

Passed by both Houses



New South Wales

# Marine Legislation Amendment Bill 2016

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2016

*Clerk of the Parliaments*



New South Wales

## **Marine Legislation Amendment Bill 2016**

Act No     , 2016

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An Act to amend the *Marine Safety Act 1998* and the *Ports and Maritime Administration Act 1995* to make provision for camera recorded offences and further provision for safety management matters, alcohol and drug testing procedures, and compliance and investigation; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Marine Legislation Amendment Act 2016*.

**2 Commencement**

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

## **Schedule 1 Amendment of Marine Safety Act 1998 No 121**

### **[1] Section 3 Objects of Act**

Insert after section 3 (b):

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

### **[2] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

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

*foreign vessel* has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

*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*.

### **[3] Section 4 (1)**

Omit “National law” from the definition of *regulated Australian vessel*.

Insert instead “*Navigation Act 2012* of the Commonwealth”.

### **[4] Section 8 Vessels and waters to which Act applies**

Omit section 8 (2). Insert instead:

- (2) Despite subsection (1), Parts 4 and 5 (other than sections 63B, 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.

### **[5] Section 9**

Omit the section. Insert instead:

#### **9 Act does not apply to defence vessels**

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

### **[6] Part 2, Division 1, heading**

Insert after the heading to Part 2:

#### **Division 1 General provisions**

### **[7] Section 11 Speed limits, wash limits and other restrictions on operation of vessels in navigable waters**

Insert “published in the Gazette or” after “notice” in section 11 (1).

### **[8] Section 11 (2) and (2A)**

Omit section 11 (2). Insert instead:

- (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).

**[9] Section 12**

Omit the section. Insert instead:

**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.

**[10] Section 13 Reckless, dangerous or negligent navigation and other acts**

Omit the penalty from section 13 (1). Insert instead:

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.

**[11] Section 13 (3) (c)**

Insert at the end of section 13 (3) (b):

- (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.

**[12] Section 13 (5)**

Omit the definition of *seagoing ship*. Insert in alphabetical order:

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

**[13] Section 13A**

Insert after section 13:

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

Omit section 15A (1) (a). Insert instead:

- (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

**[15] Section 15A (1A)**

Insert after section 15A (1):

- (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.

**[16] Section 16 Removal of obstructions in navigable waters**

Omit the penalty from section 16 (2). Insert instead:

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.

**[17] Section 19 Regulations relating to safety of navigation**

Omit the note. Insert instead:

**Note.** Part 6A of the *Ports and Maritime Administration Act 1995* deals with the management of wharves, moorings, port facilities and works.

**[18] Part 2, Division 2**

Insert after section 19:

**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 Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS,

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 Chief Executive of RMS.
- (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 Chief Executive of RMS at that place or may be moved to and impounded at any other place determined by the Commissioner or Chief Executive.
- (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 Chief Executive of RMS 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 RMS of any offence under this Division.
- (3) RMS 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 Chief Executive of RMS 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 Chief Executive of RMS.

**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 Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS.
- (5) The Commissioner of Police or Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS 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 Chief Executive of RMS may dispose of a vessel that is the subject of forfeiture under section 19F by releasing it to Transport for NSW or RMS to be used for the purposes of crash testing and any educational program for operators of vessels established by Transport for NSW or RMS.
- (6) Transport for NSW or RMS 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 or RMS.

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

No action lies against the Crown, the Minister, the Commissioner of Police or Chief Executive of RMS, RMS, 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 or Chief Executive of RMS, RMS 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.

**[19] Section 22 Prescribed concentrations of alcohol**

Omit “*youth range*” from section 22 (a). Insert instead “*novice range*”.

**[20] Part 3 Boating safety—alcohol and other drug use**

Omit Divisions 2 and 3. Insert instead:

**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 or cocaine in person's blood or urine**

A person must not, while there is present in the person's blood or urine any morphine or cocaine, 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):

- (a) the court attendance notice may allege that both morphine and cocaine were present in the 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 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.

(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.

**[21] Part 3**

Re-number Division 4 as Division 3.

**[22] Section 28A Cancellation and suspension of marine safety licences**

Omit section 28A (2). Insert instead:

- (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

**[23] Section 28A (5)**

Insert before the note to the section:

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

**[24] Section 39 Cancellation and suspension of licences by court in connection with offence**

Insert after section 39 (2):

- (2A) The court is to cause particulars of any cancellation, suspension or disqualification under this section to be forwarded to RMS.

**[25] Section 44**

Omit the section. Insert instead:

**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.

**[26] Section 45**

Omit the section. Insert instead:

**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.

**[27] Sections 46–48**

Omit the sections. Insert instead:

**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).

**[28] Section 49 Vessels requiring State registration**

Omit “that operate” from section 49 (1).

**[29] Section 51**

Omit the section. Insert instead:

**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.

**[30] Section 52 Additional grounds for refusal, suspension or cancellation of registration**

Insert after section 52 (b):

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

**[31] Section 63A Offences committed by disqualified holders of boat driving licences**

Omit “100 penalty units” and “125 penalty units” from the penalty in section 63A (1).

Insert instead “30 penalty units” and “50 penalty units”, respectively.

**[32] Section 63A (4A)**

Insert after section 63A (4):

- (4A) The court is to cause particulars of any disqualification under subsection (4) to be forwarded to RMS.

**[33] Section 75 Vessels exempted from compulsory pilotage**

Omit section 75 (1) (b).

**[34] Section 88 General powers of harbour master in relation to vessels**

Insert after section 88 (1) (e):

- (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.

**[35] Section 88 (4)**

Insert after section 88 (3):

- (4) A direction given under this section may be given in relation to a particular vessel or a particular class of vessels.

**[36] Section 91B**

Insert after section 91A:

**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.

**[37] Part 8, heading**

Omit the heading. Insert instead:

**Part 8 Compliance and investigation**

**[38] Section 96 Appointment of authorised officers (other than harbour masters and police officers)**

Omit “a Port Corporation” from section 96 (1) (b).

Insert instead “the Port Authority of New South Wales”.

**[39] Section 97A**

Omit the section. Insert instead:

**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.

**[40] Section 98A**

Insert after section 98:

**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.

**[41] Section 100 Marine accident particulars**

Omit “this Division”. Insert instead “sections 98 (3) and 99”.

**[42] Section 100 (a1)**

Insert after section 100 (a):

- (a1) an explanation of the circumstances of the marine accident,

**[43] Section 103**

Omit the section. Insert instead:

**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*.

**[44] Section 108 Report to Minister of investigation**

Omit section 108 (3). Insert instead:

- (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.

**[45] Section 109**

Omit the section. Insert instead:

**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.

**[46] Section 111**

Omit the section. Insert instead:

**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 RMS, Transport for NSW or the Chief Investigator of the report and the action taken by the Minister on the report.
- (3) If RMS is the responsible licensing official for a marine safety licence rather than the Minister, the Minister may require RMS 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 RMS (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.

**[47] Section 118 Detention of vessel for purposes of investigation**

Omit “48 hours” from section 118 (2). Insert instead “72 hours”.

**[48] Section 119 Production of marine safety licences**

Insert after section 119 (4):

- (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.

**[49] Section 121 Identification of owner, operator and master of vessel**

Omit “owner or master” from section 121 (1). Insert instead “owner, operator or master”.

**[50] Section 121 (2)**

Omit “owner or the master”. Insert instead “owner, operator or master”.

**[51] Section 121 (3)**

Insert “or operator” after “master” wherever occurring.

**[52] Section 121 (4)**

Insert “or operator” after “owner” wherever occurring.

**[53] Section 121 (5)**

Insert after section 121 (4):

- (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.

**[54] Section 122 Power to require persons to attend to answer questions or produce documents or other things**

Omit section 122 (4). Insert instead:

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

**[55] Section 123 Limitation on self-incrimination**

Insert after section 123 (2):

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

**[56] Section 125B Inspections of public ferry wharves**

Omit section 125B (2) and (3). Insert instead:

- (2) An authorised officer may carry out any such inspection.

**[57] Section 125B (6)**

Omit the subsection.

**[58] Section 126A**

Insert after section 126:

**126A Camera recorded offences**

Schedule 1A makes provision for camera recorded offences.

**[59] Section 133 Proof of certain matters not required**

Insert at the end of section 133 (1) (c):

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,

**[60] Section 133 (2) (a)**

Omit “Minister or RMS”.

Insert instead “Minister, RMS or Port Authority of New South Wales”.

**[61] Section 133 (2) (l)**

Omit “as published in a statement in a newspaper circulating throughout New South Wales”.

Insert instead “and the relevant location, as specified for that day on the website of Geoscience Australia”.

**[62] Section 135A Suspension or cancellation of licences by court in connection with offence**

Insert after section 135A (3):

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

**[63] Schedule 1**

Omit the Schedule. Insert instead:

**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, morphine or cocaine 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.

**[64] Schedule 1A**

Insert after Schedule 1:

## **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 section 21 of 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 section 21 of 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 Chief Executive of RMS 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 Chief Executive of RMS 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) RMS 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), RMS 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.

**[65] Schedule 3 Amendment of other Acts**

Omit Schedule 3.7.

**[66] Schedule 4 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Marine Legislation Amendment Act 2016**

**Definition**

In this Part:

*amending Act* means the *Marine Legislation Amendment Act 2016*.

**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.

**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.

**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.

## Schedule 2 Amendment of Ports and Maritime Administration Act 1995 No 13

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*authorised officer* has the same meaning as in the *Marine Safety Act 1998*.

*foreign vessel* has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

*Port Authority of New South Wales* means the Newcastle Port Corporation established under this Act.

*regulated Australian vessel* has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

### [2] Section 36 Definition

Omit the definition of *authorised officer*.

### [3] Sections 43A–43D

Insert after section 43:

#### 43A Exclusion of Dividing Fences Act 1991

The *Dividing Fences Act 1991* does not apply to or in respect of so much of a sea retaining wall that separates land vested in the Authority or Port Authority of New South Wales from land of another owner.

#### 43B Land vested in the Authority taken to be Crown land for certain purposes

For the purposes of the *Mining Act 1992*, the *Offshore Minerals Act 1999* and the *Petroleum (Onshore) Act 1991*, land vested in the Authority or Port Authority of New South Wales is taken to be and to have always been Crown land.

#### 43C Grant of rights of way under the Petroleum (Onshore) Act 1991

- (1) Subject to this section, section 106 of the *Petroleum (Onshore) Act 1991* does not extend to land that is vested in the Authority or Port Authority of New South Wales.
- (2) Subsection (1) does not apply if:
  - (a) an application is made under section 106 of the *Petroleum (Onshore) Act 1991* for a right of way, and
  - (b) the Authority is notified of the application and is furnished with such information with respect to the application as it reasonably requires, and
  - (c) the Authority, within one month after being notified of the application or within such further time as the Secretary of the Department of Industry, Skills and Regional Development may specify:
    - (i) notifies that Secretary that the Authority is not prepared to grant to the applicant a right of way in substitution for the right of way applied for, or
    - (ii) notifies that Secretary that the Authority and the applicant are unable to reach agreement as to the terms and conditions on which the Authority will grant such a right of way.

**43D Leases and licences under other Acts**

- (1) The Secretary of the Department of Industry, Skills and Regional Development must give to the Authority at least 21 days notice of any proposal to grant any lease or licence under the *Mining Act 1992*, the *Offshore Minerals Act 1999* or the *Petroleum (Onshore) Act 1991* in respect of any land:
  - (a) vested in the Authority or Port Authority of New South Wales, or
  - (b) contained in that part of the bed and shores of any area of water specified in an order in force under section 85D (2).
- (2) The Secretary of the Department of Industry, Skills and Regional Development must give the Authority at least 21 days notice of any proposal to grant any aquaculture lease under Part 6 of the *Fisheries Management Act 1994* in respect of any land referred to in subsection (1).
- (3) If, despite representations of the Authority to the contrary, it is decided that any such lease or licence is to be granted, the Authority must be notified accordingly and may, within 14 days of such notice, refer the dispute to the Minister.
- (4) A dispute referred to in subsection (3) is to be resolved by the Minister in consultation with any other responsible Ministers. If a resolution cannot be reached the dispute is to be resolved by the Premier.

**[4] Part 4A**

Insert after Part 4:

**Part 4A Safety directions**

**43E Directions to maintain or improve safety and security**

- (1) The regulations may make provision for or with respect to maintaining or improving safety and security at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales, including any of the following activities in the landside precinct at the port or wharf:
  - (a) the movement, handling or storage of goods,
  - (b) the conduct of any person or class of persons,
  - (c) any activity that may pose a risk to safety or security at the port or wharf.
- (2) Subject to the regulations, the Authority, Transport for NSW or the Port Authority of New South Wales may, for the purpose of maintaining or improving safety and security at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales, give directions (referred to in this Part as *safety directions*) that regulate any of the following activities in the landside precinct at the port or wharf:
  - (a) the driving, stopping and parking of vehicles,
  - (b) the movement, handling or storage of goods,
  - (c) the conduct of any person or class of persons,
  - (d) any activity that may pose a risk to safety or security at the port or wharf.
- (3) The power to regulate an activity includes the power to prohibit the activity.
- (4) A safety direction may be of general application or may be limited in its application to specified persons or a specified class of persons.

- (5) A certificate issued by the Minister or by the Authority certifying that specified land is or is not part of the landside precinct at a port or wharf is evidence of the matter certified.
- (6) In this section:  
*landside precinct* at a port or wharf means:
  - (a) land at the port or wharf that is not covered by water, or
  - (b) any wharf or other structure built on or over land covered by water that is adjacent to land referred to in paragraph (a), or
  - (c) land leased to the Authority, Transport for NSW or the Port Authority of New South Wales that is contiguous with land referred to in paragraph (a).
- (7) Land is *contiguous* with other land if it adjoins the other land (or would adjoin the other land were it not separated from the other land by a road, rail corridor or easement) or it is in close proximity to the other land.

#### **43F How safety directions are given**

- (1) A safety direction may be given in any of the following ways:
  - (a) by notice displayed in the area at the port or wharf where the direction applies,
  - (b) by notice published on the website of the Authority, Transport for NSW or the Port Authority of New South Wales,
  - (c) by notice served on the person or persons to whom the direction applies.
- (2) A safety direction given by notice published on the website of the Authority, Transport for NSW or the Port Authority of New South Wales has no effect until a copy of the notice is published in the Gazette.
- (3) Before a safety direction is given under section 43E (2) (a) or (b), not less than 2 weeks advance notice of the proposed direction must be given to the harbour master for the port.
- (4) Advance notice of a proposed safety direction is not required if the direction is given in an emergency.

#### **43G Enforcement of safety directions**

- (1) A person must comply with a safety direction (except to the extent that compliance would result in the contravention of a requirement imposed by or under an Act).  
Maximum penalty: 30 penalty units.
- (2) The Authority, Transport for NSW or Port Authority of New South Wales may enforce compliance with a safety direction in any of the following ways:
  - (a) by using reasonable force to remove from the port or wharf any person who is contravening the direction,
  - (b) by removing from the port or wharf, or moving within the port or wharf, any vehicle or vessel that is stopped or parked in contravention of the direction (including by removing, dismantling or neutralising any locking device or other feature of the vehicle or vessel and allowing the vehicle or vessel to be started by other means),
  - (c) by removing from the port or wharf, or moving within the port or wharf, any goods stored in contravention of the direction (including by removing any locks preventing access to goods).

- (3) The Authority, Transport for NSW or the Port Authority of New South Wales may authorise the enforcement powers in subsection (2) to be exercised by an authorised officer, a delegate of the Authority, Transport for NSW or the Port Authority of New South Wales or any other person specifically authorised for the purposes of this section.
- (4) The power to remove or move a vehicle, vessel or goods from or within the port or wharf includes the power to place the vehicle, vessel or goods in secure storage pending return of the vehicle, vessel or goods to their owner.
- (5) The Authority, Transport for NSW or the Port Authority of New South Wales is entitled to recover as a debt the reasonable costs incurred by the Authority, Transport for NSW or the Port Authority of New South Wales in enforcing compliance with a safety direction. Those costs are recoverable from the person whose contravention of the direction resulted in those costs being incurred. The costs are a charge on any vehicle, vessel or goods removed under this section.
- (6) The Authority, Transport for NSW or the Port Authority of New South Wales must take all reasonable steps to secure any vehicle, vessel or goods that are removed or moved under this section against theft or damage.
- (7) The Authority, Transport for NSW or the Port Authority of New South Wales must take all reasonable steps to limit any damage to any vehicle, vessel or goods that are removed or moved under this section.
- (8) A certificate issued by the Authority, Transport for NSW or the Port Authority of New South Wales certifying as to the reasonable costs incurred by the Authority, Transport for NSW or the Port Authority of New South Wales in enforcing compliance with a safety direction is evidence of the matters certified.
- (9) Anything done by or on behalf of the Authority, Transport for NSW or the Port Authority of New South Wales reasonably and in good faith to enforce compliance with a safety direction as permitted by this Part does not subject the Authority, Transport for NSW or the Port Authority of New South Wales or any other person to any action, liability, claim or demand.

**[5] Part 6A**

Insert after section 85:

**Part 6A Management of wharves, moorings, port facilities and works**

**85A Access to wharves**

- (1) A person must not secure a commercial vessel, or cause a commercial vessel to be secured, to a wharf of the Authority unless the person:
  - (a) is authorised to do so by a wharf authorisation, and
  - (b) complies with the conditions (if any) of the wharf authorisation.Maximum penalty: 100 penalty units.

(2) In this section:

**wharf authorisation** means an authorisation (however described) given by the Authority or Transport for NSW that permits a person to secure a vessel to a wharf of the Authority.

**Note.** A wharf authorisation includes the following:

- (a) a contract or agreement between a person and the Authority or Transport for NSW that authorises the person to secure a commercial vessel to a wharf,
- (b) a permit issued under the Commuter Wharf Permit Scheme administered by the Authority,
- (c) a booking made through the Charter Wharf Booking System administered by the Authority.

**wharf of the Authority** means a wharf, pier, jetty, landing stage or dock owned by the Authority within Sydney Harbour or its tributaries.

#### **85B Use of moorings by vessels**

A person must not cause a vessel to occupy a mooring in any navigable waters except in accordance with a mooring licence issued by the Authority in accordance with the regulations.

Maximum penalty: 50 penalty units.

#### **85C Use of port facilities by vessels**

(1) A person must not establish any port facilities for use by commercial vessels, foreign vessels or regulated Australian vessels in or in the vicinity of any pilotage port that affects the safety of navigation except in accordance with an approval from the Authority, Transport for NSW or the Port Authority of New South Wales.

Maximum penalty: 100 penalty units.

(2) A person must not permit any port facility that has not been used for the berthing, docking or mooring of a commercial vessel, foreign vessel or regulated Australian vessel for 2 years or more to be used except in accordance with an approval from the Authority, Transport for NSW or the Port Authority of New South Wales.

Maximum penalty: 100 penalty units.

#### **85D Investigation of port facilities**

(1) The Authority, Transport for NSW or the Port Authority of New South Wales may investigate existing or proposed port facilities for use by vessels.

(2) The Authority, Transport for NSW or the Port Authority of New South Wales may, with the approval of the Minister, make an order prohibiting:

- (a) the construction of any embankment, retaining wall, reclamation, wharf or a structure of any kind, or
- (b) the carrying out of any dredging operations,

in any specified area of water affected by an investigation under subsection (1) except in accordance with an approval given by the Authority, Transport for NSW or the Port Authority of New South Wales.

(3) An order under subsection (2) must be published in the Gazette.

(4) The Authority, Transport for NSW or the Port Authority of New South Wales is only to prohibit works referred to in subsection (2) if those works would adversely affect the port facilities under investigation or adversely affect the subsequent operation of the port facilities.

- (5) A person must not carry out any work that is prohibited by an order in force under this section.  
Maximum penalty: 100 penalty units.
- (6) Nothing in this section enables the prohibition of the carrying out of work pursuant to an aquaculture lease under Part 6 of the *Fisheries Management Act 1994*, a lease under the *Mining Act 1992* or a licence under the *Offshore Minerals Act 1999*.

**85E Removal of unauthorised works**

- (1) The Authority, Transport for NSW or the Port Authority of New South Wales may give notice to a person who is making use of any work carried out in contravention of section 85C or 85D requiring the person to stop making use of that work by a specified date.
- (2) A person must not fail to comply with a notice given in accordance with subsection (1).  
Maximum penalty: 50 penalty units.
- (3) The Authority, Transport for NSW or the Port Authority of New South Wales may remove, or authorise the removal of, any work carried out in contravention of section 85C or 85D.
- (4) The Authority, Transport for NSW or the Port Authority of New South Wales may cause or authorise any work or any thing removed in accordance with subsection (3) to be destroyed, stored or sold, or may sell the work on condition that it be removed.
- (5) The Authority, Transport for NSW or the Port Authority of New South Wales may recover as a debt in a court of competent jurisdiction the costs and expenses incurred by it in the removal, destruction, storage or sale of any work under this section from the person who carried out the work or who has made use of it after the receipt of a notice referred to in subsection (1).

**85F Proof of certain matters not required**

A certificate signed or purporting to be signed by the Authority or an officer prescribed by the regulations and stating that:

- (a) a person named in the certificate did or did not at a specified time hold a commuter wharf permit issued by the Authority in accordance with the regulations, or
- (b) any such permit was or was not suspended or cancelled at a specified time, or
- (c) a vessel named in the certificate did or did not at a specified time have a booking under the wharf booking system established by the Authority in accordance with the regulations, or
- (d) a person named in the certificate was or was not at a specified time the holder of a mooring licence issued by the Authority in accordance with the regulations, or
- (e) any such licence was or was not suspended or cancelled at a specified time or was or was not subject to a specified condition at a specified time,

is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

**85G Regulations under this Part**

- (1) The regulations may make provision for or with respect to access to wharves, mooring licences and removal of unauthorised works under this Part.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the establishment of a commuter wharf permit system to control access to wharves,
  - (b) the establishment, administration, operation and enforcement of a wharf booking system and mooring licensing system,
  - (c) the approval, refusal, issue, duration and renewal of permits and licences under such systems,
  - (d) the imposition of conditions on permits and licences,
  - (e) the variation, suspension or cancellation of permits and licences,
  - (f) the application requirements for permits and licences,
  - (g) the fees payable in relation to permits, licences and bookings under a wharf booking system,
  - (h) classes of permits and licences,
  - (i) the equipment, or type of equipment, that must be used to secure a vessel to a mooring,
  - (j) the exemption of any person, vessel or other thing from this Part or any provisions of this Part.

**85H Administrative reviews by NCAT**

- (1) The regulations may provide that a person may apply to the Civil and Administrative Tribunal for the administrative review under the *Administrative Decisions Review Act 1997* of a decision made in respect of the person under the regulations under section 85G in relation to a mooring licence issued by the Authority.
- (2) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

**[6] Part 7A Occupation of navigable waters**

Omit the Part.

**[7] Sections 105A–105C**

Insert after section 105:

**105A Erosion or siltation in certain ports**

- (1) In this section:

*prescribed land* means land that is within a distance of 10 metres measured horizontally on the landward side:

  - (a) from the top of the bank of any non-tidal waters, or
  - (b) from high water mark on the shore of any tidal waters,being in each case waters of which the bed is vested in the Authority.

*prescribed work* means:

  - (a) excavation, or

- (b) removal of soil, sand, gravel, stone, rock or other material from land, or
- (c) removal of a retaining wall.

**public authority** means:

- (a) the Authority, or
- (b) any other body, corporate or unincorporate, constituted by an Act where the Governor or a Minister of the Crown appoints one or more of the members of the body, or
- (c) a corporation constituted by an Act, or
- (d) a council or a county council within the meaning of the *Local Government Act 1993*.

- (2) A person (other than a public authority) must not carry out any prescribed work on prescribed land except in accordance with an approval (and any conditions of the approval) in writing from the Authority.

Maximum penalty: 100 penalty units.

- (3) If the Authority is satisfied:
  - (a) that the bank or shore of any waters of which the bed is vested in the Authority is being eroded or is likely to be eroded, or
  - (b) that any material of any kind is being deposited, or is likely to be deposited, on the bed or shore of any such waters,

by reason of or as a result of:

- (c) the carrying out on any land of any prescribed work (whether or not the person carrying out the work is liable to a penalty under subsection (2)), or
- (d) the demolition, collapse, partial collapse or disrepair of or any damage to, a retaining wall or other structure on any land,

the Authority may give to the prescribed person in relation to the land the notice specified in subsection (5).

- (4) The person prescribed by this subsection in relation to any land (the **prescribed person**) is:
  - (a) where the land is not vested in the Crown or a public authority—the owner of the land, or
  - (b) where the land is vested in the Crown or a public authority and work referred to in subsection (3) (c) has been carried out on the land in connection with land not so vested:
    - (i) the person who carried out the work, or
    - (ii) the owner of the land not so vested.

- (5) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:
  - (a) in the case referred to in subsection (3) (a)—that the erosion ceases or is prevented and that any erosion that has occurred is made good, or
  - (b) in the case referred to in subsection (3) (b)—that the deposit of material ceases or is prevented and that any deposited material is removed.
- (6) If any material of any kind escapes from, or is carried by natural forces from, any land on which a person:
  - (a) stored or accumulated that material, or

- (b) carried on any work of excavation, earthmoving, material extraction, demolition, engineering or building construction, and the material is deposited on the bed or shore of any waters of which the bed is vested in the Authority, the Authority may give to that person with respect to that land the notice specified in subsection (7).
- (7) The notice prescribed by this subsection is a notice in writing requiring the person to whom it is given to take within a reasonable time specified in the notice such measures as are necessary to ensure:
  - (a) the prevention of any further deposit on the bed or shore of any waters (the bed of which is vested in the Authority) of any material escaping, or carried by natural forces, from the land in respect of which it is given, and
  - (b) that any such material so deposited is removed.
- (8) The Authority may amend or revoke a notice given under this section.
- (9) A person who is given a notice specified in subsection (5) or (7) must comply with the notice.  
Maximum penalty: 100 penalty units.

**105B Liability of owners and masters of vessels for damage to certain property**

- (1) If a vessel damages any wharf, structure or fixed or movable property of any kind vested in or in the possession of a relevant authority, the owner or master of the vessel must pay to the relevant authority the costs and expenses incurred in the repair and reinstatement of the wharf, structure or property damaged.
- (2) Any amount payable under subsection (1) that is not paid may be recovered by the relevant authority as a debt in any court of competent jurisdiction.
- (3) In this section, a *relevant authority* means the Authority, Transport for NSW or the Port Authority of New South Wales.

**105C Obstructions and encroachments in waters**

- (1) In this section, *structure* includes any swimming pool, pontoon, jetty, shed or any other structure.
- (2) For the purposes of this section a reference to the bed of any waters vested in a relevant authority includes a reference to any land that, but for the existence of a structure, would be covered by any such waters.
- (3) A person must not erect a structure in, on or over the bed of any waters vested in a relevant authority without first obtaining the permission of the relevant authority.  
Maximum penalty: 100 penalty units.
- (4) A person who erects a structure in, on or over the bed of any waters vested in a relevant authority must not use the structure after the expiration of the time specified in a written notice from the relevant authority served on the person and requiring the person to remove the structure.  
Maximum penalty: 100 penalty units.
- (5) A relevant authority may remove or authorise the removal of any structure, erected without its permission in, on or over the bed of any waters vested in it or not removed in accordance with any notice given under subsection (4).
- (6) The relevant authority may cause or authorise any structure or part of a structure removed in accordance with this section to be destroyed or stored or

sold, or may sell the structure on condition that it be removed, and may recover in any court of competent jurisdiction the expenses incurred in the removal, destruction, storage or sale from the person who erected the structure or caused the structure to be erected or has made use of it after service on the person of a notice referred to in subsection (4).

- (7) In this section, a *relevant authority* means the Authority, Transport for NSW or Port Authority of New South Wales.

**[8] Section 110 Regulations**

Insert after section 110 (1):

- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the driving, stopping and parking of vehicles at a port (other than a private port) or wharf owned by the Authority or the Port Authority of New South Wales.

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

### **3.1 Fines Act 1996 No 99**

**[1] Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty**

Insert “or an approved enforcement device (within the meaning of Schedule 1A to the *Marine Safety Act 1998*)” after “2013)” in paragraph (b1) of the definition of *vehicle or vessel offence* in section 38 (4).

**[2] Section 38 (4), definition of “vehicle or vessel offence”**

Insert after paragraph (g):

(g1) an offence under Part 4 of Schedule 1A to the *Marine Safety Act 1998*,

### **3.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Marine Safety Act 1998*, section 19P