



New South Wales

Marine Safety Amendment (Random Breath Testing) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Marine Safety Act 1998* as follows:

- (a) to enable random breath testing of persons operating vessels,
- (b) to prohibit persons under 18 years from operating vessels with any alcohol present in their blood,
- (c) to increase the penalties for offences under the Act involving the presence of certain prescribed concentrations of alcohol in the blood of persons operating vessels in line with the penalties for offences involving prescribed concentrations of alcohol under the *Road Transport (Safety and Traffic Management) Act 1999*.

The Bill also makes amendments of a minor, consequential or ancillary nature (including consequential amendments to other legislation).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Marine Safety Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulations specified in Schedule 2.

Schedule 1 Amendment of Marine Safety Act 1998

Schedule 1 [1] amends the definition of *operate a vessel* in section 20 (1) of the *Marine Safety Act 1998* (the *Principal Act*) so that the term (where used in Part 3 of and Schedule 1 to the Principal Act relating to alcohol and drugs in connection with boating safety) includes supervising a juvenile operator of a motor vessel. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [2] amends section 22 of the Principal Act to provide for a youth range prescribed concentration of alcohol (*PCA*), being more than zero grams, but less than 0.02 grams, of alcohol in 100 millilitres of blood, for the purposes of Part 3 of and Schedule 1 to the Principal Act. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [3] inserts proposed section 24 (1A) into the Principal Act to make it an offence for a person under 18 years of age to operate a vessel while having the youth range PCA present in the person's blood.

Schedule 1 [4] amends section 24 of the Principal Act to provide for a penalty for the offence in proposed section 24 (1A). The amendment also increases the penalties for existing offences under the Act involving the presence of certain prescribed concentrations of alcohol in the blood of persons operating vessels in line with the penalties for offences involving prescribed concentrations of alcohol under the *Road Transport (Safety and Traffic Management) Act 1999*. The proposed penalties are as follows:

- (a) for an offence involving the proposed youth range PCA, the special range PCA or low range PCA—a maximum penalty of 10 penalty units (currently 5 penalty units) in the case of a first offence, or 20 penalty units (currently 10 penalty units) in the case of any subsequent offence,
- (b) for an offence involving the middle range PCA—a maximum penalty of 20 penalty units or 9 months imprisonment, or both, in the case of a first offence, or 30 penalty units or 12 months imprisonment, or both, in the case of any subsequent offence (currently 10 penalty units or 6 months imprisonment, or both, whether a first or subsequent offence),

- (c) for an offence involving the high range PCA—a maximum penalty of 30 penalty units (currently 15 penalty units) or 18 months imprisonment (currently 9 months), or both, in the case of a first offence, or 50 penalty units (currently 20 penalty units) or 2 years imprisonment (currently 12 months), or both, in the case of any subsequent offence.

The item also omits an offence (relating to supervision of a juvenile operator of a motor vessel while having a specified concentration of alcohol in the blood) which is no longer necessary given the amendment made by Schedule 1 [1] and the existing offences relating to the operation of a vessel while having a specified concentration of alcohol in the blood.

Schedule 1 [5] provides for a defence to the offence in proposed section 24 (1A). It is a defence to the proposed offence if the defendant proves that the presence in the defendant's blood of the youth range PCA at the time that the person is alleged to have committed the offence was not caused by the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance), or the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

Schedule 1 [6] inserts proposed section 141 (2) into the Principal Act to allow the Acts and regulations repealed by Schedule 2 to the Principal Act, or different provisions of the same Act or Regulation, to be repealed on different days.

Schedule 1 [7] amends clause 3 of Schedule 1 to the Principal Act to allow for random breath testing by police officers. Under the proposed clause, a police officer may require a person to undergo a breath test if the officer has reasonable cause to believe the person is or was operating a vessel. **Schedule 1 [8]** and **[10]** make consequential amendments.

Schedule 1 [13] and **[15]** make amendments by way of statute law revision.

Clauses 16 and 17 of Schedule 1 to the Principal Act facilitate the admission into evidence, in proceedings for an offence under section 24 or 23, respectively, of the alcohol concentration in the defendant's blood (in the case of clause 16) and the presence and concentration of a drug in the defendant's blood or urine (in the case of clause 17) if the blood or urine sample was taken within 2 hours after the time the defendant operated the vessel concerned (unless the defendant proves otherwise). **Schedule 1 [14]** amends clauses 16 and 17 to increase the time limit for the taking of samples for the purposes of those provisions from 2 hours to 3 hours. **Schedule 1 [12]** makes a consequential amendment.

Schedule 1 [16] omits Schedule 3.1 to the Principal Act which contains redundant amendments (uncommenced) made by the Principal Act to the *Crimes Act 1900*.

Schedule 1 [17] amends Schedule 4 to the Principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [18] inserts provisions of a savings or transitional nature into Schedule 4 to the Principal Act. In particular, the effect of proposed clause 12 is that legal proceedings for offences committed before the commencement of an amendment made by Schedule 1 to the proposed Act will continue to be determined under the law as it stood before that commencement.

Schedule 2 Amendment of other Acts and Regulations

Schedule 2.1–2.6 make amendments to certain Acts and Regulations consequential on the repeal of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* by Schedule 2 to (and section 141 of) the Principal Act.