood or urine samples or with the results of a breath analysis required under the proposed Act for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the person.

**Clause 23** creates offences relating to the taking of samples of blood or urine by a medical practitioner. It is an offence for a medical practitioner to refuse to take a sample or fail to comply with requirements relating to the sample. The proposed provision provides defences in circumstances where the practitioner believes that taking the sample would prejudice the proper care and treatment of the person or for other reasonable cause.

The provision also creates an offence of obstructing a medical practitioner attempting to take a sample of blood and urine.

**Division 4—Certificate evidence in proceedings**

This Division deals with the use of certificate evidence in the course of proceedings under the Act. A certificate signed by the police officer, the medical practitioner who took samples or the analyst who carried out the analysis is prima facie evidence of the particulars of that test, samples or analysis stated in it.

**Clause 24** deals with certificate evidence of concentration of alcohol in the blood if the concentration is determined by breath analysis carried out by a police officer.

**Clause 25** deals with certificate evidence of the concentration of alcohol in the blood where the concentration is determined by analysis of a sample of blood. The proposed clause provides for the certification of evidence by both the medical practitioner taking the sample of blood and the analyst carrying out the analysis.

**Clause 26** deals with certificate evidence of the presence of drugs in the blood or urine of a person.

---

*Marine (Boating Safety—Alcohol and Drugs) 1991*

---

**Clause 27** provides that if evidence is given by a certificate it may specify a minimum concentration of alcohol or another drug was found to be present. In such circumstances the certificate is to be mated as though it stated that the concentration was determined by analysis to be present in the specified minimum concentration.

**Division 5—Miscellaneous**

**Clause 28** provides that certain prescribed facts are for the purposes of any contract of insurance not admissible as evidence of the fact that a person was under the influence of drugs. The clause also provides that any contractual provision which purports to exclude or to limit, modify or restrict the operation of the section or the liability of an insurer in the event of a conviction is void.

**Clause 29** deals with the taking of blood samples from a person attended by a medical practitioner in another State or Territory as a result of an accident in New South Wales waters. If the sample is taken in accordance with provisions of the law of that State or Territory that correspond with those under which blood can be taken under the proposed Act, the practitioner may arrange for a portion of the blood to be submitted for analysis and may certify evidence relating to the taking of the sample.

**PART 4—POWERS OF POLICE OFFICERS AND OFFICERS OF BOARD**

**Clause 30** creates certain powers which may be exercised by police officers and officers of the Maritime Services Board for the purposes of the proposed Act. An offence is mated of failing to comply with certain requirements made by a police officer or officer of the Board if the person has been warned that failure would amount to an offence.

**Clause 31** provides that the owner of a vessel at the time of an alleged offence may be required to give information identifying the offender in the form of a written statement or otherwise.

**PART 5—MISCELLANEOUS**

**Clause 32** provides that the proposed Act binds the Crown.

**Clause 33** provides that proceedings for offences are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Clause 34** enables the making of regulations.

**Clause 35** gives effect to the savings and transitional provisions in Schedule 1.

**Clause 36** gives effect to Schedule 2 which makes consequential amendments to other Acts.

**Clause 37** consequentially repeals a regulation.

---