Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012
No. 66 of 2012

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>6</td>
<td>15</td>
</tr>
<tr>
<td>7</td>
<td>20</td>
</tr>
<tr>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>9</td>
<td>25</td>
</tr>
<tr>
<td>10</td>
<td>27</td>
</tr>
<tr>
<td>11</td>
<td>27</td>
</tr>
<tr>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>13</td>
<td>31</td>
</tr>
<tr>
<td>14</td>
<td>49</td>
</tr>
<tr>
<td>15</td>
<td>49</td>
</tr>
<tr>
<td>16</td>
<td>59</td>
</tr>
</tbody>
</table>

PART 1—PRELIMINARY

1 Purposes
2 Commencement

PART 2—AMENDMENT OF MARINE (DRUG, ALCOHOL AND POLLUTION CONTROL) ACT 1988

Division 1—Drug and alcohol related amendments

3 Definitions
4 Interpretation
5 Offences involving alcohol or other drugs
6 Penalties for offences involving alcohol or drugs
7 New section 28A substituted
   28A Provisions about cancellation and disqualification
8 Immediate suspension of marine licence or certificate of competency in certain circumstances
9 Preliminary breath tests
10 Preliminary breath testing stations
11 Breath analysis
12 Blood samples to be taken in certain cases
13 New sections 31AA to 31AE inserted
   31AA Drug assessment
   31AB Blood and urine samples
   31AC Destruction of identifying information
   31AD Preliminary oral fluid tests
   31AE Oral fluid testing and analysis
14 Evidentiary provisions—blood tests
15 New sections 32A, 32B and 32C inserted
   32A Evidentiary provisions—urine tests
   32B Evidentiary provisions—oral fluid tests
   32C Approved analysts and approved experts
16 Evidentiary provisions—breath tests
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>59</td>
</tr>
<tr>
<td>New section 33B inserted</td>
<td></td>
</tr>
<tr>
<td>33B</td>
<td>59</td>
</tr>
<tr>
<td>Prohibited analysis</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>61</td>
</tr>
<tr>
<td>New Schedule 1 inserted</td>
<td></td>
</tr>
<tr>
<td>SCHEDULE 1—Minimum Disqualification Periods</td>
<td>61</td>
</tr>
<tr>
<td>19</td>
<td>62</td>
</tr>
<tr>
<td>Regulation making powers relating to taking and testing of samples of oral fluid</td>
<td></td>
</tr>
<tr>
<td>Division 2—Pollution control and other amendments</td>
<td>63</td>
</tr>
<tr>
<td>20</td>
<td>63</td>
</tr>
<tr>
<td>Definitions etc.</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>63</td>
</tr>
<tr>
<td>Repeal of redundant section</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>63</td>
</tr>
<tr>
<td>New section 71AA inserted</td>
<td></td>
</tr>
<tr>
<td>71AA</td>
<td>63</td>
</tr>
<tr>
<td>Definition</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>64</td>
</tr>
<tr>
<td>Section 71B substituted</td>
<td></td>
</tr>
<tr>
<td>71B</td>
<td>64</td>
</tr>
<tr>
<td>Powers of the Secretary</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>65</td>
</tr>
<tr>
<td>New sections 71C and 71D inserted</td>
<td></td>
</tr>
<tr>
<td>71C</td>
<td>65</td>
</tr>
<tr>
<td>Protection of Secretary from liability</td>
<td></td>
</tr>
<tr>
<td>71D</td>
<td>66</td>
</tr>
<tr>
<td>Protection from liability (Victorian Marine Pollution Contingency Plan)</td>
<td></td>
</tr>
<tr>
<td>PART 3—AMENDMENT OF MARINE SAFETY ACT 2010</td>
<td>67</td>
</tr>
<tr>
<td>25</td>
<td>67</td>
</tr>
<tr>
<td>Section 38 substituted</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>67</td>
</tr>
<tr>
<td>Vessel may be registered in one name only</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>67</td>
</tr>
<tr>
<td>New sections 162A to 162C inserted</td>
<td></td>
</tr>
<tr>
<td>162A</td>
<td>67</td>
</tr>
<tr>
<td>Police power to inspect vessels</td>
<td></td>
</tr>
<tr>
<td>162B</td>
<td>68</td>
</tr>
<tr>
<td>Police powers to enter vessels without consent or warrant</td>
<td></td>
</tr>
<tr>
<td>162C</td>
<td>69</td>
</tr>
<tr>
<td>Police may direct someone to provide certain information concerning owner or master of a vessel</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>70</td>
</tr>
<tr>
<td>Power to prosecute</td>
<td></td>
</tr>
<tr>
<td>PART 4—AMENDMENT OF PORT MANAGEMENT ACT 1995</td>
<td>71</td>
</tr>
<tr>
<td>28</td>
<td>71</td>
</tr>
<tr>
<td>Section 94 substituted</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>71</td>
</tr>
<tr>
<td>Liability of officers of bodies corporate</td>
<td></td>
</tr>
<tr>
<td>PART 5—AMENDMENT OF TRANSPORT (COMPLIANCE AND MISCELLANEOUS) ACT 1983</td>
<td>73</td>
</tr>
<tr>
<td>29</td>
<td>73</td>
</tr>
<tr>
<td>General marine related inspection, inquiry and search powers</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>74</td>
</tr>
<tr>
<td>Regulation making powers for the purposes of transport safety infringements</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>74</td>
</tr>
<tr>
<td>Who may only bring proceedings for offences against relevant transport safety laws</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>75</td>
</tr>
<tr>
<td>Statute law revision</td>
<td></td>
</tr>
</tbody>
</table>
PART 6—AMENDMENT OF TRANSPORT LEGISLATION AMENDMENT (PUBLIC TRANSPORT DEVELOPMENT AUTHORITY) ACT 2011

33 Statute law revision 76

PART 7—REPEAL OF AMENDING ACT

34 Repeal of amending Act 77

ENDNOTES 78
The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

(a) to amend the Marine (Drug, Alcohol and Pollution Control) Act 1988—
(i) to create new offences prohibiting the operation of a vessel or being a master or pilot of a vessel underway or at anchor while impaired by a drug other than alcohol; and

(ii) to prescribe a zero concentration of alcohol in specified circumstances for persons under the age of 21 years and operators, masters and pilots of commercial and government vessels; and

(iii) to align penalty and enforcement provisions for drug and alcohol offences under that Act with equivalent provisions under the Road Safety Act 1986; and

(iv) to provide for a drug assessment and testing regime; and

(v) to clarify functions, powers and responsibilities in relation to marine pollution; and

(vi) to make other miscellaneous amendments to improve the operation of the Act; and

(b) to amend the Marine Safety Act 2010—

(i) to remove the requirement that a vessel may only be registered in the name of a natural person; and

(ii) to make further provision for prosecutions; and

(iii) to make further provision in relation to police powers under that Act; and

(c) to amend the Port Management Act 1995 to modify a directors' liability provision under that Act; and
Part 1—Preliminary

(d) to amend the Transport (Compliance and Miscellaneous) Act 1983—

(i) to make further provision for enforcement powers; and

(ii) to make further provision for regulations made under that Act in relation to transport safety infringements; and

(e) to amend the Transport Legislation Amendment (Public Transport Development Authority) Act 2011 to make statute law revision amendments to that Act.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2013, it comes into operation on that day.
PART 2—AMENDMENT OF MARINE (DRUG, ALCOHOL AND POLLUTION CONTROL) ACT 1988

Division 1—Drug and alcohol related amendments

3 Definitions

(1) In section 3(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for the definition of *pilot substitute*—

"*pilot* has the same meaning as in the Marine Safety Act 2010;".

(2) In section 3(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for paragraph (a) of the definition of *prescribed concentration of alcohol substitute*—

"(a) in the case of a person who is operating a vessel underway, or is the master or pilot of a vessel underway or at anchor, where any of the following apply—

(i) the person is under the age of 21 years;

(ii) the vessel is a commercial or government vessel—

any concentration of alcohol present in the blood or breath of that person; and".

(3) In section 3(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert the following definitions—

"*Australian fishing vessel* has the same meaning as in the Marine Safety Act 2010;"

*certificate of competency* has the same meaning as in the Marine Safety Act 2010;

*commercial vessel* has the same meaning as in the Marine Safety Act 2010;".
dentist means a person registered under the Health Practitioner Regulation National Law—
(a) to practise in the dental profession (other than as a student); and
(b) in the dentists division of that profession;
drug has the same meaning as in the Road Safety Act 1986;
fishing vessel has the same meaning as in the Marine Safety Act 2010;
government vessel has the same meaning as in the Marine Safety Act 2010;
permissible non-prescription drug has the same meaning as in the Road Safety Act 1986;
pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);
prescribed concentration of drugs has the same meaning as in the Road Safety Act 1986;
prescribed illicit drug has the same meaning as in the Road Safety Act 1986;
prescription drug has the same meaning as in the Road Safety Act 1986;
trading vessel has the same meaning as in the Marine Safety Act 2010;".
4 Interpretation

(1) For section 27(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(1) For the purposes of this Part—

(a) if it is established that at any time within 3 hours after an alleged offence against paragraph (a) or (b) of section 28(1) a certain concentration of alcohol was present in the blood or breath of the person charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the person's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed; and

(b) if it is established that at any time within 3 hours after an alleged offence against paragraph (ba) of section 28(1) a certain drug was present in the body of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's body at the time at which the offence is alleged to have been committed; and

(c) if it is established that at any time within 3 hours after an alleged offence against paragraph (bb) of section 28(1) a certain drug was present in the blood or oral fluid of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's blood or oral fluid at the time at which the
offence is alleged to have been committed.

(1AA) For the purposes of an alleged offence against paragraph (ba) of section 28(1) it must be presumed that a drug found by an analyst to be present in the sample of blood or urine taken from the person charged was not due solely to the consumption or use of that drug after operating a vessel or being a master or pilot of a vessel underway or at anchor unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

(1AB) For the purposes of sections 31AA and 31AB, a person operating a vessel or a master or pilot of a vessel is not to be taken to be impaired unless—

(a) in the case of a person operating a vessel, his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to operate a vessel properly; or

(b) in the case of a master or pilot of a vessel, his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to direct the proper operation of the vessel."

(2) In section 27(1A) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for "being involved in the operation of a vessel under way" substitute "operating a vessel or being a master or pilot of a vessel underway or at anchor".
(3) After section 27(1A) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(1B) For the purposes of an alleged offence against paragraph (g) or (h) of section 28(1) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid provided by, or taken from, the person charged was not due solely to the consumption or use of that drug after operating a vessel or being a master or pilot of a vessel underway or at anchor unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person."

(4) After section 27(2) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(2A) An approval or authority given under or for the purposes of section 31 or 31AA(3) by the Chief Commissioner of Police may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.

(2B) For the avoidance of doubt it is declared that nothing in this Part requires a person who is in a dwelling to allow a member of the police force to enter that dwelling without a warrant."
(5) In section 27(3) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) insert the following definition—

"at anchor, in relation to a vessel, does not include a vessel properly made fast at a registered mooring or at anchor at a registered mooring;";

(b) for the definition of vessel under way substitute—

"vessel underway, in relation to a vessel, includes any period when the vessel is being secured, moored or retrieved from the water but does not include a vessel that is—

(a) at anchor; or

(b) properly made fast to the shore or properly made fast at a registered mooring or at anchor at a registered mooring; or

(c) aground; or

(d) ashore.".

5 Offences involving alcohol or other drugs

(1) For section 28(1)(a) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(a) the person operates a vessel or is the master or pilot of a vessel underway or at anchor while under the influence of alcohol or any other drug to such an extent as to—

(i) in the case of a person operating a vessel, be incapable of having proper control of the vessel; or
(ii) in the case of a master or pilot of a vessel, be incapable of directing the proper operation of the vessel; or".

(2) In section 28(1)(b) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for "under way" substitute "or is a master or pilot of a vessel underway or at anchor".

(3) After section 28(1)(b) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(ba) the person operates a vessel or is a master or pilot of a vessel underway or at anchor while impaired by a drug; or

(bb) the person operates a vessel or is a master or pilot of a vessel underway or at anchor while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or".

(4) After section 28(1)(c) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(ca) the person refuses to undergo an assessment of drug impairment in accordance with section 31AA when required under that section to do so or refuses to comply with any other requirement made under section 31AA(1); or

(cb) the person refuses or fails to comply with a request or signal to go to a preliminary breath testing station, given under section 30(3); or".

(5) In section 28(1)(d) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 after "(2)," insert "(2AA),".
(6) In section 28(1)(e) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) for "being involved in the operation of a vessel under way" substitute "operating a vessel or being a master or pilot of a vessel underway or at anchor";

(b) in subparagraph (ii), for "under way" substitute "or being the master or pilot of the vessel underway or at anchor".

(7) After section 28(1)(e) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(ea) the person refuses to comply with a requirement made under section 31AB(1); or

(eb) the person refuses to provide a sample of oral fluid in accordance with section 31AD or 31AE when required under that section to do so or refuses to comply with any other requirement made under that section; or"

(8) In section 28(1)(f) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) for "31 or 31A" substitute "31, 31A, 31AB or 31AE";

(b) for "being involved in the operation of a vessel under way" substitute "operating a vessel or being a master or pilot of a vessel underway or at anchor";

(c) in subparagraph (ii), for "being involved in the operation of the vessel under way." substitute "operating the vessel or being the master or pilot of the vessel underway or at anchor; or".
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

(9) After section 28(1)(f) of the *Marine (Drug, Alcohol and Pollution Control) Act 1988* insert—

"(g) within 3 hours after operating a vessel or being a master or pilot of a vessel underway or at anchor, the person provides a sample of oral fluid in accordance with section 31AE and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 32B and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after operating the vessel or being the master or pilot of the vessel underway or at anchor; or

(h) the person has had a sample of blood taken from him or her in accordance with section 31, 31A, 31AB or 31AE within 3 hours after operating a vessel or being a master or pilot of a vessel underway or at anchor and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 32 and the analyst has found at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after operating the vessel or being the master or pilot of a vessel underway or at anchor.".
(10) In section 28(1A) of the *Marine (Drug, Alcohol and Pollution Control) Act 1988*—

(a) for "paragraph (c) or (d)" substitute "paragraph (c), (ca), (d), (ea) or (eb)";

(b) after paragraph (a) insert—

"(ab) in the case of an offence under paragraph (ca)—

(i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; and

(ii) a member of the police force authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made; and"

(c) in paragraph (b)(iv), for "made." substitute "made; and"

(d) after paragraph (b) insert—

"(c) in the case of an offence under paragraph (ea)—

(i) the member of the police force requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(ii) the member of the police force requiring a sample of urine had not nominated a registered medical practitioner or approved health professional to whom the
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

s. 5

sample was to be furnished for analysis; and

(iii) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and

(d) in the case of an offence under paragraph (eb)—

(i) a prescribed device was not presented to the person at the time of the making of the requirement; and

(ii) a prescribed device was not available at the place or vessel where the requirement was made at the time it was made; and

(iii) a person authorised to carry out the prescribed procedure for the provision of a sample of oral fluid was not present at the place where the requirement was made at the time it was made; and

(iv) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(v) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made.".
(11) After section 28(1B) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(1C) To avoid doubt, in proceedings for an offence under paragraph (eb) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(d)(i), (ii) or (iii) is not a reason of a substantial character for a refusal for the purposes of section 31AE(12)."

6 Penalties for offences involving alcohol or drugs

(1) For section 28(2)(b) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(b) for a second offence, to a fine of not more than 120 penalty units or to imprisonment for not more than 12 months; and

(c) for a subsequent offence, to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months.".

(2) After section 28(2) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(2A) A person who is guilty of an offence under paragraph (b), (e) or (f) of subsection (1) is liable—

(a) in the case of a first offence, to a fine of not more than 20 penalty units; and

(b) in the case of a second offence—

(i) to a fine of not more than 60 penalty units or to imprisonment for a term of not more than 6 months if the concentration of alcohol—
(A) in the person's blood was less than 0.15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0.15 grams per 210 litres of exhaled air— as the case requires; or

(ii) to a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was 0.15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0.15 grams or more per 210 litres of exhaled air— as the case requires; and

(c) in the case of any other subsequent offence—

(i) to a fine of not more than 120 penalty units or imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was less than 0.15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0.15 grams per 210 litres of exhaled air— as the case requires; or
(ii) to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months if the concentration of alcohol—

(A) in the person's blood was 0.15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0.15 grams or more per 210 litres of exhaled air—
as the case requires."

(3) In section 28(3) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) for "subsection (1)(b), (c), (d), (e) or (f)" substitute "paragraph (ba), (c), (ca), (cb), (d) or (ea) of subsection (1)";

(b) for paragraph (b) substitute—

"(b) for a second offence, to a fine of not more than 120 penalty units or to imprisonment for not more than 12 months; and

(c) for a subsequent offence, to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months.".

(4) After section 28(3) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(3A) A person who is guilty of an offence under paragraph (bb), (eb), (g) or (h) of subsection (1) is liable—

(a) in the case of a first offence, to a fine of not more than 12 penalty units; and
(b) in the case of a second offence, to a fine of not more than 60 penalty units; and

(c) in the case of any other subsequent offence, to a fine of not more than 120 penalty units.

(3B) In proceedings for an offence under paragraph (ba) of subsection (1), proof that—

(a) the person operated a vessel or was the master or pilot of a vessel underway or at anchor; and

(b) one or more drugs were present in the person's body at the time at which he or she operated the vessel or was the master or pilot of the vessel underway or at anchor; and

(c) the behaviour of the person on an assessment of drug impairment carried out under section 31AA was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and

(d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable—

(i) in the case of a person operating a vessel, to operate a vessel properly; or

(ii) in the case of a master or pilot of a vessel, direct the proper operation of the vessel—

is, in the absence of evidence to the contrary but subject to subsections (3C) and (3D), proof that the accused operated a vessel or
was a master or pilot of a vessel underway or at anchor while impaired by a drug.

(3C) If on an analysis carried out in accordance with this Part, no drug other than a permissible non-prescription drug or a prescription drug was found present in the person's body, it is a defence to a charge under paragraph (ba) of subsection (1) for the person charged to prove that—

(a) he or she did not know and could not reasonably have known that the permissible non-prescription drug or the prescription drug, or the combination of those drugs, so found would, if consumed or used in accordance with advice given to him or her by a registered medical practitioner, a dentist or a pharmacist in relation to the drug or combination of drugs, impair—

(i) operating a vessel; or

(ii) in the case of a master or pilot of a vessel, directing the proper operation of a vessel; and

(b) he or she consumed or used that drug or combination of drugs in accordance with that advice.

(3D) In subsection (3C), advice means written or oral advice and includes anything written on a label accompanying the drug."

(5) In section 28(5) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 for "subsection (1)(f)" substitute "paragraph (f), (g) or (h) of subsection (1)".

s. 6
(6) After section 28(5A) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** insert—

"(6A) In any proceedings for an offence under paragraph (g) or (h) of subsection (1) evidence as to the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting the presumption created by section 27(1B) but is otherwise inadmissible."

(7) After section 28(8) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** insert—

"(9) If on a prosecution for an offence under paragraph (a) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (ba) of that subsection, the court may find the accused guilty of an offence under paragraph (ba) and punish the accused accordingly.

(10) If on a prosecution for an offence under paragraph (ba) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (bb) of that subsection, the court may find the accused guilty of an offence under paragraph (bb) and punish the accused accordingly."

**7 New section 28A substituted**

For section 28A of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** substitute—

"28A Provisions about cancellation and disqualification

(1) On convicting a person, or finding a person guilty of an offence under section 28(1)(b), (e) or (f) the court may where—

---

20
(a) the concentration of alcohol—
   (i) in the blood of that person was less than 0.05 grams per 100 millilitres of blood; or
   (ii) in the breath of that person was less than 0.05 grams per 210 litres of exhaled air—
         as the case requires; and

(b) the offence is a first offence—

if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such time as the court thinks fit, not being more than 6 months.

(2) Subject to subsection (3), on convicting a person, or finding a person guilty, of an offence under section 28(1)(b), (e) or (f), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—

(a) in the case of a first offence, the period specified in Column 2 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule; and
(b) in the case of a subsequent offence, the period specified in Column 3 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule.

(3) If a court finds a person guilty of an offence under section 28(1)(b), (e) or (f) but does not record a conviction, the court is not required to cancel a marine licence or certificate of competency or disqualify the offender from obtaining one in accordance with subsection (2) if it appears to the court that at the relevant time the concentration of alcohol in the blood or breath of the offender—

(a) in the case of a person previously found guilty of an offence against any one of the paragraphs of section 28(1) or any previous enactment corresponding to any of those paragraphs or any corresponding law, was less than 0.05 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires); or

(b) in any other case, was less than 0.07 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires).

(4) Subsection (3)(b) does not apply to a person who, at the time the offence was committed, was under the age of 26 years.

(5) On convicting a person, or finding a person guilty, of an offence under section 28(1)(a), (c), (cb) or (d), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a
marine licence or certificate of competency, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—

(a) in the case of a first offence, 2 years;

(b) in the case of a subsequent offence, 4 years.

(6) On convicting a person, or finding a person guilty of an offence under section 28(1)(ba), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 12 months; and

(b) in the case of a subsequent offence, 2 years.

(7) On convicting a person, or finding a person guilty of an offence under section 28(1)(ca) or (ea), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 2 years; and

(b) in the case of a subsequent offence, 4 years.
(8) On convicting a person, or finding a person guilty of an offence under section 28(1)(eb), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 6 months; and

(b) in the case of a subsequent offence, 12 months.

(9) On convicting a person, or finding a person guilty of an offence under section 28(1)(bb), (g) or (h), the court must, if the offender holds a marine licence or certificate of competency, cancel that licence or certificate and, whether or not the offender holds a marine licence or certificate of competency, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 3 months; and

(b) in the case of a subsequent offence, 6 months.

(10) Any period of suspension imposed on a person under section 28C must be deducted from the period of disqualification imposed on that person under this section.

(11) This section does not apply to a person who is convicted or found guilty of an accompanying operator offence.".
8 Immediate suspension of marine licence or certificate of competency in certain circumstances

(1) In the heading to section 28C(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, after "marine licence" insert "or certificate of competency".

(2) In section 28C(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) in paragraph (a)(i) and (ii), for "0·15 grams" substitute "0·10 grams";

(b) for "the master of a registered recreational vessel or a regulated hire and drive vessel" substitute "operating a vessel or the master or pilot of a vessel underway or at anchor";

(c) after "marine licence" insert "or certificate of competency";

(d) after "licence document" insert "or certificate".

(3) After section 28C(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"(1A) If a person is charged by a member of the police force with an offence under paragraph (ba), (ca), (ea) or (eb) of section 28(1), any member of the police force may, at any time after the filing of the charge-sheet charging the offence until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her marine licence or certificate of competency is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who
gave the notice the licence document or certificate.".

(4) In section 28C(3) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**—

(a) for "subsection (1)" **substitute** "subsection (1) or (1A)";

(b) after "marine licence" **insert** "or certificate of competency".

9 Preliminary breath tests

(1) In section 29(1) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**—

(a) for paragraph (a) **substitute**—

"(a) any person he or she finds to be operating a vessel; or

(ab) any person he or she finds to be a master or pilot of a vessel underway or at anchor; or";

(b) in paragraph (b)—

(i) **omit** "involved in";

(ii) after "signalled" **insert** "to stop at or";

(c) after paragraph (b) **insert**—

"(ba) any person who is a master or pilot of a vessel who has been requested or signalled to stop at or to go to a preliminary breath testing station under section 30(3); or"

(d) in paragraph (c), for "the master of a vessel" **substitute** "operating a vessel or the master or pilot of a vessel underway or at anchor";

(e) in paragraph (d)—

(i) after "an occupant of a vessel" **insert** "underway or at anchor";
(ii) for "the master" substitute "the person operating the vessel or the master or pilot".

(2) For section 29(3) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(3) A person is not obliged to undergo a preliminary breath test if more than 3 hours have passed since the person was—

(a) operating a vessel; or

(b) the master or pilot of a vessel underway or at anchor; or

(c) an occupant of a vessel.".

10 Preliminary breath testing stations

(1) In section 30(2)(a) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 after "breath tests" insert "or preliminary oral fluid tests".

(2) In section 30(3) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for "under way" substitute "or who is the master or pilot of a vessel underway, at anchor or aground".

11 Breath analysis

(1) For sections 31(1) and (2) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(1) Subsection (1A) applies if a person undergoes a preliminary breath test when required to do so by a member of the police force under section 29 and—

(a) the test in the opinion of the member in whose presence it is made indicates that the person's breath contains alcohol;
(b) the person, in the opinion of the member, refuses or fails to carry out the test in the manner specified in section 29(2).

(1A) A member of the police force may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may also require the person to accompany a member of the police force to a police station or other place where the sample of breath is to be furnished and to remain there until whichever of the following occurs first—

(a) the person has furnished the sample of breath and been given the certificate referred to in subsection (4);

(b) the passing of 3 hours after the person was—

(i) operating a vessel; or

(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(2) A member of the police force may require any person whom that member reasonably believes to have offended against section 28(1)(a) or (b) to furnish a sample of breath for analysis by a breath analysing instrument (instead of undergoing a preliminary breath test in accordance with section 29) and for that purpose may also require the person to accompany a member of the police force to a police station or other place where the sample of breath is to be furnished and to remain there until whichever of the following occurs first—

s. 11
(a) the person has furnished the sample of breath and been given the certificate referred to in subsection (4);

(b) the passing of 3 hours after the person was—

(i) operating a vessel; or

(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(2AA) A member of the police force may require any person who is required to undergo a drug assessment under section 31AA to furnish a sample of breath for analysis by a breath analysing instrument and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the drug assessment until whichever of the following occurs first—

(a) the person has furnished the sample of breath and any further sample required to be furnished under subsection (2A) and been given the certificate referred to in subsection (4) and the drug assessment has been carried out;

(b) the passing of 3 hours after the person was—

(i) operating a vessel; or

(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(3) In section 31(2A) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 for ",(1) or (2)" substitute ",(1), (2) or (2AA)".
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

(4) For section 31(6) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"(6) A person is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the person was—

(a) operating a vessel; or

(b) the master or pilot of a vessel underway or at anchor; or

(c) an occupant of a vessel.".

(5) In section 31(9A) of the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) for "(1), (2) or (2A)" substitute "(1), (2), (2AA) or (2A)";

(b) for "the sample has been taken or until 3 hours after being the master of or being an occupant of a vessel under way, whichever is the sooner" substitute "whichever of the following occurs first—

(c) the sample has been taken;

(d) the passing of 3 hours after the person was—

   (i) operating a vessel; or

   (ii) the master or pilot of a vessel underway or at anchor; or

   (iii) an occupant of a vessel.".

12 Blood samples to be taken in certain cases

In section 31A(2) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for "under way, the person must allow a doctor to take from that person at that place a sample of that person's blood for analysis." substitute ", the person must allow a doctor to take from that person at that
place a sample of that person's blood for analysis if—

(a) the person was operating the vessel at the time the incident occurred; or

(b) the person was the master or pilot of the vessel at the time the incident occurred and any of the following apply—

(i) the vessel was underway or at anchor at the time the incident occurred;

(ii) the vessel ran aground as a result of the incident.”.

13 New sections 31AA to 31AE inserted

After section 31A of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"31AA Drug assessment

(1) A member of the police force may at any time require—

(a) any person he or she finds operating a vessel; or

(b) any person he or she finds to be a master or pilot of a vessel underway or at anchor; or

(c) any person that is or has been operating a vessel that has been requested or signalled to stop at or to go to a preliminary testing station under section 30(3); or

(d) any person that is or has been a master or pilot of a vessel underway or at anchor that has been requested or signalled to stop at or to go to a preliminary testing station under section 30(3); or
(e) any person whom he or she believes on reasonable grounds has within the last 3 preceding hours operated a vessel or been the master or pilot of a vessel underway or at anchor when it was involved in an accident; or

(f) any person whom he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a vessel underway or at anchor when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was operating the vessel or the master or pilot of the vessel when it was involved in the accident; or

(g) any person whom he or she has required under section 29 to undergo a preliminary breath test; or

(h) any person required under section 31 to furnish a sample of breath or from whom a sample of blood was required to be taken under section 31(9A)—to undergo an assessment of drug impairment if, in the opinion of the member, that person's behaviour or appearance indicates that he or she may be impaired for a reason other than alcohol alone and for that purpose may further require the person to accompany a member of the police force to a place where the assessment is to be carried out and to remain there until whichever of the following occurs first—

(i) the assessment has been carried out;
(j) the passing of 3 hours after the person was—
   (i) operating a vessel; or
   (ii) the master or pilot of a vessel underway or at anchor; or
   (iii) an occupant of a vessel.

(2) A person is not obliged to undergo an assessment of drug impairment if more than 3 hours have passed since the person was—
   (a) operating a vessel; or
   (b) the master or pilot of a vessel underway or at anchor; or
   (c) an occupant of a vessel.

(3) An assessment of drug impairment must be carried out by a member of the police force authorised to do so by the Chief Commissioner of Police.

(4) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under subsection (5).

(5) The Director, Transport Safety may, by notice published in the Government Gazette, specify the procedure to be followed in assessing drug impairment.

(6) The carrying out of an assessment of drug impairment must be video-recorded unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.
(7) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under paragraph (ba) of section 28(1), a copy of the video-recording, if any, must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

(8) Subject to subsection (9), the video-recording of the carrying out of an assessment of drug impairment on a person is only admissible in a proceeding against that person for an offence against this Act for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under subsection (5).

(9) Evidence obtained as a result of an assessment of drug impairment carried out on a person is inadmissible as part of the prosecution case in proceedings against that person for any offence if the video-recording of the assessment and any related material and information should have been but has not been destroyed as required by section 31AC.

(10) In any proceeding under this Act—
  (a) the statement of any member of the police force that on a particular date he or she was authorised by the Chief Commissioner of Police under subsection (3) to carry out an assessment of drug impairment; or
  (b) a certificate purporting to be signed by the Chief Commissioner of Police that a member of the police force named in it is authorised by the Chief
Commissioner under subsection (3) to carry out an assessment of drug impairment—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that member.

31AB Blood and urine samples

(1) If a person undergoes an assessment of drug impairment when required under section 31AA to do so and the assessment, in the opinion of the member of the police force carrying it out, indicates that the person may be impaired by a drug or drugs, any member of the police force may require the person to do either or both of the following—

(a) allow a registered medical practitioner or an approved health professional nominated by that member to take from the person a sample of that person's blood for analysis;

(b) furnish to a registered medical practitioner or an approved health professional nominated by that member a sample of that person's urine for analysis—

and for that purpose may further require the person to accompany a member of the police force to a place where the sample is to be taken or furnished and to remain there until whichever of the following occurs first—

(c) the sample has been taken or furnished;

(d) the passing of 3 hours after the person was—

   (i) operating a vessel; or
(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(2) A member of the police force must not require a person to allow a sample of his or her blood to be taken for analysis under subsection (1)(a) if that person has already had a sample of blood taken from him or her under section 31 after—

(a) operating a vessel; or

(b) being master or pilot of a vessel underway or at anchor; or

(c) being an occupant of a vessel.

(3) The registered medical practitioner or approved health professional who takes a sample of blood or is furnished with a sample of urine under this section must deliver a part of the sample to the member of the police force who required it to be taken or furnished and another part to the person from whom it was taken or by whom it was furnished.

(4) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood, or be furnished with a sample of the urine, of any other person in accordance with this section.

Penalty: 12 penalty units.

(5) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being
furnished with any sample of urine, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or be furnished by, any person under this section.

(6) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under paragraph (ba) of section 28(1), a copy of a written report on that assessment prepared by the member of the police force who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

31AC Destruction of identifying information

(1) In this section, relevant offence means—

(a) an offence under section 28(1)(ba) or (ea); or

(b) any other offence arising out of the same circumstances; or

(c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.

(2) If an assessment of drug impairment has been carried out on a person under section 31AA and—

(a) the person has not been charged with a relevant offence at the end of the period of 12 months after the assessment; or
(b) the person has been so charged but the charge is not proceeded with or the person is not found guilty of the offence, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police must, subject to subsection (4), destroy, or cause to be destroyed, at the time specified in subsection (3) any video-recording made of the assessment and any related material and information.

(3) A video-recording and any related material and information referred to in subsection (2) must be destroyed—

(a) in a case to which subsection (2)(a) applies, immediately after that period of 12 months; or

(b) in a case to which subsection (2)(b) applies—

(i) within 1 month after the conclusion of the proceeding and the end of any appeal period; or

(ii) if the proceeding has been adjourned under section 75 of the Sentencing Act 1991, within 1 month after dismissal under that section.

(4) A member of the police force may, before the end of a period referred to in subsection (3)(b), apply without notice to the Magistrates' Court for an order extending that period and, if the Court makes such an order, the reference to the period in subsection (3) is a reference to that period as so extended.
(5) If the Magistrates' Court makes an order under subsection (4), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the assessment of drug impairment was carried out.

(6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the assessment was carried out so requests, within 14 days after receiving the request, notify that person in writing whether the destruction has occurred.

(7) A person who knowingly—

(a) fails to destroy; or

(b) uses, or causes or permits to be used—a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

(8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.
31AD Preliminary oral fluid tests

(1) A member of the police force may at any time require—

(a) any person he or she finds operating a vessel; or

(b) any person he or she finds to be a master or pilot of a vessel underway or at anchor; or

(c) any person that is or has been operating a vessel that has been requested or signalled to stop at or to go to a preliminary testing station under section 30(3); or

(d) any person that is or has been the master or pilot of a vessel underway or at anchor that has been requested or signalled to stop at or to go to a preliminary testing station under section 30(3); or

(e) any person whom he or she believes on reasonable grounds has within the last 3 preceding hours operated a vessel or been the master or pilot of a vessel underway or at anchor when it was involved in an accident; or

(f) any person whom he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a vessel underway or at anchor when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was operating the vessel or the master or pilot of the vessel when it was involved in the accident—
to undergo a preliminary oral fluid test by a prescribed device and, for that purpose, may further require the person, if on board a vessel, to leave the vessel for the purpose of undergoing the test.

(2) A preliminary oral fluid test must be carried out in accordance with the prescribed procedure.

(3) A prescribed device may be comprised of a collection unit and a testing unit and one or more other parts.

(4) A person required to undergo a preliminary oral fluid test must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and carrying out the physical actions that are necessary to ensure that, in the opinion of the member of the police force who, under this section, is requiring the test to be undergone, a sufficient sample of oral fluid has been captured by the device or unit.

(5) A member of the police force who, under this section, is requiring another person to undergo a preliminary oral fluid test may give any reasonable direction as to the physical actions that are necessary for the person to undergo the test.

(6) Without limiting section 30(3), a person required to undergo a preliminary oral fluid test is required to remain at the place at which the test is being carried out until the sample of oral fluid provided has been tested by a prescribed device.
(7) A person is not obliged to undergo a preliminary oral fluid test if more than 3 hours have passed since the person was—
   (a) operating a vessel; or
   (b) the master or pilot of a vessel underway or at anchor; or
   (c) an occupant of a vessel.

31AE Oral fluid testing and analysis

(1) If a person undergoes a preliminary oral fluid test when required to do so under section 31AD by a member of the police force and—
   (a) the test, in the opinion of the member in whose presence it is made, indicates that the person's oral fluid contains a prescribed illicit drug; or
   (b) the person, in the opinion of the member, refuses or fails to carry out the test in the manner specified in section 31AD(4)—

any member of the police force may require the person to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 32A and for that purpose may further require the person to accompany any member of the police force to a place where the sample is to be provided and to remain there until whichever the first occurs—
   (c) the person has provided the sample and any further sample required to be provided under subsection (4), the sample has been tested by a prescribed device and the person has been given
(if necessary) a part of the sample under subsection (11);
(d) the passing of 3 hours after the person was—
   (i) operating a vessel; or
   (ii) the master or pilot of a vessel underway or at anchor; or
   (iii) an occupant of a vessel.

Example
A person may be required to go to a police station, a public building or a police car to provide a sample of oral fluid under this section.

(2) A member of the police force may require any person who is required to undergo an assessment of drug impairment under section 31AA or to furnish a sample of breath for analysis by a breath analysing instrument under section 31 to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 32B and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the assessment or furnishing the sample of breath until whichever the first occurs—
(a) the person has provided the sample of oral fluid and any further sample required to be provided under subsection (4), the sample has been tested by a prescribed device and the person has been given (if necessary) a part of the sample under subsection (11) and the assessment has been carried out or the sample of breath has been furnished (as the case requires);
(b) the passing of 3 hours after the person was—

(i) operating a vessel; or

(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(3) The provision of a sample of oral fluid under this section must be carried out in accordance with the prescribed procedure.

(4) The member of the police force who required a person to provide a sample of oral fluid to be provided under subsection (1) or (2) may require the person who provided it to provide one or more further samples if it appears to the member that the prescribed device is incapable of testing for the presence in the sample, or each of the samples, previously provided of a prescribed illicit drug because the amount of sample provided was insufficient or because of a power failure or malfunctioning of the device or for any other reason whatsoever.

(5) Only a member of the police force authorised in writing by the Chief Commissioner of Police, for the purposes of this section, may carry out the procedure for the provision of a sample of oral fluid under this section.

(6) The Chief Commissioner of Police may only authorise a member of the police force for the purposes of this section if satisfied that the member has the appropriate training to carry out the prescribed procedure for the provision of a sample of oral fluid under this section.
(7) A prescribed device may be comprised of a collection unit and a testing unit and one or more other parts.

(8) A person required to provide a sample of oral fluid under this section must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and carrying out the physical actions that are necessary to ensure that, in the opinion of the member of the police force, a sufficient sample of oral fluid has been captured by the device or unit.

(9) A member of the police force who, under this section, is requiring another person to provide a sample of oral fluid may give any reasonable direction as to the physical actions that are necessary for the person to provide the sample.

(10) A person is not obliged to provide a sample of oral fluid under this section if more than 3 hours have passed since the person was—

(a) operating a vessel; or

(b) the master or pilot of a vessel underway or at anchor; or

(c) an occupant of a vessel.

(11) If a test by a prescribed device of a sample of oral fluid provided under this section indicates, in the opinion of the member of the police force who carried out the procedure in the course of which the sample was provided, that the person's oral fluid contains a prescribed illicit drug, the member must retain a part of the sample and deliver another part to the person by whom the sample was provided.
(12) A person must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.

(13) The member of the police force who required a person to provide a sample of oral fluid under subsection (1) or (2) may require that person to allow a registered medical practitioner or an approved health professional nominated by the member who required the sample to take from the person a sample of that person's blood for analysis if it appears to the member that—

(a) that person is unable to furnish the required sample of oral fluid on medical grounds or because of some physical disability or condition; or

(b) the prescribed device is incapable of testing for the presence in the sample of a prescribed illicit drug for any reason whatsoever—

and for that purpose may further require that person to accompany a member of the police force to a place where the sample of blood is to be taken and to remain there until whichever of the following first occurs—

(c) the sample has been taken;

(d) the passing of 3 hours after the person was—

(i) operating a vessel; or
(ii) the master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel.

(14) The registered medical practitioner or approved health professional who takes a sample of blood under subsection (13) must deliver a part of the sample to the member of the police force who required it to be taken and another part to the person from whom it was taken.

(15) A person who allows the taking of a sample of his or her blood in accordance with subsection (13) must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section.

(16) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with subsection (13).

Penalty: 12 penalty units.

(17) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under subsection (13).

(18) A person who is required under this section to provide a sample of oral fluid may, immediately after being given a part of the sample under subsection (11), request the member of the police force making the requirement to arrange for the taking, in the
presence of any member of the police force, of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force in whose presence the sample is taken.

(19) A part of a sample of blood taken under subsection (18) must be delivered to the person who required the oral fluid sample to be provided under this section.

(20) Nothing in subsection (18) relieves a person from any penalty under section 28(1)(eb) for refusing to provide a sample of oral fluid.

(21) Evidence derived from a sample of oral fluid provided in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under subsection (18) if reasonable efforts were made to comply with the request.

(22) In any proceeding under this Act—

(a) the statement of any member of the police force that on a particular date he or she was authorised under subsection (6) for the purposes of this section; or

(b) a certificate purporting to be signed by the Chief Commissioner of Police certifying that a particular member of the police force named in it is authorised under subsection (6) for the purposes of this section—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that officer or member.".
14 Evidentiary provisions—blood tests

(1) In section 32(2) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, after "operating of a vessel" insert "or, in the case of a master or pilot, arising out of the direction of the operation of a vessel,"

(2) In section 32(2)(c) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, for "the master of a vessel under way" substitute "operating a vessel or the master or pilot of a vessel underway or at anchor".

15 New sections 32A, 32B and 32C inserted

After section 32 of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"32A Evidentiary provisions—urine tests

(1) In this section—

approved analyst means a person who by virtue of section 32C(1) is taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of section 32C(2) is taken to be a properly qualified expert for the purposes of this section;

prescribed legal proceeding means—

(a) a hearing for an offence against section 28(1); or

(b) a trial or hearing for an offence against section 318(1) or 319(1) of the Crimes Act 1958 arising out of the operating of a vessel;
properly qualified analyst means—

(a) an approved analyst; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4);

properly qualified expert means—

(a) an approved expert; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (5).

(2) If a question as to the presence of a drug in the body of a person at any time is relevant in a prescribed legal proceeding then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(a) of the furnishing by that person, after that person operated a vessel or was a master or pilot or a vessel underway or at anchor, of a sample of urine to a registered medical practitioner or an approved health professional;
(b) of the analysis of that sample of urine by a properly qualified analyst within twelve months after it was taken;

(c) of the presence of a drug in that sample of urine at the time of analysis;

(d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used, including its effect on—

(i) in the case of a person operating a vessel, the person's ability to operate the vessel properly;

(ii) in the case of a master or pilot, the person's ability to direct the proper operation of the vessel.

(3) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of urine analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Act is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
(5) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a person's ability to operate a vessel properly or, in the case of a master or pilot, to direct the proper operation of a vessel) is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(6) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (2) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(7) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or

(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(8) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed
to in the affidavit or stated in the statutory declaration.

(9) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

(10) The court must not grant leave under subsection (9) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the urine referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or

(ii) there is a reasonable possibility that the urine referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the urine not been contaminated in that way; or
(iii) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample operated a vessel or was a master or pilot of a vessel underway or at anchor; or

(iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(11) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend the court on the hearing of an application for leave under subsection (9).

(12) Evidence of a kind permitted to be given by subsection (2) in a prescribed legal proceeding is inadmissible as evidence in any other legal proceedings.

32B Evidentiary provisions—oral fluid tests

(1) In this section—

*approved analyst* means a person who by virtue of section 32C(1) is taken to be a properly qualified analyst for the purposes of this section;

*prescribed legal proceeding* means—

(a) a hearing for an offence against section 28(1); or
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

(b) a trial or hearing for an offence against section 318(1) or 319(1) of the Crimes Act 1958 arising out of the operating of a vessel;

_properly qualified analyst_ means—

(a) an approved analyst; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4).

(2) If a question as to the presence of a prescribed illicit drug in the body of a person at any time is relevant in a prescribed legal proceeding then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(a) of the providing by that person of a sample of oral fluid under section 31AE after that person was—

(i) operating a vessel; or

(ii) a master or pilot of a vessel underway or at anchor; or

(iii) an occupant of a vessel;

(b) of the analysis of that sample of oral fluid by a properly qualified analyst within twelve months after it was taken;

(c) of the presence of a prescribed illicit drug in that sample of oral fluid at the time of analysis.
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

(3) A certificate containing the prescribed particulars purporting to be signed by the person who carried out the procedure in the course of which the sample of oral fluid was provided is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of oral fluid analysed by the analyst of a substance that is a prescribed illicit drug is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(5) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (2) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(6) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or

(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
(7) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(8) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

(9) The court must not grant leave under subsection (8) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the oral fluid referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or
(ii) there is a reasonable possibility that the oral fluid referred to in a certificate given under subsection (3) had become contaminated in such a way that a drug found on analysis would not have been found had the oral fluid not been contaminated in that way; or

(iii) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample operated the vessel, was a master or pilot of the vessel underway or at anchor, or was an occupant of the vessel; or

(iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(10) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend the court on the hearing of an application for leave under subsection (8).

(11) Evidence of a kind permitted to be given by subsection (2) in prescribed legal proceedings is inadmissible as evidence in any other legal proceedings.
**32C Approved analysts and approved experts**

(1) A person who is an approved analyst within the meaning of section 57A of the Road Safety Act 1986 is taken to be a properly qualified analyst for the purposes of sections 32A and 32B.

(2) A person who is an approved expert within the meaning of section 57A of the Road Safety Act 1986 is taken to be a properly qualified expert for the purposes of sections 32A."

**16 Evidentiary provisions—breath tests**

In section 33(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988 after "operating of a vessel" insert "or, in the case of a master or pilot, arising out of the direction of the operation of a vessel".

**17 New section 33B inserted**

After section 33A of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"33B Prohibited analysis

(1) In this section—

*DNA database* has the meaning given by section 464(2) of the Crimes Act 1958;

*Part 4 sample* means a sample of blood, urine or oral fluid taken from, or furnished or provided by, a person under this Part;
permitted purpose, in relation to an analysis of a Part 4 sample, means the purpose of determining—

(a) whether alcohol or any other drug is present in the sample; or

(b) the level of concentration in which alcohol or any other drug is present in the sample;

prohibited analysis, in relation to a Part 4 sample, means analysis of the sample for a purpose other than the permitted purpose.

Example

Deriving a DNA profile from the sample is a purpose for which analysis is prohibited.

(2) A person who intentionally or recklessly—

(a) supplies a Part 4 sample, or causes a Part 4 sample to be supplied, to a person for prohibited analysis; or

(b) carries out a prohibited analysis of a Part 4 sample; or

(c) includes, or causes the inclusion of, information derived from a prohibited analysis on a DNA database kept under a law of this State or the Commonwealth or of another State or a Territory—

is guilty of an offence and liable to imprisonment for a term of not more than 12 months or to a fine of not more than 120 penalty units.".
18 New Schedule 1 inserted

Before Schedule 4 of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

**SCHEDULE 1**

Section 28A

**MINIMUM DISQUALIFICATION PERIODS**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concentration of alcohol in blood in grams per 100 millilitres of blood or in breath in grams per 210 litres of exhaled air</td>
<td>First offence</td>
<td>Subsequent offence</td>
</tr>
<tr>
<td>less than -07</td>
<td>6 months</td>
<td>12 months</td>
</tr>
<tr>
<td>-07 or more but less than -08</td>
<td>6 months</td>
<td>14 months</td>
</tr>
<tr>
<td>-08 or more but less than -09</td>
<td>6 months</td>
<td>16 months</td>
</tr>
<tr>
<td>-09 or more but less than -10</td>
<td>6 months</td>
<td>18 months</td>
</tr>
<tr>
<td>-10 or more but less than -11</td>
<td>10 months</td>
<td>20 months</td>
</tr>
<tr>
<td>-11 or more but less than -12</td>
<td>11 months</td>
<td>22 months</td>
</tr>
<tr>
<td>-12 or more but less than -13</td>
<td>12 months</td>
<td>24 months</td>
</tr>
<tr>
<td>-13 or more but less than -14</td>
<td>13 months</td>
<td>26 months</td>
</tr>
<tr>
<td>-14 or more but less than -15</td>
<td>14 months</td>
<td>28 months</td>
</tr>
<tr>
<td>-15 or more but less than -16</td>
<td>15 months</td>
<td>30 months</td>
</tr>
<tr>
<td>-16 or more but less than -17</td>
<td>16 months</td>
<td>32 months</td>
</tr>
<tr>
<td>-17 or more but less than -18</td>
<td>17 months</td>
<td>34 months</td>
</tr>
<tr>
<td>-18 or more but less than -19</td>
<td>18 months</td>
<td>36 months</td>
</tr>
<tr>
<td>-19 or more but less than -20</td>
<td>19 months</td>
<td>38 months</td>
</tr>
<tr>
<td>-20 or more but less than -21</td>
<td>20 months</td>
<td>40 months</td>
</tr>
<tr>
<td>-21 or more but less than -22</td>
<td>21 months</td>
<td>42 months</td>
</tr>
<tr>
<td>-22 or more but less than -23</td>
<td>22 months</td>
<td>44 months</td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Concentration of alcohol in blood in grams per 100 millilitres of blood or in breath in grams per 210 litres of exhaled air</td>
<td>First offence</td>
<td>Subsequent offence</td>
</tr>
<tr>
<td>-23 or more but less than -24</td>
<td>23 months</td>
<td>46 months</td>
</tr>
<tr>
<td>-24 or more</td>
<td>24 months</td>
<td>48 months</td>
</tr>
</tbody>
</table>

19 Regulation making powers relating to taking and testing of samples of oral fluid

In Schedule 5 to the Marine (Drug, Alcohol and Pollution Control) Act 1988—

(a) after item 62B insert—

"62BA. Devices for the purposes of sections 31AD and 31AE and the procedures to be employed in obtaining samples of oral fluid or carrying out tests under those sections.

62BB. The methods and conditions to be observed by persons carrying out procedures under section 31AE for collecting oral fluid samples.

62BC. The delivering of portions of samples of oral fluid to the people who provided them and to the persons who required them to be provided."

(b) in item 62C, after "blood samples" insert "or urine samples";

(c) after item 62D insert—

"62DA. The methods to be used by analysts in determining the presence of a substance in a blood, urine or oral fluid sample."
(d) in item 62E, after "blood" insert ", urine or oral fluid";

(e) in item 62F—

(i) after "taking," insert "safe-keeping,"

(ii) after "blood" insert ", urine or oral fluid".

Division 2—Pollution control and other amendments

20 Definitions etc.

In section 34(1) of the Marine (Drug, Alcohol and Pollution Control) Act 1988, in the definition of appropriate authority, for "Director" substitute "Secretary".

21 Repeal of redundant section

Section 66D of the Marine (Drug, Alcohol and Pollution Control) Act 1988 is repealed.

22 New section 71AA inserted

Before section 71A of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"71AA Definition

In this Division—

specified person or body means—

(a) a port management body, local port manager, waterway manager, channel operator, port operator (as defined in the Port Management Act 1995), committee of management of Crown land within designated ports; or

(b) an oil terminal operator or chemical terminal operator; or
(c) any other person or body, or person or body who is a member of a class of person or body, specified in an Order made by the Governor in Council for the purposes of this Division and published in the Government Gazette.”.

23 Section 71B substituted

For section 71B of the Marine (Drug, Alcohol and Pollution Control) Act 1988 substitute—

"71B Powers of the Secretary

(1) The Secretary may direct a specified person or body to participate in the Victorian Marine Pollution Contingency Plan by preparing and planning for marine pollution incidents (including by providing and maintaining equipment and training personnel) as specified in the direction.

(2) The Secretary may direct a specified person or body—

(a) who is a public statutory body within the meaning of Part 5; and

(b) to whom the Victorian Marine Pollution Contingency Plan applies—

to give effect to the Victorian Marine Pollution Contingency Plan in relation to a marine pollution incident that is a prohibited discharge within the meaning of Part 5.
Part 2—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

(3) A direction given under subsection (2) must specify the manner in which the specified person or body must give effect to the Victorian Marine Pollution Contingency Plan.

(4) A specified person or body who is given a direction under subsection (2) must not, without reasonable excuse, refuse or fail to comply with the direction.

Penalty: 120 penalty units.”.

24 New sections 71C and 71D inserted

After section 71B of the Marine (Drug, Alcohol and Pollution Control) Act 1988 insert—

"71C Protection of Secretary from liability

(1) The Secretary is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under or in connection with section 71A(1)(c) or (d); or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with section 71A(1)(c) or (d).

(2) If the Secretary does or omits to do anything—

(a) negligently in the exercise of a power or the performance of a function under or in connection with section 71A(1)(c) or (d); or
(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with section 71A(1)(c) or (d)—

any liability that would, but for subsection (1), attach to the Secretary because of that act or omission attaches instead to the Crown.

71D Protection from liability (Victorian Marine Pollution Contingency Plan)

(1) A person given a direction under section 71B(1) or (2) is not personally liable for anything done or omitted to be done in good faith—

(a) in complying with that direction; or

(b) in the reasonable belief that the act or omission was compliance with that direction.

(2) If a person referred to in subsection (1) does or omits to do anything—

(a) negligently in complying with a direction referred to in that subsection; or

(b) in the reasonable belief that the act or omission was compliance with such a direction—

any liability that would, but for subsection (1), attach to the person because of that act or omission attaches instead to the Crown."
PART 3—AMENDMENT OF MARINE SAFETY ACT 2010

25 Section 38 substituted

For section 38 of the Marine Safety Act 2010 substitute—

"38 Vessel may be registered in one name only

A vessel may only be registered in the name of—

(a) an individual who is of or over the age of 14 years; or

(b) a body corporate; or

(c) an unincorporated body."

26 New sections 162A to 162C inserted

After section 162 of the Marine Safety Act 2010 insert—

"162A Police power to inspect vessels

(1) This section applies to—

(a) a vessel that is being operated; or

(b) a vessel that a member of the police force believes on reasonable grounds—

(i) will be operated on State waters; or

(ii) has been operated on State waters within the preceding 30 days.

(2) A member of the police force may—

(a) inspect the vessel or equipment on the vessel for the purpose of determining whether the owner or master of the vessel, or person operating the vessel, is complying with this Act or the regulations;
(b) direct the master of the vessel, or person operating the vessel, to—
   (i) stop or manoeuvre the vessel in a manner specified in the direction; and
   (ii) produce, for inspection, equipment specified in the direction for the purpose of determining whether the owner or master of the vessel, or person operating the vessel, is complying with this Act or the regulations.

Example
A direction under subsection (2)(b)(i) may be a direction to manoeuvre a vessel to a berth.

(3) An inspection—
   (a) must be at a reasonable time; and
   (b) may include any reasonable tests that the member of the police force decides to be appropriate.

(4) A person must not refuse or fail to allow a vessel, or equipment on a vessel, to be inspected under this section.
Penalty: 60 penalty units.

(5) A person must not refuse or fail to comply with a direction under subsection (2)(b).
Penalty: 60 penalty units.

162B Police powers to enter vessels without consent or warrant

(1) This section does not limit section 162A.
(2) A member of the police force may enter and search a vessel, or inspect any equipment, builders plate or document found on a vessel, in order to determine whether this Act and the regulations are being complied with.

Example
An inspection of a document under subsection (2) may be an inspection of a licence, certificate of competency, certificate of survey, certificate of safe operation or a log book.

(3) The member of the police force—

(a) must do a thing mentioned in subsection (2) at a reasonable time;

(b) may do a thing mentioned in subsection (2) with the assistance of another member of the police force or a transport safety officer.

162C Police may direct someone to provide certain information concerning owner or master of a vessel

(1) A member of the police force may direct a person whom the member believes on reasonable grounds has information concerning the identity or location of the owner or master of a vessel to provide all the information the person has regarding the identity or location of the owner or master of the vessel.

(2) A person must not refuse or fail to comply with a direction under subsection (1).

Penalty: 5 penalty units.
(3) It is not an offence for a person to fail to comply with subsection (2) if the member of the police force did not inform the person, at the time the direction was given, that it is an offence to fail to comply with the direction."

27 Power to prosecute

(1) In section 292(1) of the Marine Safety Act 2010, for "this Act, the regulations or regulations made under the Port Management Act 1995" substitute "marine and port legislation".

(2) After section 292(2) of the Marine Safety Act 2010 insert—

"(3) In this section, marine and port legislation means—

(a) this Act or the regulations;

(b) the Marine (Drug, Alcohol and Pollution Control) Act 1988 or regulations made under that Act;

(c) the Port Management Act 1995 or regulations made under that Act.".
PART 4—AMENDMENT OF PORT MANAGEMENT ACT 1995

28 Section 94 substituted

For section 94 of the Port Management Act 1995 substitute—

"94 Liability of officers of bodies corporate

(1) If a body corporate commits an offence against any of the following provisions, an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate—

(a) section 63A;
(b) section 73E(1);
(c) section 73O(3);
(d) section 88M(1);
(e) section 88O;
(f) section 91C(2);
(g) section 91C(3).

(2) An officer of a body corporate who is found guilty of an offence by force of subsection (1) is liable to a penalty not exceeding the maximum penalty for a natural person for the offence.

(3) In determining whether an officer of a body corporate failed to exercise due diligence, regard must be had to—

(a) the officer's knowledge about the matter concerned; and
(b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
(c) the actions taken (if any) by the officer to prevent the contravention by the body corporate; and

(d) any other relevant matter.

(4) An officer of a body corporate may commit an offence against a provision referred to in subsection (1) whether or not the body corporate is proceeded against or found guilty of an offence against that provision.

(5) In this section, officer—

(a) in relation to a body corporate that is a corporation as defined by section 9 of the Corporations Act, has the same meaning as officer of a corporation has in section 9 of that Act; or

(b) in relation to a body corporate which is not a corporation as defined by section 9 of the Corporations Act, means any person (by whatever name called) who is concerned in, or takes part in, the management of the body corporate.".
PART 5—AMENDMENT OF TRANSPORT (COMPLIANCE AND MISCELLANEOUS) ACT 1983

29 General marine related inspection, inquiry and search powers

(1) In section 228ZBA(1) of the Transport (Compliance and Miscellaneous) Act 1983—

(a) in paragraph (a), for "hours; and" substitute "hours;";

(b) in paragraph (c), for "vessel; and" substitute "vessel;".

(2) After section 228ZBA(1) of the Transport (Compliance and Miscellaneous) Act 1983 insert—

"(1A) A transport safety officer may, for compliance and investigative purposes, direct the master of the vessel, or person operating the vessel, to—

(a) stop or manoeuvre the vessel in a manner specified in the direction; and

(b) produce, for inspection, equipment specified in the direction.

Example
A direction under subsection (1A) may be a direction to manoeuvre the vessel to a berth.”.

(3) In section 228ZBA(3) of the Transport (Compliance and Miscellaneous) Act 1983, after "subsection (1)(c)" insert "or (1A)".
30 Regulation making powers for the purposes of transport safety infringements

At the end of section 228ZZPB of the Transport (Compliance and Miscellaneous) Act 1983 insert—

"(2) The regulations may—

(a) provide that a transport safety infringement applies, or does not apply, at times, on days, in circumstances or at places identified in the regulations;

(b) provide that a transport safety infringement applies, or does not apply, to a person or a class of person, specified in the regulations;

(c) allow for a different amount of penalty for a transport safety infringement according to the circumstances in which the offence is committed or the extent of the contravention constituting the offence."

31 Who may only bring proceedings for offences against relevant transport safety laws

For section 229A(4) of the Transport (Compliance and Miscellaneous) Act 1983 substitute—

"(4) Nothing in this section prevents—

(a) the Director of Public Prosecutions from bringing a proceeding for an indictable offence against a relevant transport safety law; or

(b) a member of the police force from bringing a proceeding for an offence against a relevant transport safety law."
32 Statute law revision

In section 228ZW(1)(b) of the Transport (Compliance and Miscellaneous) Act 1983, for "section 228ZB(1)(a)" substitute "section 228ZBA(1)(a)".
PART 6—AMENDMENT OF TRANSPORT LEGISLATION AMENDMENT (PUBLIC TRANSPORT DEVELOPMENT AUTHORITY) ACT 2011

33 Statute law revision

(1) In section 26(1)(d) of the Transport Legislation Amendment (Public Transport Development Authority) Act 2011, for "Director" substitute "the Director".

(2) In section 29(3) of the Transport Legislation Amendment (Public Transport Development Authority) Act 2011, after 'Body" insert "(wherever occurring)".
PART 7—REPEAL OF AMENDING ACT

34 Repeal of amending Act

This Act is repealed on 1 July 2014.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).
ENDNOTES

† Minister's second reading speech—

Legislative Assembly: 12 September 2012

Legislative Council: 11 October 2012

The long title for the Bill for this Act was "A Bill for an Act to amend the Marine (Drug, Alcohol and Pollution Control) Act 1988, the Marine Safety Act 2010, the Port Management Act 1995, the Transport (Compliance and Miscellaneous) Act 1983 and the Transport Legislation Amendment (Public Transport Development Authority) Act 2011 and for other purposes."