



New South Wales

Marine Safety Amendment Bill 2008

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* (*the Principal Act*):

- (a) to increase penalties for certain offences relating to the negligent and dangerous operation of vessels, and
 - (b) to create new offences with increased penalties for operating a vessel while disqualified from doing so, and
 - (c) to confer on authorised officers (who include police officers) a direction power in relation to conduct affecting the safety of persons and property in, on or near navigable waters, and
 - (d) to ensure that, as far as is practicable, the provisions of that Act relating to the operation of vessels while having the prescribed concentration of alcohol in the breath or blood or being under the influence of alcohol or a drug, and the random breath testing of the operators of vessels, are in line with provisions relating to those matters in respect of vehicles under the road legislation, and
 - (e) to require certain commercial vessels that are not required to have a survey certificate to comply with other prescribed standards in relation to their design, construction and equipment, and
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- (f) to make further provision in relation to the pilotage of vessels and the appointment and functions of harbour masters, and
- (g) to make further provision for the regulation by the Minister of public ferry wharves, and
- (h) to facilitate the application of the *National Standard for Commercial Vessels* of the Commonwealth (*the National Standard*), and
- (i) to facilitate the introduction in the State of uniform provisions relating to builders plates for recreational vessels, and
- (j) in miscellaneous respects to further improve the licensing, administration and enforcement provisions of that Act.

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 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Amendments relating to increased penalties, new offences and enforcement provisions

Schedule 1 [6] amends section 11 of the Principal Act to increase the penalty for the creation of wash in contravention of a notice displayed in accordance with the section.

Schedule 1 [8] substitutes section 13 of the Principal Act to increase the penalties for operating a vessel negligently, recklessly or at a speed or in a manner dangerous to the public. The new section introduces the possibility of imprisonment in situations where the conduct in question occasioned death or grievous bodily harm. The new section also provides increased maximum monetary penalties in a case where the vessel concerned was a seagoing ship (being a vessel over 45.72 metres in length and carrying cargo or passengers and normally operating between ports) and lesser increased penalties in the case of other commercial vessels. **Schedule 1 [62]** makes a consequential amendment.

Schedule 1 [9] inserts section 15A into the Principal Act to enable an authorised officer to give a direction to a person in, on or near navigable waters if necessary to

ensure the safety of any person, or prevent damage to any property, in, on or near navigable waters.

Schedule 1 [21] amends the definition of *unsafe vessel* in section 44 of the Principal Act to provide that a vessel is unsafe if for any reason the operation of the vessel is likely to endanger any person. At present, the definition provides that for a vessel to be unsafe the operation of the vessel must be a danger to human life.

Schedule 1 [22] amends section 45 of the Principal Act to make it an offence for the owner or master of a vessel to operate it if he or she ought reasonably to know that it is unsafe. Currently, section 45 requires the prosecution to prove that the owner or master actually knew that the vessel was unsafe. The amendment also increases the monetary penalty for offences under the section.

Schedule 1 [24] amends section 51 of the Principal Act to increase the penalty for operating a vessel that is required to be registered if it is unregistered from 50 penalty units (currently \$5,500) to 75 penalty units (currently \$8,250).

Schedule 1 [32] inserts proposed section 59A into the Principal Act to provide a specific offence of operating a commercial vessel while disqualified from holding or obtaining a certificate of competency under that Act. The proposed section also makes it an offence to make an application for such a certificate in a false name during any such period of disqualification. The maximum penalties are higher for second and subsequent offences.

Schedule 1 [34] substitutes section 63 of the Principal Act to make it clear that it is an offence for a person to operate certain recreational vessels unless the person holds a boat driving licence of a type that authorises the operation of such a vessel.

Schedule 1 [35] inserts proposed section 63A into the Principal Act to provide a specific offence of operating certain recreational vessels while disqualified from holding or obtaining a boat driving licence under the Act. The proposed section also makes it an offence to make an application for such a licence in a false name during any such period of disqualification. The maximum penalties are higher for second and subsequent offences.

Schedule 1 [38] substitutes section 67 of the Principal Act to make it clear that the regulation-making power in that section dealing with the installation or carriage on vessels of safety equipment extends to enabling the making of regulations with respect to the wearing of safety equipment by persons on vessels or engaged in marine activities.

Schedule 1 [52] inserts proposed section 97A into the Principal Act which makes it an offence to obstruct an authorised officer or other person in the exercise of functions under the Act. **Schedule 1 [55]** amends section 125 of the Principal Act to remove a similar offence applying only to the exercise of functions under Division 4 (Investigative powers of authorised officers) of Part 8 of that Act.

Amendments relating to marine safety licences

Schedule 1 [17] amends section 37 of the Principal Act to make it clear that the regulations may require the holding of a marine safety licence for activities that may be regulated under the Act.

Schedule 1 [18] amends section 37 of the Principal Act to enable regulations to be made with respect to fees and charges for inspections in connection with marine safety licences and with respect to the suspension and cancellation of marine safety licences and the disqualification of persons from holding or obtaining such licences.

Schedule 1 [15] omits section 34 consequentially as that section deals with the setting of fees for applications for marine safety licences.

Schedule 1 [19] substitutes section 38 of the Principal Act to enable the Minister to disqualify a person from holding a marine safety licence in certain circumstances.

Schedule 1 [53] amends section 111 of the Principal Act to enable the Minister to make such a disqualification as a result of the report of an investigator on an investigation under the Act of a marine accident or other incident.

Schedule 1 [20] amends section 42 of the Principal Act to enable a person to apply to the Administrative Decisions Tribunal for a review of any limitation imposed on a marine safety licence, whether or not imposed as a condition of the licence.

Schedule 1 [23] amends section 50 of the Principal Act to extend the provisions requiring the registration of certain vessels to commercial vessels that are pleasure craft or that are Australian fishing vessels operating in specified circumstances. Those vessels are currently generally excluded from the operation of the *Navigation Act 1912* of the Commonwealth. **Schedule 1 [1]** amends the definition of ***Australian fishing vessel*** in section 4 of the Principal Act to include fishing fleet support vessels within the meaning of the *Navigation Act 1912* of the Commonwealth as those vessels are also generally excluded from the operation of that Act. **Schedule 1 [3]** inserts a definition of ***pleasure craft*** into section 4 of the Principal Act.

Schedule 1 [26] substitutes section 53 of the Principal Act and inserts proposed section 53A.

New section 53 extends the operation of Division 3 of Part 5 of the Principal Act, which deals with survey certificates and design and construction standards for commercial vessels, to commercial vessels that are Australian fishing vessels or pleasure craft while operating outside State waters. The new section also removes the provision that limits the application of the Division to vessels that are required to be registered. **Schedule 1 [28]** makes a consequential amendment.

Proposed section 53A replaces the current requirements in section 53 that the owner and master of a commercial vessel to which Division 3 of Part 5 of the Principal Act applies must not operate the vessel unless it has a survey certificate. The new provisions will prohibit the owner or master of such a vessel from operating the vessel if it does not comply with prescribed requirements as to its design, construction or equipment and, if the regulations require it to have a survey certificate, it does not have such a certificate. **Schedule 1 [25]** makes a consequential amendment.

Schedule 1 [27] amends section 54 of the Principal Act to remove the requirement that the Minister needs to be satisfied that a vessel is safe to operate when granting a survey certificate for the vessel. However, the Minister must still be satisfied that the vessel complies with the relevant requirements as to design, construction and equipment.

Schedule 1 [29] omits section 55 of the Principal Act which enables the Minister to be satisfied that a vessel complies with the relevant design, construction and equipment requirements and is safe to operate by relying on a certificate from an appropriately accredited surveyor. **Schedule 1 [13]** amends section 29 of the Principal Act to omit a surveyor's accreditation from the list of marine safety licences as it is not intended to provide for surveyor's accreditation at this time.

Schedule 1 [31] amends section 57 of the Principal Act to extend the operation of Division 4 of Part 5, which deals with requirements for crews of commercial vessels, to commercial vessels that are Australian fishing vessels or pleasure craft while operating outside State waters. The amendment also removes the provision that limits the application of the Division to vessels that are required to be registered.

Schedule 1 [36] and [37] amend section 64 of the Principal Act to make it clear that the exemption from holding a boat driving licence for a recreational vessel provided in that section to a visiting boat operator who is licensed in another State or Territory does not apply if the licence is suspended in that other State or Territory. The exemption also does not apply if the visiting operator holds a boating licence in New South Wales that is suspended or is disqualified from holding such a licence.

Amendments relating to alcohol and drug provisions

Schedule 1 [12] substitutes Part 3 of the Principal Act relating to offences of operating vessels with the prescribed concentration of alcohol in the breath or blood or while under the influence of alcohol or another drug. The new provisions mirror, as far as is practicable without changing the prescribed concentrations and the persons to which they currently apply under the Principal Act, the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* relating to equivalent offences in connection with the driving of vehicles.

Schedule 1 [76] substitutes Schedule 1 to the Principal Act relating to random breath testing of the operators of vessels and the procedure for the analysis of breath and blood samples so as to mirror, as far as is practicable, the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* relating to equivalent matters in connection with the driving of vehicles.

Amendments relating to pilotage and harbour masters

Schedule 1 [40] substitutes the definition of *pilotage* in section 71 of the Principal Act to provide greater clarity as to when a vessel is taken to be under pilotage for the purposes of the Act.

Schedule 1 [41] amends section 72 of the Principal Act to provide that a person who is an unlicensed trainee marine pilot does not commit an offence of acting as a marine

pilot if the person is under the direct supervision of an appropriately licensed marine pilot.

Schedule 1 [42] substitutes section 73 of the Principal Act to clarify the circumstances in which a person is authorised to act as a marine pilot of a vessel in a pilotage port.

Schedule 1 [43] amends section 74 of the Principal Act to provide that a vessel subject to pilotage may be moved without having the pilot on board if the movement of the vessel is approved by the harbour master and recorded in the vessel's log.

Schedule 1 [44] amends section 75 of the Principal Act to exempt a vessel from requiring a pilot if the master of the vessel is the holder of a certificate of local knowledge under the Act that applies to the port and the vessel concerned. The amendment merely reflects the exemptions currently provided under section 79 of the *Ports and Maritime Administration Act 1995* for such certificates. **Schedule 1 [14], [16] and [45]** make consequential amendments.

Schedule 1 [46] amends section 80 of the Principal Act to make it clear that the protection of the State and certain others from actions for damages in relation to the negligence of marine pilots extends to the actions of trainee marine pilots.

Schedule 1 [47] inserts proposed section 81A into the Principal Act to require a person acting as a marine pilot for a vessel to immediately notify the harbour master if the master of the vessel is not implementing the person's orders in relation to the pilotage of the vessel.

Schedule 1 [48] amends section 83 of the Principal Act to enable the regulations relating to pilotage and marine pilots' licences to adopt a document published by the Minister.

Schedule 1 [49] substitutes section 85 of the Principal Act to enable the Minister to appoint any person as a harbour master rather than, as is currently the case, a Departmental officer or a member of staff of a Port Corporation.

Schedule 1 [50] amends section 86 of the Principal Act to enable a harbour master or the Minister to appoint more than one person to exercise the harbour master's functions.

Schedule 1 [51] inserts proposed section 91A into the Principal Act which provides that a harbour master who is acting as a marine pilot for a vessel must, if giving a direction as harbour master, indicate that it is such a direction and that failure to comply may constitute an offence. A failure to comply with a direction of a marine pilot does not constitute an offence.

Amendments relating to public ferry wharves

Schedule 1 [59] amends section 125C of the Principal Act to enable the Minister to vary an improvement notice issued in relation to a public ferry wharf at the request of, or with the consent of, the person to whom it was given.

Schedule 1 [60] amends section 125J of the Principal Act to remove the restriction that an improvement notice or prohibition notice issued under the Act in relation to a public ferry wharf may be withdrawn only if it was issued in error or is incorrect.

Schedule 1 [61] inserts proposed sections 125L and 125M into the Principal Act.

Proposed section 125L enables the Minister to require an owner or person responsible for the maintenance of a public ferry wharf to obtain a report from an appropriately qualified person as to the condition of the wharf. If the requirement is not complied with, the Minister may obtain such a report and recover the costs of doing so.

Proposed section 125M enables regulations to be made in relation to specified matters concerning public ferry wharves, including the inspection of such wharves under the Principal Act, the maintenance of such wharves and standards for their construction.

Schedule 1 [56]–[58] make consequential amendments.

Amendments facilitating adoption of national commercial vessels provisions

Schedule 1 [4] amends section 4 of the Principal Act to omit an unnecessary definition of the Uniform Shipping Laws Code.

Schedule 1 [30] substitutes section 56 of the Principal Act which enables the making of regulations with respect to commercial vessels, including the construction, design, equipment and survey of those vessels. The new section will enable regulations to also be made with respect to the manner in which any such matter is to be determined.

Schedule 1 [33] substitutes section 60 of the Principal Act which currently enables regulations to be made with respect to the minimum crew to be carried in commercial vessels. The new section will enable the regulations to deal generally with crewing matters to accommodate different terminology and requirements to be introduced in the National Standard.

Schedule 1 [71] and [72] amend section 138 of the Principal Act to facilitate the adoption of the National Standard by the regulations.

Amendments relating to national recreational builders plates provisions

Schedule 1 [39] inserts proposed section 68A into the Principal Act which enables regulations to be made in relation to the fixing of builders plates to vessels. The new provisions will facilitate the implementation of proposed uniform provisions with respect to this matter throughout Australia.

Miscellaneous amendments

Schedule 1 [2] substitutes the definition of *commercial vessel* in section 4 of the Principal Act to make it clear that the definition extends to vessels used or intended to be used by the Crown.

Schedule 1 [5] substitutes section 9 of the Principal Act to extend specified provisions of the Act to Defence Force vessels (other than commissioned vessels) and their crew. Those provisions deal with the safety of navigation, offences relating to the operation of vessels while having the prescribed concentration of alcohol and

while being under the influence of alcohol or a drug, random breath testing and the investigative powers of authorised officers. Currently, those vessels and their crew are exempt from the operation of the Act.

Schedule 1 [7] amends section 12 of the Principal Act to enable notice to be given of a special event in particular waters in a local newspaper if the Minister approves. Currently, notice has to be given in a newspaper circulating throughout New South Wales.

Schedule 1 [10] substitutes the definition of *aquatic activity* in section 18 of the Principal Act to extend the definition to races, competitions, exhibitions and other activities conducted in or on navigable waters whether or not involving vessels or equipment. Currently, the definition only covers activities involving vessels or equipment.

Schedule 1 [11] amends section 18 of the Principal Act to enable the Minister when granting a licence or approval under the Act authorising an aquatic activity to include exemptions from requirements of the Act or the regulations. **Schedule 1 [73] and [74]** make consequential amendments.

Schedule 1 [54] amends section 121 of the Principal Act to enable an authorised officer to obtain a written statement from the owner of a vessel as to the identity of the master of the vessel and to obtain such a statement from the master of a vessel as to the identity of the owner of the vessel.

Schedule 1 [63]–[65] amend section 133 of the Principal Act to facilitate the proof of certain matters in proceedings for offences.

Schedule 1 [66] and [67] make amendments to the Principal Act by way of statute law revision.

Schedule 1 [68] inserts proposed section 136A into the Principal Act which enables the Minister or the Maritime Authority to rely on expert advice when carrying out functions under the Act.

Schedule 1 [69] amends section 137 of the Principal Act to enable regulations to be made with respect to fees and charges for services provided under the Act.

Schedule 1 [70] amends section 137 of the Principal Act to include a standard provision requiring the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997* in relation to the making of regulations enabling applications for review to be made to the Administrative Decisions Tribunal.

Schedule 1 [75] amends section 144 of the Principal Act to extend the review period of the Act to 5 years after the date of assent to the proposed Act.

Schedule 1 [77]–[79] contain savings and transitional provisions.