



New South Wales

# Marine Legislation Amendment Bill 2016

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Marine Safety Act 1998* (the **Marine Act**) and the *Ports and Maritime Administration Act 1995* (the **Ports Act**) to:

- (a) introduce new offences into the Marine Act for operating a vessel in a menacing manner, and
- (b) provide for the seizure, impoundment or forfeiture of recreational vessels if an authorised officer reasonably believes certain serious offences have been committed, and
- (c) allow for random drug testing of vessel operators, and
- (d) provide consistency in penalties and disqualification periods for drug and alcohol offences under roads and maritime law, and
- (e) clarify and streamline marine compliance and investigation powers, and
- (f) establish a scheme for camera recorded offences, and
- (g) enable marine exclusion zones to be declared for special events, and
- (h) provide for the management of wharves, moorings, port facilities and works, and
- (i) make other consequential changes to give effect to recommendations made during the statutory review of the Marine Act by the Maritime Management Centre and Transport for NSW, and
- (j) save any provisions from the *Maritime Services Act 1935* and the regulations under that Act that are still in use.

## Outline of provisions

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

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

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

### Menacing behaviour offence

**Schedule 1 [13]** inserts proposed section 13A into the Marine Act. The proposed section makes it an offence to operate a vessel in any navigable waters in a manner that menaces another person with the intention of menacing that other person or where the person ought to have known that the other person might be menaced.

### Seizure, impoundment or forfeiture of recreational vessels

**Schedule 1 [18]** inserts proposed Division 2 into Part 2 of the Marine Act, which deals with the seizure, impoundment or forfeiture of recreational vessels. **Schedule 1 [6]** makes a consequential amendment.

**Proposed Division 2** contains proposed sections 19A–19U. **Proposed section 19A** empowers an authorised officer to impose the sanctions set out in the section if the officer reasonably believes that an offence has been committed involving menacing behaviour, the death of, or grievous bodily harm to, another person caused by the use of a vessel, or against section 13 (1) (b) or (c) of the Marine Act (if a court attendance notice has been issued). The sanctions include the seizure of the vessel by force and the issue of a production notice requiring the vessel to be produced by a certain date. **Proposed section 19B** deals with the service and withdrawal of such a production notice and **proposed section 19E** creates an offence for failing to comply with a production notice (with a maximum penalty of \$3,300 and suspended registration of the vessel for up to 3 months or forfeiture of the vessel for failure to comply with a second production notice).

**Proposed section 19C** outlines the powers and duties of an authorised officer relating to the seizure of recreational vessels. **Proposed section 19D** deals with the removal and impounding of a vessel produced at a place in accordance with proposed section 19A and **proposed sections 19I–19M** deal with the retention, early release, safe keeping and disposal of an impounded vessel. **Proposed section 19F** deals with the automatic forfeiture of a vessel used in connection with an offence under proposed section 19A if the court finds a person guilty of a second or subsequent offence under that section within a period of 5 years. **Proposed section 19G** enables the court to direct that a forfeiture be commuted to a period of impounding if the court is satisfied that the forfeiture will cause extreme hardship to the offending operator or any other person. **Proposed section 19H** requires interested persons to be notified of any sanction imposed relating to forfeiture. **Proposed sections 19N and 19O** limit the liability of the Crown, Minister, Commissioner of Police, Chief Executive of Roads and Maritime Services (*RMS*), *RMS*, Transport for NSW and authorised officers in respect of the seizure or impounding of a vessel.

**Proposed section 19P** provides for the application and issue of search warrants to enter and search premises and to seize a vessel reasonably believed to have been involved in an offence referred to in proposed section 19A.

**Proposed section 19Q** allows appeals against decisions made under proposed section 19E (2) and **proposed sections 19R–19T** outline the procedures for, and allow the making of regulations with respect to, such appeals.

**Proposed section 19U** makes it clear that a reference to a vessel in proposed Division 2 includes a reference to any trailer used to carry the vessel.

### Offences involving alcohol or other drugs

**Schedule 1 [20]** provides consistency in penalties and disqualification periods for drug and alcohol offences under roads and maritime law. Offences relating to operation of a vessel while a

person's oral fluid, blood or urine contains any prescribed illicit drugs or while a person's blood or urine contains morphine or cocaine (both with a maximum penalty of \$1,100 for a first offence and \$2,200 for a second or subsequent offence) are introduced. It is a defence for an offence relating to the presence of morphine in a person's blood or urine if the presence of the morphine was caused by the consumption of a substance for medicinal purposes.

**Schedule 1 [20]** also increases the maximum penalty (currently \$1,650) for the offence of operating or allowing a person to operate a vessel under the influence of alcohol or another drug to \$2,200 or imprisonment for 9 months, or both (for a first offence) or \$3,300 or imprisonment for 12 months, or both (for a second or subsequent offence).

**Schedule 1 [22]** substitutes section 28A (2) of the Marine Act to prescribe automatic disqualification periods for persons convicted of any offence in proposed section 24, 25 or 26 of the Marine Act.

**Schedule 1 [23] and [24]** require the court to notify RMS of any cancellation, suspension or disqualification under section 28A or 39 of the Marine Act.

**Schedule 1 [19] and [21]** makes a consequential amendment.

### Offences involving unsafe vessels

**Schedule 1 [25]** amends the definition of *unsafe vessel* to exclude considerations relating to cargo and the number and qualifications of the vessel's crew.

**Schedule 1 [26]** makes it an offence (with a maximum penalty of \$5,500) for any person to operate a vessel if the person knows, or ought reasonably to know, that it is an unsafe vessel.

**Schedule 1 [27]** removes provisions relating to the detention of unsafe vessels and instead enables an authorised officer to board and inspect, in State waters, a vessel that the officer considers may be unsafe. The officer may issue a written notice to the owner or operator of the vessel to require the owner or operator to repair the vessel or otherwise make it safe. A person who fails to comply with such a notice is guilty of an offence (with a maximum penalty of \$5,500) and the authorised officer may dispose of or detain the vessel if the Minister considers it reasonable in the circumstances. **Schedule 1 [28]** makes a consequential amendment.

### Compliance and investigation

**Schedule 1 [38]** allows the Minister to appoint staff of the Port Authority of New South Wales as authorised officers under the marine legislation (rather than any port corporation).

**Schedule 1 [39]** substitutes section 97A of the Marine Act to make it an offence to assault, threaten or use abusive language (or cause any other person to do so) to an authorised officer or other person in the exercise of a function under the marine legislation and to impersonate an authorised officer. The maximum penalty for those offences (including the existing offence of preventing or obstructing an authorised officer or other person in the exercise of a function under the marine legislation) is \$11,000 or 3 months imprisonment, or both.

**Schedule 1 [40]** inserts proposed section 98A, which requires the master of a recreational vessel to assist persons in distress on a vessel at sea. **Schedule 1 [42]** requires an explanation of the circumstances of a marine accident to be furnished or reported under Division 2 of Part 8 of the Marine Act.

**Schedule 1 [41]** clarifies when marine accident particulars are to be furnished or reported.

**Schedule 1 [43]** substitutes section 103 of the Marine Act to allow the carrying out of an investigation ordered by the Minister whether or not the matter is or may be subject to an inquest or inquiry under the *Coroners Act 2009* or the *Passenger Transport Act 2014*.

**Schedule 1 [44]** substitutes section 108 (3) of the Marine Act to provide that a draft report, or proposed recommendations in a report, may be provided to the Minister or any other person before completing the report if the investigator thinks that it is desirable or necessary for the purposes of transport safety, or to allow submissions or to give advance notice of the likely form of the report.

**Schedule 1 [45]** outlines the obligations of persons who receive such draft reports or

recommendations. **Schedule 1 [46]** specifies the actions that the Minister may take in connection with a report.

**Schedule 1 [47]** extends the period after which a vessel that has been detained for investigation must be released, or authorised to continue to be detained by order of a Magistrate, from 48 hours to 72 hours.

**Schedule 1 [48]** extends the requirement to carry and produce a boat licence to an authorisation to operate a power-driven vessel issued under the law of another jurisdiction.

**Schedule 1 [49]–[53]** extend the power of an authorised officer to request identification details for an owner and master of a vessel to the operator of a vessel.

**Schedule 1 [54] and [55]** restrict the application of sections 122 and 123 (which deal with the power to require persons to attend at any place to answer questions or produce documents and the limitation on self-incrimination, respectively) so that the sections do not apply to investigations under section 114 (1) (a) and (2) of the Marine Act.

**Schedule 1 [54]** also removes an outdated requirement relating to travelling to give evidence at an investigation.

**Schedule 1 [56]** empowers authorised officers to carry out inspections of public ferry wharves, rather than requiring the appointment of investigators by the Minister. **Schedule 1 [57]** makes a consequential amendment.

**Schedule 1 [37]** updates the heading to Part 8 to reflect the proposed amendments relating to compliance and investigation.

### **Legal proceedings and testing for alcohol and drug use**

**Schedule 1 [58]** inserts proposed section 126A, which gives effect to provisions relating to camera recorded offences in proposed Schedule 1A.

**Schedule 1 [59]** makes admissible in any legal proceedings (and evidence of the matters stated in the certificate) a certificate signed by the Minister, RMS or officer prescribed by the regulations stating that a marine safety licence was or was not suspended or cancelled, a person named in the certificate is or was disqualified from holding a marine safety licence and the circumstances of any such disqualification and a vessel named in the certificate was or was not registered under the Marine Act.

**Schedule 1 [60]** allows evidentiary certificates under section 133 of the Marine Act to be signed by the Port Authority of New South Wales.

**Schedule 1 [61]** amends section 133 of the Marine Act such that proof is not required (until evidence is given to the contrary) of any order made by the Port Authority of New South Wales or of the times of sunrise and sunset on any day and the relevant location, as specified for that day on the website of Geoscience Australia.

**Schedule 1 [62]** requires the court to forward the particulars of any recommended suspension, cancellation or disqualification under section 135A of the Marine Act to RMS.

**Schedule 1 [63]** substitutes Schedule 1 to the Marine Act to extend the provisions of the Schedule to oral fluid analysis and testing and ensure consistency between roads and maritime law.

**Schedule 1 [66]** inserts savings provisions in relation to the application of new provisions for the seizure, impoundment and forfeiture of vessels, existing investigations and the use of existing documents.

### **Camera recorded offences**

**Schedule 1 [64]** inserts into the Marine Act proposed Schedule 1A, which deals with camera recorded offences.

**Proposed Schedule 1A** contains proposed clauses 1–20. **Proposed clauses 1, 4 and 10** insert definitions used in the Schedule.

**Proposed clause 2** enables devices for measuring the speed of a vessel and photographing or recording a vessel being operated at speed or in contravention of certain offences under marine legislation to be approved by the Governor.

**Proposed clause 3** restricts the use of camera devices to areas of significant non-compliance with marine legislation, as declared by the Minister.

**Proposed clauses 5–9** set out how evidence obtained from approved enforcement devices may be used.

**Proposed clauses 11–20** set out liability for camera recorded offences, including when a person is taken to be the responsible person for a vessel and nominating a person as the operator of the vessel at the relevant time.

### Miscellaneous provisions

**Schedule 1 [1]** makes it clear that the Marine Act aims to provide a framework for the enforcement of marine legislation.

**Schedule 1 [2]** inserts definitions of *defence vessel*, *foreign vessel*, *Port Authority of New South Wales* and *prescribed illicit drug* into the Marine Act. **Schedule 1 [3]** amends the definition of *regulated Australian vessel* so that it has the same meaning as in the *Navigation Act 2012* of the Commonwealth. **Schedule 1 [12]** omits the definition of *seagoing ship* from the Marine Act and inserts a definition of *hire and drive vessel*. **Schedule 1 [10]** makes a consequential amendment. **Schedule 1 [4] and [5]** make amendments to the application of the Act.

**Schedule 1 [7] and [8]** enable the Minister to impose any restriction relating to the operation of vessels if considered appropriate for the safety of the public or the protection of vessels, other property, the environment or amenity of other water users, including excluding vessels from particular areas. The restrictions can be imposed by Gazette or the existing method of displaying a notice in or in the vicinity of the waters.

**Schedule 1 [9]** provides that the Minister may prohibit or regulate the operation of vessels during a special event, including by specifying an exclusion zone, by notice published in the Gazette.

**Schedule 1 [11]** requires the court, in considering whether an offence has been committed under section 13 (Reckless, dangerous or negligent navigation and other acts) to consider the impact of the alleged offence on others using or near to the waters in which the offence is alleged to have been committed.

**Schedule 1 [14]** provides for a direction to be given relating to safety on navigable waters if an authorised officer believes the direction is necessary to prevent the operation or other use of a vessel in contravention of section 14.

**Schedule 1 [15]** makes it clear that a direction relating to safety on navigable waters includes (but is not limited to) a direction to cease operating a vessel, to remove the vessel from the water and to moor the vessel.

**Schedule 1 [16]** increases the penalty by 50 penalty units for failure to remove obstructions in navigable waters where 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.

**Schedule 1 [17]** makes an amendment consequential on the proposed change to the Ports Act.

**Schedule 1 [29]** makes it clear that the offence of operating an unregistered vessel in State waters applies to any vessel entering the waters (in addition to operating in the waters) and reduces the penalty from \$8,250 to \$2,200.

**Schedule 1 [30]** provides that, in addition to any other ground on which the responsible licensing official may refuse to register a vessel or may suspend or cancel its registration, the responsible licensing official may do so on the grounds that the vessel is subject to sanctions under proposed Division 2 of Part 2 (Seizure, impoundment or forfeiture of recreational vessels).

**Schedule 1 [31]** reduces the maximum penalty for the offences under section 63A of the Marine Act (being the operation of a recreational vessel as its master while disqualified from holding a boat driving licence and the false or incorrect application for a boat driving licence while disqualified) from \$11,000 to \$3,300 (for a first offence) and from \$13,750 to \$5,500 (for a second

or subsequent offence). **Schedule 1 [32]** requires the court to notify RMS of any disqualification under section 63A of the Marine Act.

**Schedule 1 [33]** applies the compulsory pilotage provisions in Part 6 of the Marine Act to recreational vessels.

**Schedule 1 [34]** extends the powers of a harbour master to include the direction and control of watchkeeping requirements on vessels in ports, the period of advance notification required for a shipping berth and the turning of a propeller of a vessel at a wharf. **Schedule 1 [35]** makes it clear that a direction may be given in relation to a vessel or class of vessels.

**Schedule 1 [36]** inserts proposed section 91B, which requires the master of a vessel in a port to provide certain information to the harbour master on request and creates an offence for failure to do so, with a maximum penalty of \$5,500.

**Schedule 1 [65]** omits a redundant amendment.

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

**Schedule 2 [1]** inserts definitions of *authorised officer*, *foreign vessel*, *Port Authority of New South Wales* and *regulated Australian vessel* for use in the Ports Act. **Schedule 1 [2]** makes a consequential amendment.

**Schedule 2 [3]** inserts into the Ports Act proposed sections 43A–43D. **Proposed section 43A** disapplies the *Dividing Fences Act 1991* in respect of a sea retaining wall that separates land of RMS from land of another owner. **Proposed section 43B** deems land vested in RMS to be, and to always have been, Crown land. **Proposed section 43C** allows an application for a right of way under the *Petroleum (Onshore) Act 1991* in certain circumstances. **Proposed section 43D** requires the Secretary of the Department of Industry, Skills and Regional Development to notify RMS of any proposal to grant a mining or minerals lease or licence and of any proposal to grant an aquaculture lease in respect of any land vested in RMS and any land contained in the bed and shores of any area of water specified in an order under proposed section 85D of the Ports Act.

**Schedule 2 [4]** inserts proposed Part 4A, containing proposed sections 43E–43G, which relate to the giving of safety directions, being directions given by RMS or the Port Authority of New South Wales for the purpose of maintaining or improving safety and security at a port (other than a private port) or wharf owned by RMS, and their enforcement. Proposed section 43G creates an offence with a maximum penalty of \$3,300 if a person does not comply with a safety direction.

**Schedule 2 [5]** inserts proposed Part 6A, which contains provisions relating to the management of wharves, moorings, port facilities and works. **Proposed section 85A** makes it an offence (with a maximum penalty of \$11,000) to secure a commercial vessel, or cause a commercial vessel to be secured, to a wharf of RMS unless the person is authorised to do so. **Proposed section 85B** makes it an offence (with a maximum penalty of \$5,500) to cause a vessel to occupy a mooring in any navigable waters except in accordance with a mooring licence. **Proposed section 85C** makes it an offence (with a maximum penalty of \$11,000) to establish any port facilities for use by commercial vessels, foreign vessels or regulated Australian vessels in or in the vicinity of any port except in accordance with an approval (proposed section 85C (1)) and to permit any port facility that has not been used by a commercial vessel, foreign vessel or regulated Australian vessel for 2 years or more to be used except in accordance with an approval (proposed section 85C (2)). **Proposed section 85D** empowers RMS, Transport for NSW or the Port Authority of New South Wales to investigate existing or proposed facilities for use by vessels and to make, with the approval of the Minister, orders prohibiting certain construction or dredging operations. The provision makes it an offence (with a maximum penalty of \$11,000) to carry out any work prohibited by an order in force. **Proposed section 85E** empowers RMS, Transport for NSW or the Port Authority of New South Wales to give notice to stop making use of works in contravention of section 85C or 85D of the Ports Act and makes it an offence (with a maximum penalty of \$5,500) to fail to comply with such a notice. **Proposed section 85F** makes a certificate signed by RMS or a prescribed officer and stating certain information admissible as evidence in any legal

proceedings. **Proposed section 85G** enables the making of regulations with respect to access to wharves, use of moorings and removal of unauthorised works under proposed Part 6A. **Proposed section 85H** enables the making of regulations for administrative reviews. **Schedule 2 [6]** makes a consequential amendment.

**Schedule 2 [7]** inserts proposed sections 105A–105C. These proposed sections are transferred from the *Maritime Services Act 1935*. **Proposed section 105A** makes it an offence (with a maximum penalty of \$11,000) for a person, other than a public authority, to excavate, remove soil, sand or other material or remove a retaining wall on certain land except in accordance with an approval. The provision also enables RMS to give certain persons notice to take such measures as are necessary to prevent erosion and the deposit of materials. **Proposed section 105B** requires the owner or master of a vessel to pay RMS or the port operator for any damage to a wharf, structure or fixed or moveable property caused by the vessel. **Proposed section 105C** makes it an offence (with a maximum penalty of \$11,000) to erect a structure in, on or over the bed of any waters vested in, or controlled by, RMS or the Port Authority of New South Wales without permission. It also makes it an offence (with a maximum penalty of \$11,000) to use any structure erected in, on or over the bed of such waters after the expiration of the time specified in a notice from the relevant authority to require the removal of the structure.

**Schedule 2 [8]** enables the making of regulations with respect to the driving, stopping and parking of vehicles at a port (other than a private port) or wharf owned by RMS or the Port Authority of New South Wales.

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

**Schedule 3** makes consequential amendments to the *Fines Act 1996* and the *Law Enforcement (Powers and Responsibilities) Act 2002* as a result of the proposed changes to the Marine Act relating to camera recorded offences and the seizure, impoundment or forfeiture of recreational vessels.