

FIRST PRINT

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

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

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

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

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PART 1—PRELIMINARY

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

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

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

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

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

PART 2—OFFENCES RELATING TO ALCOHOL OR OTHER DRUGS

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

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

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

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

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

PART 3—PROVISIONS RELATING TO BREATH ANALYSIS ETC.

Division 1—Preliminary

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

Division 2—Testing for alcohol

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Division 4—Certificate evidence in proceedings

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

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

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

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

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

Division 5—Miscellaneous

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

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

PART 4—POWERS OF POLICE OFFICERS AND OFFICERS OF BOARD

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

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

PART 5—MISCELLANEOUS

Clause 32 provides that the proposed Act binds the Crown.

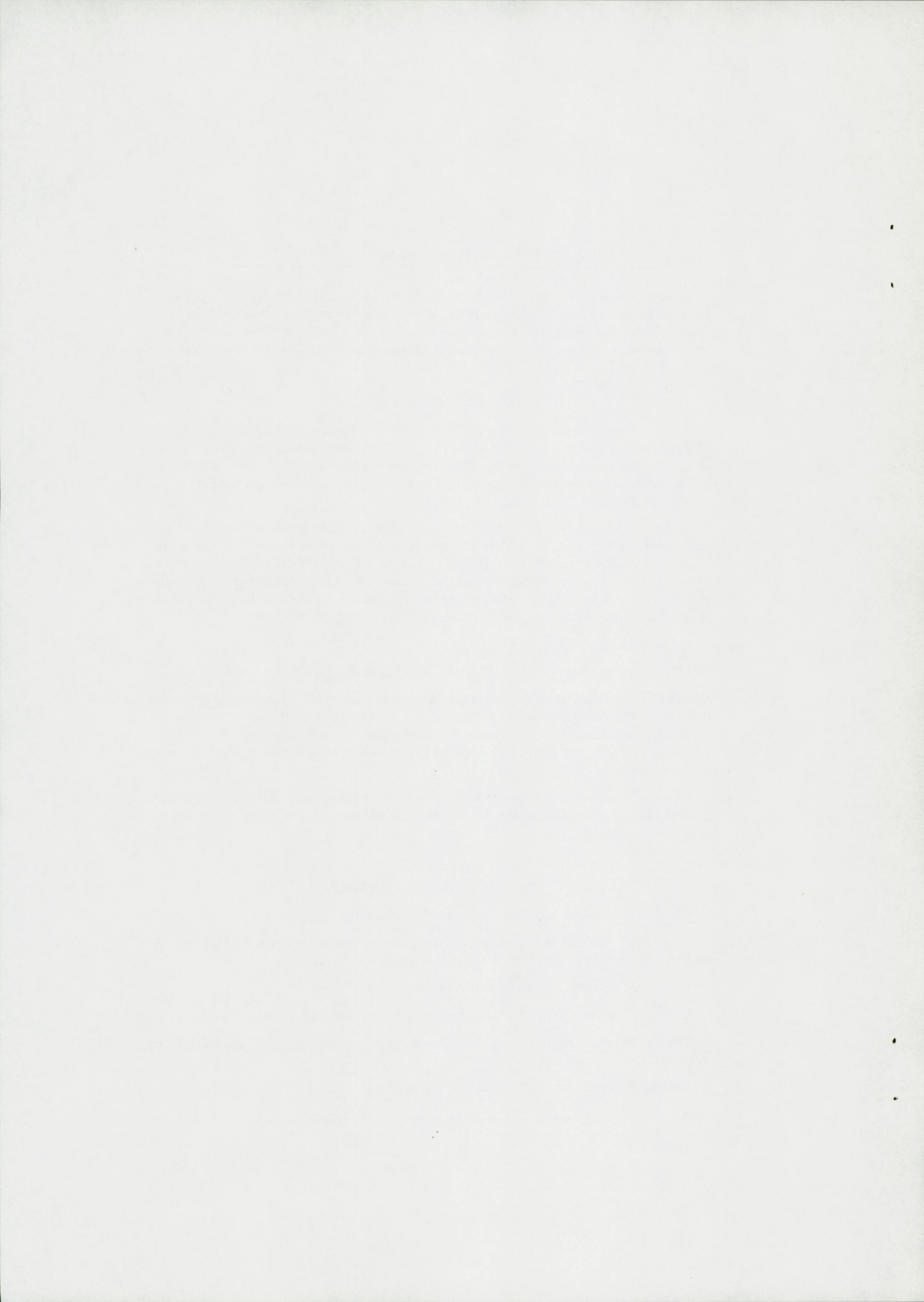
Clause 33 provides that proceedings for offences are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 34 enables the making of regulations.

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

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

Clause 37 consequentially repeals a regulation.



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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SCHEDULE 2—AMENDMENT OF OTHER ACTS

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

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to provide for the safe operation of vessels on State waters.

Marine (Boating Safety—Alcohol and Drugs) 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Marine (Boating Safety—Alcohol and Drugs) Act 1991.

Commencement

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

Definitions

3. (1) In this Act:

“analyst”, “breath analysing instrument”, “breath analysis” and “breath test” have the same meanings as they have in the Traffic Act 1909;

“Board” means the Maritime Services Board;

“commercial purpose”, in relation to a vessel, means use of the vessel:

- (a) for the carriage of persons or goods for money or any other valuable consideration; or
- (b) in any way in, or in connection with, a business or in trade or commerce;

“drug” has the same meaning as it has in the Traffic Act 1909;

“hospital” means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 4F of the Traffic Act 1909 or that is prescribed by the regulations;

“juvenile” means a person between 12 and 16 years of age;

“licence” means a licence relating to the operation of a vessel issued to a person under the marine legislation and includes:

- (a) a certificate of competency issued under the Commercial Vessels Act 1979; and
- (b) a certificate or other document recognised as a certificate of competency under section 30L (Recognition of certificates of other States etc.) of that Act;

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“major offence” means:

- (a) the crime of murder or manslaughter or an offence against section 33, 35, 53 or 54 or any other provision of the Crimes Act 1900, being a crime or offence by which the death of or bodily harm to another person was caused by or arose out of the operation of a vessel; or
- (b) an offence against Part 2;

“marine legislation” has the same meaning as it has in the Marine Administration Act 1989;

“officer”, in relation to the Board, includes an employee of the Board and any other person of whose services the Board makes use;

“operate”, in relation to a vessel, means determine or exercise control over the course or direction of the vessel, or over the means of propulsion of the vessel, while the vessel is under way;

“recreational purpose”, in relation to use of a vessel, means use of the vessel:

- (a) wholly for the purpose of recreation or sport and not for a commercial purpose; or
- (b) for any other purpose prescribed for the purposes of this definition;

“vessel” includes:

- (a) a ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil and hovercraft, and any floating object or apparatus (whether amphibious or not) used wholly or partly for the conveyance of persons or things by water; and
- (b) a seaplane; and
- (c) a sailboard,

but does not include a surfboard or similar device used by a swimmer or surfer to support the swimmer or surfer in the water;

“vessel under way” means a vessel that is not:

- (a) at anchor; or
- (b) made fast to the shore; or
- (c) aground.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

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Application of Act

4. This Act does not apply to or in relation to the operation of a vessel belonging to an arm of the Defence Force of Australia or to the naval, military or air forces of a country other than Australia.

Prescribed concentrations of alcohol

5. A reference in this Act to:

- (a) the low range prescribed concentration of alcohol is a reference to 0.02 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood; and
- (b) the middle range prescribed concentration of alcohol is a reference to a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 100 millilitres of blood; and
- (c) the high range prescribed concentration of alcohol is a reference to a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

PART 2—OFFENCES RELATING TO ALCOHOL OR OTHER DRUGS

Operating vessel under influence of alcohol or other drug

6. (1) A person must not operate a vessel on any waters while under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

(2) The master of a vessel must not permit a person to operate on 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: 15 penalty units.

(3) If a person is charged with an offence under this section:

- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information; 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 information; or
 - (ii) a combination of drugs any one or more of which was or were described in the information.

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(4) In this section:

“**master**”, in relation to a vessel, means a person (other than a pilot) having charge of the vessel.

Operating vessel or supervising juvenile with prescribed concentration of alcohol in blood

7. (1) A person who operates a vessel on any waters while a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood is present in the person's blood is guilty of an offence against this Act.

(2) It is a defence to a prosecution under subsection (1) if the defendant establishes that, at the time of the alleged offence, the defendant:

- (a) was 18 or more years of age; and
- (b) operated the vessel for a recreational purpose.

This defence is not available if the prosecution proves that 0.05 grammes or more of alcohol in 100 millilitres of blood was present in the defendant's blood at the time of the alleged offence.

(3) A person who:

- (a) is required by or under the marine legislation to supervise a juvenile operator of a motor vessel; and
- (b) permits the juvenile to operate the motor vessel on any waters while a concentration of 0.05 grammes or more of alcohol in 100 millilitres of blood is present in the blood of the person,

is guilty of an offence against this Act.

(4) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the low range prescribed concentration of alcohol:

- (a) in the case of a first offence—to a penalty not exceeding 5 penalty units; or
- (b) in the case of a second or subsequent offence—to a penalty not exceeding 10 penalty units.

(5) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the middle range prescribed concentration of alcohol, to a penalty not exceeding 10 penalty units, or to imprisonment for a period not exceeding 6 months, or both.

(6) A person who is guilty of an offence under this section is liable, if there is present in the person's blood the high range prescribed concentration of alcohol:

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- (a) in the case of a first offence—to a penalty not exceeding 15 penalty units, or to imprisonment for a period not exceeding 9 months, or both; or
 - (b) in the case of a second or subsequent offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 12 months, or both.
- (7) For the purposes of this section, if a person is guilty of an offence under this section, that offence:
- (a) is a second or subsequent offence under this section if and only if, within the period of 5 years immediately before being convicted of the offence, the person was convicted of a major offence; and
 - (b) in any other case is to be treated as a first offence.

Double jeopardy

8. (1) A person is not liable to be convicted of both:
- (a) an offence under section 6 of operating a vessel while under the influence of alcohol; and
 - (b) an offence under section 7.
- (2) A person is not liable to be convicted of both:
- (a) an offence under section 6 of operating a vessel while under the influence of alcohol; and
 - (b) an offence under section 21 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine.

Application of section 556A of Crimes Act 1900

9. (1) The provisions of section 556A (Power to permit release of offenders) of the Crimes Act 1900 do not apply to or in respect of a person who is charged with an alcohol or drug offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge (whether such period commenced before or after the commencement of this section), the provisions of that section are or have been applied to or in respect of the person in respect of a charge for another alcohol or drug offence (whether of the same or a different kind).

(2) In this section:

“**alcohol or drug offence**” means an offence under section 6 or 7 or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

Cancellation and suspension of licences

10. (1) If a person is convicted of an offence against this Part in relation to the operation of a vessel and, at the time the offence was committed, the person was required by or under the marine legislation to hold a licence or recognised licence in order to operate the vessel, the court may, by order:

- (a) cancel or suspend the licence or withdraw the recognition of the recognised licence; and
- (b) disqualify the convicted person from holding or obtaining such a licence or being recognised as the holder of such a recognised licence for a period specified by the court.

(2) The holder of a licence or recognised licence referred to in subsection (1) who is convicted of an offence under this Part (“**the convicted person**”) is automatically disqualified from holding such a licence or being recognised as the holder of such a recognised licence for a period of:

- (a) 3 months—if during the period of 5 years before the conviction he or she has not been convicted of any other major offence; and
- (b) 12 months—if during the period of 5 years before the conviction he or she has been convicted of any other major offence,

except as provided by subsection (3).

(3) The court before which the person is convicted may order that the convicted person be disqualified for a shorter period specified in the order.

(4) Any disqualification under this section is in addition to any penalty imposed for the offence.

(5) The holder of a licence cancelled or suspended or recognised licence from which recognition is withdrawn under this section is to deliver the licence to the Board as soon as practicable after the licence is suspended or cancelled or the recognition withdrawn.

(6) A recognised licence that is delivered to the Board is to be returned to the holder of the licence after endorsement to indicate that recognition of the licence has been withdrawn.

(7) In this section:

“**recognised licence**” means a certificate or other document recognised as a certificate of competency under section 30L of the Commercial Vessels Act 1979.

PART 3—PROVISIONS RELATING TO BREATH ANALYSIS ETC.**Division 1—Preliminary****Interpretation**

11. (1) A reference in this Part to a police officer authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a police officer so authorised under the Traffic Act 1909.

(2) For the purposes of this Part, a thing is regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of a medical practitioner or analyst.

(3) For the purposes of this Part, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

Division 2—Testing for alcohol**Breath testing**

12. (1) A police officer may require a person to undergo a breath test in accordance with the directions of the officer if the officer has reasonable cause to believe:

- (a) the person is or was operating a vessel, or is or was in charge of a motor vessel operated by a juvenile, while there is or was alcohol in the person's blood; or
- (b) the person was operating a vessel concerned in an accident which has resulted in the death of, or injury to, any person; or
- (c) the person was operating a vessel concerned in an accident which has resulted in damage to a vessel which affects the seaworthiness of the vessel or the safety of persons on board the vessel or damage to other property apparently in excess of \$1,000 (or, if another amount is prescribed, the prescribed amount).

(2) Nothing in this section limits section 30G (Requirements in case of accident) of the Maritime Services Act 1935.

Breath analysis following breath testing

13. (1) A police officer may require a person to submit to a breath analysis in accordance with the directions of the officer if:

- (a) it appears to the officer as a result of a breath test or assessment under this Part that 0.02 grammes or more of alcohol in 100 millilitres of blood may be present in the person's blood; or

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- (b) the person when required by the officer to undergo a breath test refuses or fails to do so in accordance with the direction of the officer.
- (2) If a police officer is entitled to require a person to submit to a breath analysis under this section, the officer may:
- (a) arrest the person without warrant; and
 - (b) take the person 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 for the purposes of the breath analysis.
- (3) A breath analysis is to be carried out by a police officer, authorised by the Commissioner of Police to operate breath analysing instruments, at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysis instrument is to deliver to the person a statement in writing signed by the officer specifying:
- (a) the concentration of alcohol determined by the analysis to be present in the person's blood and expressed in grammes of alcohol in 100 millilitres of blood; and
 - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A person who is required to submit to a breath analysis may request the police officer making the requisition to arrange for the taking (in the presence of a police officer) of a sample of the person's blood for analysis, at the person's own expense, by:
- (a) a medical practitioner nominated by the person; or
 - (b) a medical practitioner nominated by the police officer at the person's request.
- (6) The making of any such request or the taking of a sample of a person's blood does not absolve the person from the obligation imposed on the person to submit to a breath analysis in accordance with this section.
- (7) A medical practitioner by whom a sample of a person's blood is taken in accordance with an arrangement referred to in subsection (5) is to divide the sample into 2 approximately equal portions.
- (8) Of the 2 portions:
- (a) one is to be handed to the person from whom it was taken; and
 - (b) one, enclosed in a suitable sealed container, is to be handed to the police officer present at the time the sample was taken.

Blood or urine samples taken at hospitals from persons involved in accidents

14. (1) A police officer may require a person who is 15 or more years of age who attends or is admitted to a hospital for examination or treatment because the person has been involved in an accident while operating a vessel to provide as soon as practicable a sample of the person's blood or urine in accordance with the directions of a medical practitioner who attends the person at the hospital.

(2) The blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures if there is no medical practitioner present to attend the person at the hospital.

(3) Any such medical practitioner or nurse is to take the sample if informed by the police officer that the sample is required to be taken by the practitioner or nurse under this Act.

(4) A requirement under subsection (1) need not be made directly to the person concerned but may be made through a medical practitioner or any such nurse who attends the person at the hospital.

Blood or urine samples taken for detecting drugs

15. (1) If:

- (a) a person has undergone a breath test in accordance with this Part; and
- (b) the result of the test does not permit the person to be required to submit to a breath analysis,

a police officer may require the person to submit to an assessment of his or her sobriety in accordance with the directions of the officer.

(2) A person must not be required to submit to the assessment unless the police officer has a reasonable belief that, by the way in which the person was acting, the person might be under the influence of drugs.

(3) If:

- (a) the person refuses to submit to the assessment; or
- (b) after the assessment has been made, a police officer has a reasonable belief that the person is under the influence of a drug,

the officer may require the person to provide a sample of the person's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the person.

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(4) Any such medical practitioner is to take the sample if informed by the police officer that the sample is required to be taken by the practitioner under this Act.

(5) If a police officer is entitled to require a person to provide a sample of blood or urine under this section, the officer may:

- (a) arrest the person without warrant; and
- (b) take the person with such force as may be necessary to a hospital and there detain the person for the purpose of obtaining the sample.

Restrictions on requiring breath test, assessment, breath analysis or sample

16. A police officer must not require a person to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the person has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the person at the hospital (or, if no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the person; or
- (b) if it appears to the officer that it would (because of injuries sustained by the person) be dangerous to the person's medical condition if the person complied with the requisition; or
- (c) at any time after the expiration of 2 hours from the time the person operated the vessel concerned; or
- (d) at the person's home.

Action by medical practitioner or nurse with respect to samples of blood or urine

17. (1) A medical practitioner or nurse who takes a sample of blood or urine when required under this Part to do so must:

- (a) divide the sample into 2 approximately equal portions; and
- (b) place each portion into a container; and
- (c) fasten and seal each container; and
- (d) mark or label each container for future identification.

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(2) Of the 2 sealed containers:

- (a) one must be handed by the medical practitioner or nurse to the person from whom the sample was taken or to some other person on behalf of the person; and
- (b) the other must be handed by the medical practitioner or nurse to the police officer present when the sample was taken or dealt with as otherwise provided by the regulations.

Analysis of samples of blood or urine

18. (1) A police officer may arrange for a portion of a sample of a person's blood or urine taken in accordance with this Part to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

(2) If the blood or urine sample was obtained under section 14, a police officer may not make arrangements under this section for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no police officer attended the scene of the accident that led to the taking of the sample; or
- (b) although a police officer or police officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with section 15, to a breath test or assessment of his or her sobriety.

(3) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this section may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains alcohol or any other drug.

Destruction of blood samples

19. (1) A person must not wilfully destroy a portion of a sample of blood taken under section 14 or 15.

Maximum penalty: 20 penalty units.

(2) A person is not guilty of an offence under this section if the portion is destroyed:

- (a) by an analyst in the course of or on completion of an analysis of the portion; or

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- (b) in the case of a portion referred to in section 17 (2) (a)—by or at the direction of the person from whom the sample was taken or after the expiration of one month commencing on the day on which the sample was taken; or
- (c) in the case of a portion referred to in section 17 (2) (b)—by or at the direction of a police officer if the portion is not required for analysis.

Medical practitioners and nurses—protection from liability

20. No civil or criminal liability is incurred by a medical practitioner or nurse in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:

- (a) believed on reasonable grounds that the practitioner or nurse was required under this Act to take the sample of blood or urine from the person; or
- (b) was informed by a police officer that the person was a person from whom the practitioner or nurse was required under this Act to take the sample of blood or urine,

or by any person acting under the supervision or direction of the medical practitioner or nurse.

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

Refusal to be tested

21. (1) Any person who, when required under this Part to do so, refuses or fails:

- (a) to undergo a breath test; or
- (b) to submit to an assessment,

in accordance with this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) Any person who, when required under this Part to do so, refuses or fails:

- (a) to submit to a breath analysis; or
- (b) to provide a sample of blood or urine,

in accordance with this Part is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

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(3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

Interfering with results of test

22. A person who does anything to introduce, or alter the concentration of, alcohol or any other drug in the person's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Part is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the person.

Maximum penalty: 15 penalty units or imprisonment for 9 months, or both.

Taking of samples by medical practitioner

23. (1) Any medical practitioner who, when required under this Part to take a sample of blood or urine from a person:

- (a) refuses or fails to take the sample; or
- (b) does not comply with the requirements of section 17 with respect to any sample taken,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if the medical practitioner satisfies the court that:

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person; or
- (b) the practitioner was, because of the behaviour of the person, unable to take the sample; or
- (c) there was other reasonable cause for the practitioner not to take the sample.

(3) A person who hinders or obstructs a medical practitioner who is attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

Division 4—Certificate evidence in proceedings**Certificate evidence of concentration of alcohol in blood determined by breath analysis**

24. (1) In proceedings for an offence under section 7, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by a police officer authorised by the Commissioner of Police to operate breath analysing instruments.

(2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person at the time the person operated or was in charge of the vessel concerned if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under section 7, a certificate purporting to be signed by a police officer and certifying that:

- (a) the police officer is duly authorised by the Commissioner of Police to operate breath analysing instruments; and
- (b) the person named in the certificate submitted to a breath analysis; and
- (c) the apparatus used by the police officer to make the breath analysis was a breath analysing instrument within the meaning of the Traffic Act 1909; and
- (d) the analysis was made on the day and completed at the time stated in the certificate; and
- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate; and
- (f) a statement in writing required by section 13 was delivered in accordance with that subsection,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 7, 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 operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.

(5) In any proceedings for an offence under section 7, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

25. (1) In proceedings for an offence under section 7, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Part of a portion of a sample of the person's blood.

(2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person operated the vessel concerned, if that sample of blood was taken within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under section 7, a certificate purporting to be signed by a medical practitioner and certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 17;
- (d) that the practitioner used equipment of a specified description in so taking and dealing with the sample;
- (e) that the container was sealed, marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 7, a certificate purporting to be signed by a police officer certifying any one or more of the following matters:

- (a) that the police officer received a portion of a sample of a specified person's blood taken in accordance with this Part;

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- (b) that the police officer arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood;
- (c) that the container was sealed, marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(5) In proceedings for an offence under section 7, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Part;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample;
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,

is prima facie evidence:

- (g) of the particulars certified in and by the certificate; and
- (h) that the sample was a portion of the sample of the blood of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of presence of drugs

26. (1) In proceedings for an offence under section 6 (Operating vessel under influence of alcohol or other drug):

- (a) evidence may be given of:
 - (i) the presence of a drug; or
 - (ii) the presence of a particular concentration of a drug,

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in the blood or urine of the person charged, as determined pursuant to an analysis under this Part of a portion 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 is taken to have been present in the blood or urine of that person at the time the person operated the vessel concerned,

if the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

(2) In proceedings for an offence under section 6, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood or urine in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 17,

is prima facie evidence of the particulars certified in and by the certificate.

(3) In proceedings for an offence under section 6, a certificate purporting to be signed by a police officer certifying any one or more of the following matters:

- (a) that the police officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Part;
- (b) that the police officer arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 6, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Part;

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- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample;
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,

is prima facie evidence:

- (g) of the particulars certified in and by the certificate; and
- (h) that the portion was a portion of the sample of the blood or urine of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

(5) Nothing in this section enables evidence to be given of or in relation to:

- (a) the presence of a drug other than alcohol; or
- (b) the presence of a particular concentration of a drug other than alcohol,

in the blood or urine of a person charged with an offence under section 6, as determined by an analysis of a sample obtained under section 14, unless the court is satisfied that the analysis was not arranged in contravention of section 18 (2).

Certificate evidence may specify minimum concentrations

27. If, in any proceedings in which evidence is permitted to be given of the results of an analysis of a sample of a person's blood or urine, evidence is given by a certificate under this Part 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:

- (a) the certificate 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; and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a

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concentration in terms of a minimum, does not meet the requirements of this Part.

Division 5—Miscellaneous

Contracts of insurance

28. (1) In this section, the following are **prescribed facts**:

- (a) the fact that a person has undergone a breath test or submitted to a breath test or breath analysis;
- (b) the result of a breath test or breath analysis;
- (c) the result of an analysis of blood or urine;
- (d) the fact that a person has been convicted of an offence under section 7.

(2) A prescribed fact is not, for the purposes of any contract of insurance, admissible as evidence of the fact that that person was at any time under the influence of, or in any way affected by, a drug or incapable of operating a vessel, but nothing in this subsection precludes the admission of any other evidence to show any such fact.

(3) The provisions of this section have effect despite anything contained in any contract of insurance, and a covenant, term, condition or provision purporting to exclude, limit, modify or restrict the operation of this section is void.

(4) Any covenant, term, condition or provision contained in any contract of insurance purporting to exclude or limit the liability of an insurer in the event of the operator of a vessel being convicted of an offence under section 7 is void.

Blood samples taken in another State or Territory

29. (1) A medical practitioner who, in another State or in a Territory, takes a sample of blood:

- (a) from a person attended by the medical practitioner in consequence of an accident in New South Wales waters; and
- (b) in accordance with the provisions of a law of that other State or Territory that substantially corresponds to the provisions of sections 14, 17 and 18,

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.

(2) In proceedings for an offence under section 7, a certificate purporting to be signed by a person who, in another State or in a Territory:

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- (a) took a blood sample; or
- (b) analysed a blood sample,

in accordance with the provisions of a law of that State or Territory that substantially corresponds to the provisions of sections 14, 17 and 18 is prima facie evidence of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under section 18.

PART 4—POWERS OF POLICE OFFICERS AND OFFICERS OF BOARD

Powers of police officers and officers of Board

30. (1) A police officer may for the purposes of this Act exercise the following powers:

- (a) direct or signal a person who is operating a vessel to manoeuvre the vessel in a specified manner or to a specified place;
- (b) direct or signal a person to stop the vessel and secure it in a specified manner;
- (c) board a vessel for the purpose of investigating an offence the police officer reasonably suspects to have been committed while the vessel was under way;
- (d) require any person whom the police officer reasonably suspects of having committed an offence against this Act or the regulations or who, in the opinion of the police officer, is in a position to give evidence relating to the commission of an offence, to state his or her full name and residential address.

(2) An officer of the Board may, to assist any police officer in enforcing this Act, exercise a power referred to in subsection (1) (a) or (b).

(3) A person who:

- (a) fails or refuses to comply with a requirement under this section; or
- (b) hinders a police officer or officer of the Board acting in the exercise of the police officer's or officer's powers under this section; or
- (c) when required to state his or her name and residential address, states a false name or address,

is guilty of an offence.

Maximum penalty: 10 penalty units.

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(4) A person is not guilty of an offence of failing or refusing to comply with a requirement under subsection (1) (c) or (d) unless it is established that the police officer:

- (a) warned the person that a failure or refusal to comply with the requirement is an offence; and
- (b) identified himself or herself as a police officer.

Maximum penalty: 10 penalty units.

Identification of offender

31. (1) If a person is reasonably suspected by a police officer to have committed an offence against this Act or the regulations, the owner of the vessel concerned or person in charge of the vessel at the time of the alleged offence may be required to give information as to the full name and residential address of the person suspected of committing the offence and any other person may be required to give any information which may lead to the identification of the person.

(2) The owner or person in charge may be required to give the information in the form of a written statement signed by the owner or person in charge.

(3) A person who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 10 penalty units.

(4) A person is not guilty of an offence under this section if it is established that the person did not know and could not with reasonable diligence have established the name and address of the person.

(5) A written statement purporting to be furnished under this section and to contain particulars of the name and residential address of a person at the time of commission of an alleged offence against this Act or the regulations is evidence in proceedings against the person that he or she was the operator of the vessel at the time of commission of the alleged offence without proof of signature if the person does not appear before the court.

PART 5—MISCELLANEOUS

Act binds the Crown

32. This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.

Proceedings for offences

33. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

34. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made for or with respect to the following:

- (a) the methods and conditions to be observed by medical practitioners in taking samples of blood or urine under Part 3;
- (b) the storage of samples so taken;
- (c) the delivery or transmission of portions of samples so taken to the persons from whom they are taken, to police officers or to analysts;
- (d) the destruction of portions of samples so taken.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

35. Schedule 1 has effect.

Amendment of other Acts

36. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Consequential repeal of regulation

37. Regulation 3 (2) of the Water Traffic Regulations—N.S.W. is repealed.

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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 35)

Part 1—Regulations

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Part 2—Other provisions

Cancellation and suspension of licences

2. Section 10 does not apply in respect of the conviction of a person of a major offence before the commencement of that section.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 36)

Crimes Act 1900 No. 40

Section 414A (Certificates to be evidence):

After section 414A (8), insert:

(9) A certificate which would, by virtue of Part 3 of the Marine (Boating Safety—Alcohol and Drugs) Act 1991, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under that Part is prima facie evidence of those particulars:

- (a) at any inquest; or
- (b) where a person is charged before a Magistrate or before any Court with an indictable offence.

(10) A certificate referred to in subsection (9) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

SECOND READING SPEECH

IT IS WITH GREAT PLEASURE THAT I INTRODUCE THIS LEGISLATION WHICH REPRESENTS A MAJOR MILESTONE IN THIS GOVERNMENT'S CAMPAIGN TO REINFORCE SAFETY ON THE WATERWAYS OF NEW SOUTH WALES AND WHICH I FORESHADOWED TO THE HOUSE ON 30 OCTOBER 1991. IT IS ONE OF A SERIES OF REFORMS WHICH HAVE BEEN INITIATED BY THIS GOVERNMENT SINCE IT CAME TO POWER IN 1988.

THE KEY OBJECTIVE OF THIS BILL IS THE ENHANCEMENT OF THE SAFETY OF OUR CITIZENS ON STATE WATERS.

THE MARINE (BOATING SAFETY - ALCOHOL AND DRUGS) BILL PROPOSES THE INTRODUCTION OF BLOOD ALCOHOL LIMITS FOR VESSEL OPERATORS AND PROVIDES FOR BREATH TESTS TO DETERMINE WHETHER AN OPERATOR HAS REACHED OR EXCEEDED THE PRESCRIBED LIMIT. BREATH TESTING WILL BE CARRIED OUT AFTER ACCIDENTS INVOLVING SERIOUS INJURY, DEATH OR PROPERTY DAMAGE; OR WHERE RECKLESS, DANGEROUS OR CULPABLE NAVIGATION GIVES REASON TO BELIEVE THAT OPERATORS ARE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

UNDER THIS LEGISLATION WHEN A BREATH TEST INDICATES THAT A PERSON HAS REACHED OR EXCEEDED A PRESCRIBED BLOOD ALCOHOL LIMIT, THE PERSON WILL BE REQUIRED TO UNDERGO A BREATH ANALYSIS. RECOGNISING THE SERIOUS NATURE OF BREATH TESTING, THE BILL PROVIDES THAT TESTS WILL ONLY BE ADMINISTERED BY MEMBERS OF THE NEW SOUTH WALES POLICE SERVICE. HOWEVER,

ACTION MAY ALSO BE INITIATED BY OFFICERS OF THE MSB WHO MAY INSTRUCT OPERATORS THEY SUSPECT OF OPERATING BOATS UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO STOP OR PROCEED TO A CERTAIN PLACE UNTIL THE ARRIVAL OF THE POLICE TO CONDUCT THE BREATH TEST.

THE BILL BEFORE THE HOUSE STRENGTHENS THE EXISTING LEGISLATION IN TWO WAYS : FIRSTLY, WHILE IT IS ALREADY AN OFFENCE TO OPERATE A VESSEL UNDER THE INFLUENCE OF ALCOHOL OR A DRUG, NO BLOOD ALCOHOL LIMITS ARE SET, MAKING ENFORCEMENT DIFFICULT AND IN SOME CASES VIRTUALLY IMPOSSIBLE. SECONDLY, THE EXISTING LEGISLATION DOES NOT PROVIDE FOR TESTS FOR DRUGS TO BE CARRIED OUT.

THE PROPOSED LEGISLATION IS GENERALLY CONSISTENT WITH THE TRAFFIC ACT 1909. THE LEGISLATION PROVIDES THAT A PERSON WHO OPERATES A VESSEL FOR A COMMERCIAL PURPOSE AND A PERSON BELOW 18 YEARS OF AGE WHO OPERATES A VESSEL FOR A RECREATIONAL PURPOSE WILL HAVE COMMITTED AN OFFENCE IF THEY OPERATE WHEN THEY HAVE A BLOOD ALCOHOL CONTENT OF 0.02 GRAMMES PER 100 MILLILITRES OR MORE. A PERSON 18 YEARS OF AGE AND OVER WILL COMMIT AN OFFENCE IF SUCH PERSON HAS A BLOOD ALCOHOL CONTENT OF 0.05 OR MORE WHILE OPERATING A VESSEL FOR RECREATIONAL PURPOSES.

OPERATORS OF COMMERCIAL VESSELS HAVE BEEN SET A LIMIT OF 0.02 BECAUSE THEY PROVIDE PUBLIC TRANSPORT AND OTHER PROFESSIONAL

SERVICES ON THE WATERWAYS. AS PROFESSIONALS THEY NEED TO BE BEYOND REPROACH AND THEY ARE NOT EXPECTED TO CONSUME ANY ALCOHOL OR DRUGS WHEN ON DUTY OR JUST PRIOR TO COMMENCING DUTY. THIS REPRESENTS A MAJOR IMPROVEMENT IN THE MANAGEMENT OF OUR PUBLIC TRANSPORT SYSTEM WHERE THE SAFETY OF FARE-PAYING PASSENGERS IS ALWAYS PARAMOUNT.

THE LEVEL OF 0.02 IS CONSISTENT WITH THE AGREEMENT BETWEEN THE STATES AND THE COMMONWEALTH REACHED IN THE AUSTRALIAN TRANSPORT ADVISORY COUNCIL THAT THERE WOULD BE A UNIFORM 0.02 BLOOD ALCOHOL LIMIT APPLIED TO THE DRIVERS OF PASSENGER TRANSPORT VEHICLES INCLUDING FERRIES.

A UNIQUE FEATURE OF THE BILL CONCERNS THE RESPONSIBILITY WHICH LIES WITH THE MASTER OR PERSON IN OVERALL CONTROL OF A VESSEL. THE LEGISLATION PROVIDES FOR SUCH PERSONS TO BE GUILTY OF AN OFFENCE IF THEY ALLOW ANOTHER PERSON TO PARTICIPATE IN THE VESSEL'S OPERATION WHEN THEY KNOW THAT PERSON TO BE UNDER THE INFLUENCE OF ALCOHOL OR A DRUG. THIS IS AN IMPORTANT PROVISION IN THE BILL.

THE BACKGROUND TO THIS LEGISLATION IS THAT, AFTER ASSUMING OFFICE, THIS GOVERNMENT EMBARKED ON A NUMBER OF INITIATIVES CONCERNING THE WATERWAYS ONE OF WHICH INVOLVED CONSTITUTING A WATERWAYS AUTHORITY AS A SEPARATE ENTITY UNDER A RESTRUCTURED MARITIME SERVICES BOARD. THE AUTHORITY WAS CHARGED WITH THE RESPONSIBILITY OF FOCUSING ON THE MANAGEMENT AND DEVELOPMENT

OF OUR WATERWAYS. THIS ORGANISATION, WITH ITS OWN BOARD OF DIRECTORS DRAWN FROM WIDE INTERESTS IN THE BOATING COMMUNITY, WAS ENTRUSTED WITH ENSURING THAT THE NEEDS OF THE BOATING PUBLIC, IMPROVEMENTS TO THE WATERWAYS INFRASTRUCTURE AND ENVIRONMENT AND ENHANCEMENT OF BOATING SAFETY WERE ALL GIVEN THE HIGH PRIORITY THEY DESERVE.

THESE INITIATIVES GAINED IMPETUS AS A RESULT OF THE N'GLUKA TRAGEDY IN 1990 WHEN FIVE CHILDREN LOST THEIR LIVES. AFTER THE INQUIRY THE CORONER RECOMMENDED THAT CONSIDERATION BE GIVEN TO THE INTRODUCTION OF RANDOM BREATH TESTING ON STATE WATERS. HOWEVER, CURRENT ACCIDENT DATA IS INSUFFICIENT TO JUSTIFY THIS MEASURE AND, RECOGNISING THAT MOST OF THE BOATING IN THIS STATE IS A LEISURE ACTIVITY AND THAT THE PRESSURES AND PROBLEMS WHICH OBTAIN ON THE ROADS DO NOT OCCUR IN ANYTHING LIKE THE SAME DEGREE ON WATER, THIS GOVERNMENT DECIDED NOT TO INTRODUCE RANDOM BREATH TESTING AT PRESENT. ONCE THIS LEGISLATION IS IN PLACE, ACCURATE STATISTICS WILL BE OBTAINED PROGRESSIVELY AND IT WILL BE POSSIBLE TO REVIEW WHETHER THERE IS A NEED FOR RANDOM BREATH TESTING.

THESE PROPOSALS WERE THE SUBJECT OF WIDE CONSULTATION WITH BOATING ORGANISATIONS. I AM GLAD TO SAY THAT THE MAJORITY OF SUCH ORGANISATIONS SUPPORTED THE MEASURES AND WHEN THE GOVERNMENT ANNOUNCED ITS INTENTION EARLIER THIS YEAR TO INTRODUCE SUCH LEGISLATION, IT WAS RECEIVED POSITIVELY BY THE PUBLIC AT LARGE.

THERE IS NO DOUBT THAT SAFETY ON THE WATER WILL BE IMPROVED FOR THOSE WHO USE VESSELS TO EARN THEIR LIVING AS WELL AS FOR THOSE WHO ARE INVOLVED SOLELY IN RECREATIONAL BOATING. FOR TOO LONG THERE HAS BEEN NO REAL CONTROL OVER BLOOD ALCOHOL LIMITS.

IN SUMMARY THIS LEGISLATION IS THE RESULT OF A PROCESS OF DETAILED CONSULTATION AND CAREFUL PREPARATION. I AM APPRECIATIVE OF THE SUPPORT IT HAS BEEN GIVEN BY THE BOATING COMMUNITY AND AM GRATEFUL FOR THE POSITIVE ASSISTANCE I HAVE RECEIVED FROM MY COLLEAGUE IN ANOTHER PLACE, THE MINISTER FOR POLICE AND EMERGENCY SERVICES WHOSE OFFICERS WILL ENFORCE IT. I AM CONVINCED THAT THE MEASURES NOW BEING INTRODUCED BY THE GOVERNMENT WILL LEAD TO FEWER DEATHS AND INJURIES ON OUR WATERWAYS AND I BELIEVE THAT THE GREAT MAJORITY OF NEW SOUTH WALES BOATERS WILL APPLAUD THIS LATEST INITIATIVE IN THE AREA OF PUBLIC SAFETY. I COMMEND THE BILL TO THE HOUSE.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(11) Where any certificate under section 24 (Certificate evidence of concentration of alcohol in blood determined by breath analysis) of the Marine (Boating Safety—Alcohol and Drugs) Act 1991 is admitted in evidence by virtue of subsection (9), evidence of the condition of a breath analysing instrument or the manner in which it was operated is not required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Marine Administration Act 1989 No. 93

Section 3 (Definitions):

Omit "Marine Pollution Act 1987," from the definition of "marine legislation", insert instead:

Marine Pollution Act 1987;

Marine (Boating Safety—Alcohol and Drugs) Act 1991,

**MARINE (BOATING SAFETY—ALCOHOL AND DRUGS)
ACT 1991 No. 80**

NEW SOUTH WALES



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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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**MARINE (BOATING SAFETY—ALCOHOL AND DRUGS)
ACT 1991 No. 80**

NEW SOUTH WALES



Act No. 80, 1991

An Act to provide for the safe operation of vessels on State waters.
[Assented to 17 December 1991]

Marine (Boating Safety—Alcohol and Drugs) 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Marine (Boating Safety—Alcohol and Drugs) Act 1991.

Commencement

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

Definitions

3. (1) In this Act:

“analyst”, “breath analysing instrument”, “breath analysis” and “breath test” have the same meanings as they have in the Traffic Act 1909;

“Board” means the Maritime Services Board;

“commercial purpose”, in relation to a vessel, means use of the vessel:

- (a) for the carriage of persons or goods for money or any other valuable consideration; or
- (b) in any way in, or in connection with, a business or in trade or commerce;

“drug” has the same meaning as it has in the Traffic Act 1909;

“hospital” means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 4F of the Traffic Act 1909 or that is prescribed by the regulations;

“juvenile” means a person between 12 and 16 years of age;

“licence” means a licence relating to the operation of a vessel issued to a person under the marine legislation and includes:

- (a) a certificate of competency issued under the Commercial Vessels Act 1979; and
- (b) a certificate or other document recognised as a certificate of competency under section 30L (Recognition of certificates of other States etc.) of that Act;

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“major offence” means:

- (a) the crime of murder or manslaughter or an offence against section 33, 35, 53 or 54 or any other provision of the Crimes Act 1900, being a crime or offence by which the death of or bodily harm to another person was caused by or arose out of the operation of a vessel; or
- (b) an offence against Part 2;

“marine legislation” has the same meaning as it has in the Marine Administration Act 1989;

“officer”, in relation to the Board, includes an employee of the Board and any other person of whose services the Board makes use;

“operate”, in relation to a vessel, means determine or exercise control over the course or direction of the vessel, or over the means of propulsion of the vessel, while the vessel is under way;

“recreational purpose”, in relation to use of a vessel, means use of the vessel:

- (a) wholly for the purpose of recreation or sport and not for a commercial purpose; or
- (b) for any other purpose prescribed for the purposes of this definition;

“vessel” includes:

- (a) a ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil and hovercraft, and any floating object or apparatus (whether amphibious or not) used wholly or partly for the conveyance of persons or things by water; and
- (b) a seaplane; and
- (c) a sailboard,

but does not include a surfboard or similar device used by a swimmer or surfer to support the swimmer or surfer in the water;

“vessel under way” means a vessel that is not:

- (a) at anchor; or
- (b) made fast to the shore; or
- (c) aground.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

Application of Act

4. This Act does not apply to or in relation to the operation of a vessel belonging to an arm of the Defence Force of Australia or to the naval, military or air forces of a country other than Australia.

Prescribed concentrations of alcohol

5. A reference in this Act to:

- (a) the low range prescribed concentration of alcohol is a reference to 0.02 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood; and
- (b) the middle range prescribed concentration of alcohol is a reference to a concentration of 0.08 grammes or more, but less than 0.15 grammes, of alcohol in 100 millilitres of blood; and
- (c) the high range prescribed concentration of alcohol is a reference to a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

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

Operating vessel under influence of alcohol or other drug

6. (1) A person must not operate a vessel on any waters while under the influence of alcohol or any other drug.

Maximum penalty: 15 penalty units.

(2) The master of a vessel must not permit a person to operate on 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: 15 penalty units.

(3) If a person is charged with an offence under this section:

- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information; 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 information; or
 - (ii) a combination of drugs any one or more of which was or were described in the information.

(4) In this section:

“**master**”, in relation to a vessel, means a person (other than a pilot) having charge of the vessel.

Operating vessel or supervising juvenile with prescribed concentration of alcohol in blood

7. (1) A person who operates a vessel on any waters while a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood is present in the person’s blood is guilty of an offence against this Act.

(2) It is a defence to a prosecution under subsection (1) if the defendant establishes that, at the time of the alleged offence, the defendant:

- (a) was 18 or more years of age; and
- (b) operated the vessel for a recreational purpose.

This defence is not available if the prosecution proves that 0.05 grammes or more of alcohol in 100 millilitres of blood was present in the defendant’s blood at the time of the alleged offence.

(3) A person who:

- (a) is required by or under the marine legislation to supervise a juvenile operator of a motor vessel; and
- (b) permits the juvenile to operate the motor vessel on any waters while a concentration of 0.05 grammes or more of alcohol in 100 millilitres of blood is present in the blood of the person,

is guilty of an offence against this Act.

(4) A person who is guilty of an offence under this section is liable, if there is present in the person’s blood the low range prescribed concentration of alcohol:

- (a) in the case of a first offence—to a penalty not exceeding 5 penalty units; or
- (b) in the case of a second or subsequent offence—to a penalty not exceeding 10 penalty units.

(5) A person who is guilty of an offence under this section is liable, if there is present in the person’s blood the middle range prescribed concentration of alcohol, to a penalty not exceeding 10 penalty units, or to imprisonment for a period not exceeding 6 months, or both.

(6) A person who is guilty of an offence under this section is liable, if there is present in the person’s blood the high range prescribed concentration of alcohol:

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- (a) in the case of a first offence—to a penalty not exceeding 15 penalty units, or to imprisonment for a period not exceeding 9 months, or both; or
- (b) in the case of a second or subsequent offence—to a penalty not exceeding 20 penalty units or to imprisonment for a period not exceeding 12 months, or both.

(7) For the purposes of this section, if a person is guilty of an offence under this section, that offence:

- (a) is a second or subsequent offence under this section if and only if, within the period of 5 years immediately before being convicted of the offence, the person was convicted of a major offence; and
- (b) in any other case is to be treated as a first offence.

Double jeopardy

8. (1) A person is not liable to be convicted of both:

- (a) an offence under section 6 of operating a vessel while under the influence of alcohol; and
- (b) an offence under section 7.

(2) A person is not liable to be convicted of both:

- (a) an offence under section 6 of operating a vessel while under the influence of alcohol; and
- (b) an offence under section 21 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine.

Application of section 556A of Crimes Act 1900

9. (1) The provisions of section 556A (Power to permit release of offenders) of the Crimes Act 1900 do not apply to or in respect of a person who is charged with an alcohol or drug offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge (whether such period commenced before or after the commencement of this section), the provisions of that section are or have been applied to or in respect of the person in respect of a charge for another alcohol or drug offence (whether of the same or a different kind).

(2) In this section:

“**alcohol or drug offence**” means an offence under section 6 or 7 or an offence of aiding, abetting, counselling or procuring the commission of such an offence.

Cancellation and suspension of licences

10. (1) If a person is convicted of an offence against this Part in relation to the operation of a vessel and, at the time the offence was committed, the person was required by or under the marine legislation to hold a licence or recognised licence in order to operate the vessel, the court may, by order:

- (a) cancel or suspend the licence or withdraw the recognition of the recognised licence; and
- (b) disqualify the convicted person from holding or obtaining such a licence or being recognised as the holder of such a recognised licence for a period specified by the court.

(2) The holder of a licence or recognised licence referred to in subsection (1) who is convicted of an offence under this Part (**“the convicted person”**) is automatically disqualified from holding such a licence or being recognised as the holder of such a recognised licence for a period of:

- (a) 3 months—if during the period of 5 years before the conviction he or she has not been convicted of any other major offence; and
- (b) 12 months—if during the period of 5 years before the conviction he or she has been convicted of any other major offence,

except as provided by subsection (3).

(3) The court before which the person is convicted may order that the convicted person be disqualified for a shorter period specified in the order.

(4) Any disqualification under this section is in addition to any penalty imposed for the offence.

(5) The holder of a licence cancelled or suspended or recognised licence from which recognition is withdrawn under this section is to deliver the licence to the Board as soon as practicable after the licence is suspended or cancelled or the recognition withdrawn.

(6) A recognised licence that is delivered to the Board is to be returned to the holder of the licence after endorsement to indicate that recognition of the licence has been withdrawn.

(7) In this section:

“recognised licence” means a certificate or other document recognised as a certificate of competency under section 30L of the Commercial Vessels Act 1979.

PART 3—PROVISIONS RELATING TO BREATH ANALYSIS ETC.**Division 1—Preliminary****Interpretation**

11. (1) A reference in this Part to a police officer authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a police officer so authorised under the Traffic Act 1909.

(2) For the purposes of this Part, a thing is regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of a medical practitioner or analyst.

(3) For the purposes of this Part, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

Division 2—Testing for alcohol**Breath testing**

12. (1) A police officer may require a person to undergo a breath test in accordance with the directions of the officer if the officer has reasonable cause to believe:

- (a) the person is or was operating a vessel, or is or was in charge of a motor vessel operated by a juvenile, while there is or was alcohol in the person's blood; or
- (b) the person was operating a vessel concerned in an accident which has resulted in the death of, or injury to, any person; or
- (c) the person was operating a vessel concerned in an accident which has resulted in damage to a vessel which affects the seaworthiness of the vessel or the safety of persons on board the vessel or damage to other property apparently in excess of \$1,000 (or, if another amount is prescribed, the prescribed amount).

(2) Nothing in this section limits section 30G (Requirements in case of accident) of the Maritime Services Act 1935.

Breath analysis following breath testing

13. (1) A police officer may require a person to submit to a breath analysis in accordance with the directions of the officer if:

- (a) it appears to the officer as a result of a breath test or assessment under this Part that 0.02 grammes or more of alcohol in 100 millilitres of blood may be present in the person's blood; or

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- (b) the person when required by the officer to undergo a breath test refuses or fails to do so in accordance with the direction of the officer.
- (2) If a police officer is entitled to require a person to submit to a breath analysis under this section, the officer may:
- (a) arrest the person without warrant; and
 - (b) take the person 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 for the purposes of the breath analysis.
- (3) A breath analysis is to be carried out by a police officer, authorised by the Commissioner of Police to operate breath analysing instruments, at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysis instrument is to deliver to the person a statement in writing signed by the officer specifying:
- (a) the concentration of alcohol determined by the analysis to be present in the person's blood and expressed in grammes of alcohol in 100 millilitres of blood; and
 - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A person who is required to submit to a breath analysis may request the police officer making the requisition to arrange for the taking (in the presence of a police officer) of a sample of the person's blood for analysis, at the person's own expense, by:
- (a) a medical practitioner nominated by the person; or
 - (b) a medical practitioner nominated by the police officer at the person's request.
- (6) The making of any such request or the taking of a sample of a person's blood does not absolve the person from the obligation imposed on the person to submit to a breath analysis in accordance with this section.
- (7) A medical practitioner by whom a sample of a person's blood is taken in accordance with an arrangement referred to in subsection (5) is to divide the sample into 2 approximately equal portions.
- (8) Of the 2 portions:
- (a) one is to be handed to the person from whom it was taken; and
 - (b) one, enclosed in a suitable sealed container, is to be handed to the police officer present at the time the sample was taken.

Blood or urine samples taken at hospitals from persons involved in accidents

14. (1) A police officer may require a person who is 15 or more years of age who attends or is admitted to a hospital for examination or treatment because the person has been involved in an accident while operating a vessel to provide as soon as practicable a sample of the person's blood or urine in accordance with the directions of a medical practitioner who attends the person at the hospital.

(2) The blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures if there is no medical practitioner present to attend the person at the hospital.

(3) Any such medical practitioner or nurse is to take the sample if informed by the police officer that the sample is required to be taken by the practitioner or nurse under this Act.

(4) A requirement under subsection (1) need not be made directly to the person concerned but may be made through a medical practitioner or any such nurse who attends the person at the hospital.

Blood or urine samples taken for detecting drugs

15. (1) If:

- (a) a person has undergone a breath test in accordance with this Part; and
- (b) the result of the test does not permit the person to be required to submit to a breath analysis,

a police officer may require the person to submit to an assessment of his or her sobriety in accordance with the directions of the officer.

(2) A person must not be required to submit to the assessment unless the police officer has a reasonable belief that, by the way in which the person was acting, the person might be under the influence of drugs.

(3) If:

- (a) the person refuses to submit to the assessment; or
- (b) after the assessment has been made, a police officer has a reasonable belief that the person is under the influence of a drug,

the officer may require the person to provide a sample of the person's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the person.

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(4) Any such medical practitioner is to take the sample if informed by the police officer that the sample is required to be taken by the practitioner under this Act.

(5) If a police officer is entitled to require a person to provide a sample of blood or urine under this section, the officer may:

- (a) arrest the person without warrant; and
- (b) take the person with such force as may be necessary to a hospital and there detain the person for the purpose of obtaining the sample.

Restrictions on requiring breath test, assessment, breath analysis or sample

16. A police officer must not require a person to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the person has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the person at the hospital (or, if no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the person; or
- (b) if it appears to the officer that it would (because of injuries sustained by the person) be dangerous to the person's medical condition if the person complied with the requisition; or
- (c) at any time after the expiration of 2 hours from the time the person operated the vessel concerned; or
- (d) at the person's home.

Action by medical practitioner or nurse with respect to samples of blood or urine

17. (1) A medical practitioner or nurse who takes a sample of blood or urine when required under this Part to do so must:

- (a) divide the sample into 2 approximately equal portions; and
- (b) place each portion into a container; and
- (c) fasten and seal each container; and
- (d) mark or label each container for future identification.

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- (2) Of the 2 sealed containers:
- (a) one must be handed by the medical practitioner or nurse to the person from whom the sample was taken or to some other person on behalf of the person; and
 - (b) the other must be handed by the medical practitioner or nurse to the police officer present when the sample was taken or dealt with as otherwise provided by the regulations.

Analysis of samples of blood or urine

18. (1) A police officer may arrange for a portion of a sample of a person's blood or urine taken in accordance with this Part to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

(2) If the blood or urine sample was obtained under section 14, a police officer may not make arrangements under this section for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no police officer attended the scene of the accident that led to the taking of the sample; or
- (b) although a police officer or police officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit, in accordance with section 15, to a breath test or assessment of his or her sobriety.

(3) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this section may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains alcohol or any other drug.

Destruction of blood samples

19. (1) A person must not wilfully destroy a portion of a sample of blood taken under section 14 or 15.

Maximum penalty: 20 penalty units.

(2) A person is not guilty of an offence under this section if the portion is destroyed:

- (a) by an analyst in the course of or on completion of an analysis of the portion; or

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- (b) in the case of a portion referred to in section 17 (2) (a)—by or at the direction of the person from whom the sample was taken or after the expiration of one month commencing on the day on which the sample was taken; or
- (c) in the case of a portion referred to in section 17 (2) (b)—by or at the direction of a police officer if the portion is not required for analysis.

Medical practitioners and nurses—protection from liability

20. No civil or criminal liability is incurred by a medical practitioner or nurse in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:

- (a) believed on reasonable grounds that the practitioner or nurse was required under this Act to take the sample of blood or urine from the person; or
- (b) was informed by a police officer that the person was a person from whom the practitioner or nurse was required under this Act to take the sample of blood or urine,

or by any person acting under the supervision or direction of the medical practitioner or nurse.

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

Refusal to be tested

21. (1) Any person who, when required under this Part to do so, refuses or fails:

- (a) to undergo a breath test; or
- (b) to submit to an assessment,

in accordance with this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) Any person who, when required under this Part to do so, refuses or fails:

- (a) to submit to a breath analysis; or
- (b) to provide a sample of blood or urine,

in accordance with this Part is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

(3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

Interfering with results of test

22. A person who does anything to introduce, or alter the concentration of, alcohol or any other drug in the person's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Part is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the person.

Maximum penalty: 15 penalty units or imprisonment for 9 months, or both.

Taking of samples by medical practitioner

23. (1) Any medical practitioner who, when required under this Part to take a sample of blood or urine from a person:

- (a) refuses or fails to take the sample; or
- (b) does not comply with the requirements of section 17 with respect to any sample taken,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if the medical practitioner satisfies the court that:

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the person would be prejudicial to the proper care and treatment of the person; or
- (b) the practitioner was, because of the behaviour of the person, unable to take the sample; or
- (c) there was other reasonable cause for the practitioner not to take the sample.

(3) A person who hinders or obstructs a medical practitioner who is attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Maximum penalty: 10 penalty units.

Division 4—Certificate evidence in proceedings**Certificate evidence of concentration of alcohol in blood determined by breath analysis**

24. (1) In proceedings for an offence under section 7, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by a police officer authorised by the Commissioner of Police to operate breath analysing instruments.

(2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person at the time the person operated or was in charge of the vessel concerned if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under section 7, a certificate purporting to be signed by a police officer and certifying that:

- (a) the police officer is duly authorised by the Commissioner of Police to operate breath analysing instruments; and
- (b) the person named in the certificate submitted to a breath analysis; and
- (c) the apparatus used by the police officer to make the breath analysis was a breath analysing instrument within the meaning of the Traffic Act 1909; and
- (d) the analysis was made on the day and completed at the time stated in the certificate; and
- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate; and
- (f) a statement in writing required by section 13 was delivered in accordance with that subsection,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 7, 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 operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.

(5) In any proceedings for an offence under section 7, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

25. (1) In proceedings for an offence under section 7, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Part of a portion of a sample of the person's blood.

(2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person operated the vessel concerned, if that sample of blood was taken within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under section 7, a certificate purporting to be signed by a medical practitioner and certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 17;
- (d) that the practitioner used equipment of a specified description in so taking and dealing with the sample;
- (e) that the container was sealed, marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 7, a certificate purporting to be signed by a police officer certifying any one or more of the following matters:

- (a) that the police officer received a portion of a sample of a specified person's blood taken in accordance with this Part;

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- (b) that the police officer arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood;
- (c) that the container was sealed, marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(5) In proceedings for an offence under section 7, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Part;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample;
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,

is prima facie evidence:

- (g) of the particulars certified in and by the certificate; and
- (h) that the sample was a portion of the sample of the blood of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of presence of drugs

26. (1) In proceedings for an offence under section 6 (Operating vessel under influence of alcohol or other drug):

- (a) evidence may be given of:
 - (i) the presence of a drug; or
 - (ii) the presence of a particular concentration of a drug,

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in the blood or urine of the person charged, as determined pursuant to an analysis under this Part of a portion 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 is taken to have been present in the blood or urine of that person at the time the person operated the vessel concerned,

if the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

(2) In proceedings for an offence under section 6, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood or urine in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 17,

is prima facie evidence of the particulars certified in and by the certificate.

(3) In proceedings for an offence under section 6, a certificate purporting to be signed by a police officer certifying any one or more of the following matters:

- (a) that the police officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Part;
- (b) that the police officer arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 6, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Part;

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- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that, on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample;
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Traffic Act 1909,

is prima facie evidence:

- (g) of the particulars certified in and by the certificate; and
- (h) that the portion was a portion of the sample of the blood or urine of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

(5) Nothing in this section enables evidence to be given of or in relation to:

- (a) the presence of a drug other than alcohol; or
- (b) the presence of a particular concentration of a drug other than alcohol,

in the blood or urine of a person charged with an offence under section 6, as determined by an analysis of a sample obtained under section 14, unless the court is satisfied that the analysis was not arranged in contravention of section 18 (2).

Certificate evidence may specify minimum concentrations

27. If, in any proceedings in which evidence is permitted to be given of the results of an analysis of a sample of a person's blood or urine, evidence is given by a certificate under this Part 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:

- (a) the certificate 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; and
- (b) the evidence given by the certificate is not open to challenge on the basis that the analysis, merely because it purports to determine a

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concentration in terms of a minimum, does not meet the requirements of this Part.

Division 5—Miscellaneous

Contracts of insurance

28. (1) In this section, the following are **prescribed facts**:

- (a) the fact that a person has undergone a breath test or submitted to a breath test or breath analysis;
- (b) the result of a breath test or breath analysis;
- (c) the result of an analysis of blood or urine;
- (d) the fact that a person has been convicted of an offence under section 7.

(2) A prescribed fact is not, for the purposes of any contract of insurance, admissible as evidence of the fact that that person was at any time under the influence of, or in any way affected by, a drug or incapable of operating a vessel, but nothing in this subsection precludes the admission of any other evidence to show any such fact.

(3) The provisions of this section have effect despite anything contained in any contract of insurance, and a covenant, term, condition or provision purporting to exclude, limit, modify or restrict the operation of this section is void.

(4) Any covenant, term, condition or provision contained in any contract of insurance purporting to exclude or limit the liability of an insurer in the event of the operator of a vessel being convicted of an offence under section 7 is void.

Blood samples taken in another State or Territory

29. (1) A medical practitioner who, in another State or in a Territory, takes a sample of blood:

- (a) from a person attended by the medical practitioner in consequence of an accident in New South Wales waters; and
- (b) in accordance with the provisions of a law of that other State or Territory that substantially corresponds to the provisions of sections 14, 17 and 18,

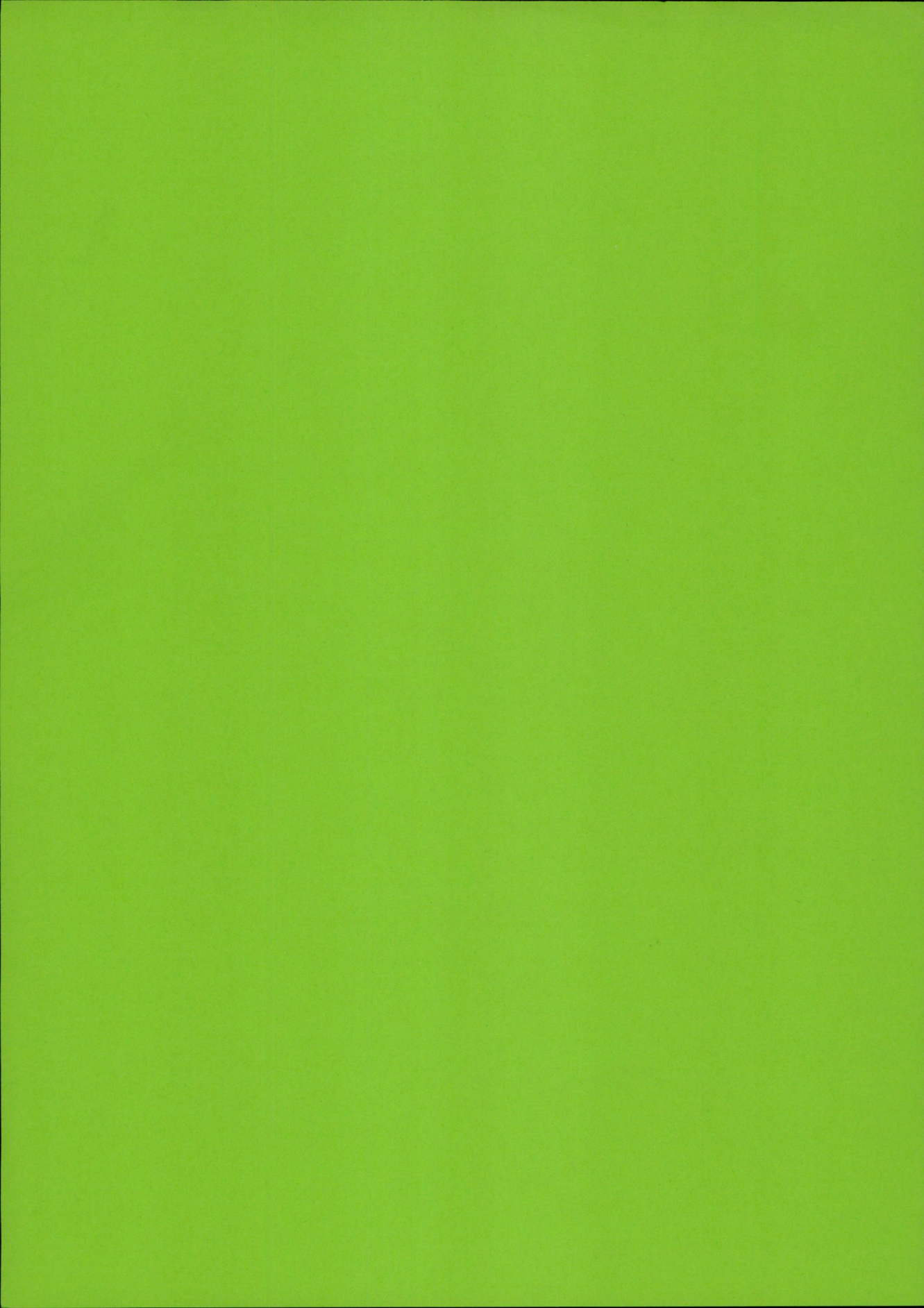
may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.

(2) In proceedings for an offence under section 7, a certificate purporting to be signed by a person who, in another State or in a Territory:

**MARINE (BOATING SAFETY—ALCOHOL AND DRUGS)
ACT 1991 No 80**

Date of last reprint: not yet reprinted

This Act is to be wholly repealed, on a day to be proclaimed, by the Marine Safety Act 1998 No 121.



- (a) took a blood sample; or
- (b) analysed a blood sample,

in accordance with the provisions of a law of that State or Territory that substantially corresponds to the provisions of sections 14, 17 and 18 is prima facie evidence of the particulars certified in and by the certificate, and an analysis to which any such certificate relates is taken to be an analysis under section 18.

PART 4—POWERS OF POLICE OFFICERS AND OFFICERS OF BOARD

Powers of police officers and officers of Board

30. (1) A police officer may for the purposes of this Act exercise the following powers:

- (a) direct or signal a person who is operating a vessel to manoeuvre the vessel in a specified manner or to a specified place;
- (b) direct or signal a person to stop the vessel and secure it in a specified manner;
- (c) board a vessel for the purpose of investigating an offence the police officer reasonably suspects to have been committed while the vessel was under way;
- (d) require any person whom the police officer reasonably suspects of having committed an offence against this Act or the regulations or who, in the opinion of the police officer, is in a position to give evidence relating to the commission of an offence, to state his or her full name and residential address.

(2) An officer of the Board may, to assist any police officer in enforcing this Act, exercise a power referred to in subsection (1) (a) or (b).

(3) A person who:

- (a) fails or refuses to comply with a requirement under this section; or
- (b) hinders a police officer or officer of the Board acting in the exercise of the police officer's or officer's powers under this section; or
- (c) when required to state his or her name and residential address, states a false name or address,

is guilty of an offence.

Maximum penalty: 10 penalty units.

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(4) A person is not guilty of an offence of failing or refusing to comply with a requirement under subsection (1) (c) or (d) unless it is established that the police officer:

- (a) warned the person that a failure or refusal to comply with the requirement is an offence; and
- (b) identified himself or herself as a police officer.

Maximum penalty: 10 penalty units.

Identification of offender

31. (1) If a person is reasonably suspected by a police officer to have committed an offence against this Act or the regulations, the owner of the vessel concerned or person in charge of the vessel at the time of the alleged offence may be required to give information as to the full name and residential address of the person suspected of committing the offence and any other person may be required to give any information which may lead to the identification of the person.

(2) The owner or person in charge may be required to give the information in the form of a written statement signed by the owner or person in charge.

(3) A person who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 10 penalty units.

(4) A person is not guilty of an offence under this section if it is established that the person did not know and could not with reasonable diligence have established the name and address of the person.

(5) A written statement purporting to be furnished under this section and to contain particulars of the name and residential address of a person at the time of commission of an alleged offence against this Act or the regulations is evidence in proceedings against the person that he or she was the operator of the vessel at the time of commission of the alleged offence without proof of signature if the person does not appear before the court.

PART 5—MISCELLANEOUS

Act binds the Crown

32. This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.

Proceedings for offences

33. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

34. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made for or with respect to the following:

- (a) the methods and conditions to be observed by medical practitioners in taking samples of blood or urine under Part 3;
- (b) the storage of samples so taken;
- (c) the delivery or transmission of portions of samples so taken to the persons from whom they are taken, to police officers or to analysts;
- (d) the destruction of portions of samples so taken.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

35. Schedule 1 has effect.

Amendment of other Acts

36. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Consequential repeal of regulation

37. Regulation 3 (2) of the Water Traffic Regulations—N.S.W. is repealed.

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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 35)

Part 1—Regulations

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Part 2—Other provisions

Cancellation and suspension of licences

2. Section 10 does not apply in respect of the conviction of a person of a major offence before the commencement of that section.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 36)

Crimes Act 1900 No. 40

Section 414A (Certificates to be evidence):

After section 414A (8), insert:

(9) A certificate which would, by virtue of Part 3 of the Marine (Boating Safety—Alcohol and Drugs) Act 1991, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under that Part is prima facie evidence of those particulars:

- (a) at any inquest; or
- (b) where a person is charged before a Magistrate or before any Court with an indictable offence.

(10) A certificate referred to in subsection (9) is not admissible, in proceedings under the Drug Misuse and Trafficking Act 1985, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(11) Where any certificate under section 24 (Certificate evidence of concentration of alcohol in blood determined by breath analysis) of the Marine (Boating Safety—Alcohol and Drugs) Act 1991 is admitted in evidence by virtue of subsection (9), evidence of the condition of a breath analysing instrument or the manner in which it was operated is not required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Marine Administration Act 1989 No. 93**Section 3 (Definitions):**

Omit “Marine Pollution Act 1987,” from the definition of “marine legislation”, insert instead:

Marine Pollution Act 1987;

Marine (Boating Safety—Alcohol and Drugs) Act 1991,

[*Minister's second reading speech made in—
Legislative Assembly on 4 December 1991
Legislative Council on 11 December 1991*]

