

TASMANIA

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**MARINE SAFETY (MISUSE OF ALCOHOL) BILL  
2006**

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**MARINE SAFETY (MISUSE OF ALCOHOL) BILL  
2006**

*(Brought in by the Minister for Police and Emergency  
Management, the Honourable David Edward Llewellyn)*

**A BILL FOR**

**An Act to improve marine safety by placing certain restrictions on the use of alcohol by persons having responsibilities connected with the operation of vessels and by providing for the enforcement of those restrictions, to make consequential amendments to the *Road Safety (Alcohol and Drugs) Act 1970* and certain other Acts and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**PART 1 – PRELIMINARY**

*Division 1 – Title and commencement*

**1. Short title**

This Act may be cited as the *Marine Safety (Misuse of Alcohol) Act 2006*.

**2. Commencement**

This Act commences on a day to be proclaimed.

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***Division 2 – Interpretation***

**3. Interpretation**

In this Act, unless the contrary intention appears –

**“adult”** means a person who has attained the age of 18 years;

**“approved analyst”** – see section 8(3);

**“approved operator”** – see section 8(4);

**“blood-sampling”** means the taking of a sample of a person’s blood;

**“breath analysing instrument”** means a breath analysing instrument within the meaning of the Corresponding Act;

**“breath analysis”** has the same meaning as in the Corresponding Act;

**“breath test”** has the same meaning as in the Corresponding Act;

**“commercial purposes”** includes –

- (a) the purposes of a passenger transport or ferry service, whether for paying or non-paying passengers; and
- (b) research purposes;

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**“commercial vessel”** means a vessel, other than a fishing vessel, that is being operated for commercial purposes;

**“conviction”**, in relation to an offence, includes a finding of guilt without the recording of a conviction for the offence;

**“Corresponding Act”** means the *Road Safety (Alcohol and Drugs) Act 1970*;

**“corresponding maritime authority”** means an office or body established under a law of another State or a Territory, or under a law of the Commonwealth, and having functions that correspond, or substantially correspond, to those of MAST;

**“disqualification order”** means an order under section 41(2)(b) or section 42(2);

**“evidentiary certificate”** means a certificate specified in Part 1 of Schedule 1;

**“evidentiary record”** means a record specified in Part 2 of Schedule 1;

**“fail”**, to submit to a procedure or comply with a direction, includes refusing to submit to the procedure or comply with the direction;

**“fishing vessel”** means a vessel that is being operated, other than under charter, for or in connection with the taking of fish for a

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commercial purpose other than marine farming;

**“functions”** includes duties;

**“in charge”**, of a vessel – see section 6;

**“liability”**, of a person to submit to a breath test, breath analysis or blood-sampling, means a liability that the person incurs because of –

- (a) the operation of a provision of this Act; or
- (b) a requirement of a police officer under this Act; or
- (c) in the case of a blood-sampling under section 23, the person’s election to submit to the blood-sampling;

**“mariners certificate”** means a certificate, licence, permit or other document (however described) that –

- (a) is issued by MAST or a corresponding maritime authority; and
- (b) authorises the person to whom it is issued to operate a vessel in a particular capacity in accordance with the conditions specified in that certificate, licence, permit or other document;



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**“maritime accident”** includes, but is not limited to –

- (a) vessels colliding; and
- (b) a vessel colliding with a navigational hazard; and
- (c) a vessel colliding with the shore or a structure on shore; and
- (d) a vessel running aground; and
- (e) an accident, involving the use of a vessel, that results in the death or injury of any person or damage to property; and
- (f) an explosion or outbreak of fire on a vessel; and
- (g) a vessel sinking or capsizing;

**“MAST”** means the Marine and Safety Authority established under the *Marine and Safety Authority Act 1997*;

**“medical evidence”** means the evidence of one or more medical practitioners;

**“medical practitioner”** means a person holding practising registration under the *Medical Practitioners Registration Act 1996*;

**“nurse”** means a person holding registration or enrolment as a nurse under the *Nursing Act 1995*;

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**“operating”**, a vessel, means either or both of the following:

- (a) being aboard and in charge of the vessel;
- (b) being aboard the vessel and exerting any degree of control over its means of steering or propulsion;

**“owner”**, of a vessel – see section 5;

**“permitted concentration”** means a concentration of 0.05 of a gram of alcohol in –

- (a) 210 litres of breath; or
- (b) 100 millilitres of blood;

**“place”** includes a vehicle or vessel;

**“prescribed”**, in relation to any matter, means –

- (a) prescribed in the regulations; or
- (b) if the regulations do not provide for that matter, prescribed under the Corresponding Act;

**“procedure”** means a breath test, breath analysis or blood-sampling;

**“proceedings”** means proceedings for an offence under this Act;

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**“provision”**, of a contract of insurance, means any term, condition, covenant or other provision of the contract, however described;

**“regulations”** means regulations made and in force under this Act;

**“relevant time”** – see section 4;

**“secured”**, in relation to a vessel, means that the vessel is –

- (a) riding at anchor (other than a sea anchor); or
- (b) tied up to a mooring, or to a moored raft or moored pontoon; or
- (c) tied up to a jetty, wharf or breakwater; or
- (d) berthed in a marina; or
- (e) secured to another vessel to which paragraph (a), (b), (c) or (d) applies; or
- (f) connected up to something such as a crane, slipway cradle or trailer winch in order to be put into or taken out of the water;

**“signatory”**, in relation to a certificate, means the person by whom the certificate purports to have been signed;

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**“subject”**, in relation to a test, analysis or sampling of breath or blood, means the person whose breath or blood has been tested, analysed or sampled;

**“supervising analyst”** – see section 8(1);

**“vessel”** means –

(a) a vessel within the meaning of the *Marine and Safety Authority Act 1997* that is –

(i) being wholly or partly propelled by an engine; or

(ii) designed or intended to be wholly or partly propelled by an engine, whether the engine is –

(A) permanently installed in the vessel; or

(B) a detachable engine temporarily mounted on the vessel; or

(C) aboard and capable of being temporarily mounted on the vessel; or

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- (b) a vessel prescribed in the regulations.

**4. Meaning of “relevant time”**

For the purposes of this Act, a reference to “the relevant time” is a reference to –

- (a) in relation to a person’s liability to submit to a breath analysis under section 18, the time when the person is first required to submit to a breath test under that section; and
- (b) in relation to a person’s liability to submit to a breath analysis under section 19, the time when the person is first required to submit to the breath analysis; and
- (c) in relation to a person’s liability to submit to a breath analysis or blood-sampling under section 20, the time when the person is first required to submit to the breath analysis or blood-sampling; and
- (d) in relation to a person’s liability to submit to a breath analysis or blood-sampling under section 23, the time when the person is first required to submit to the breath analysis.

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**5. Determining who is owner of vessel**

- (1) A reference in this Act to the owner of a vessel includes a reference to a person who –
  - (a) is registered (with or by MAST or a corresponding maritime authority) as the owner of the vessel; or
  - (b) is a joint owner of the vessel; or
  - (c) is the charterer, lessee or hirer of the vessel; or
  - (d) has a right or obligation to exercise or perform any powers or functions of an owner of the vessel; or
  - (e) publicly represents that he or she has the right or obligation to exercise or perform those powers or functions; or
  - (f) is a director or other person concerned in the management of a body corporate that owns the vessel.
  
- (2) A person does not cease to be the owner of a vessel for the purposes of this Act if the vessel is –
  - (a) secured under a mortgage, bill of sale, or other form of security; or
  - (b) chartered, leased or hired by another person.

**6. Determining who is in charge of vessel**

- (1) For the purposes of this Act, a person is taken to be in charge of a vessel at a particular time if, at that time –
  - (a) he or she is the only person, or the only adult, aboard the vessel; or
  - (b) he or she purports by word or deed, and without contradiction by any other person aboard, to be in charge of the vessel; or
  - (c) the other persons aboard the vessel or a majority of them acknowledge, by word or deed, that the person is in charge of the vessel; or
  - (d) of all the persons aboard the vessel, he or she has ultimate command of the vessel's movements.
- (2) Subsection (1)(d) has effect regardless of whether, at the particular time –
  - (a) the vessel is underway; or
  - (b) the person is actually commanding the vessel's movements.
- (3) If it is established in any proceedings that, at a particular time, a person was the owner of a vessel and was –
  - (a) aboard the vessel; and

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- (b) qualified by a mariners certificate to be in charge of or otherwise operate the vessel –

it is to be presumed, unless the person on the balance of probabilities establishes otherwise, that he or she had ultimate command of the vessel's movements at that time.

**7. Status of pilots and masters, &c., of piloted vessels**

For the avoidance of doubt –

- (a) a person who is purporting to exercise the powers or perform the functions of a pilot on a vessel at a particular time is, for the purposes of this Act, taken to be operating the vessel at that time; and
- (b) a person is not, for the purposes of this Act, taken to have ceased being in charge of a vessel by reason only that the vessel is temporarily under the direction of a pilot.

**8. Supervising analyst, approved analysts and approved operators**

- (1) The person who is the supervising analyst for the purposes of the Corresponding Act is also the supervising analyst for the purposes of this Act.



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- (2) For the purposes of this Act, the supervising analyst has such functions as may be prescribed in relation to the following matters:
  - (a) the maintenance, testing and use of breath analysing instruments;
  - (b) the training and instruction of approved operators;
  - (c) the making and keeping of records relating to the maintenance, testing and use of breath analysing instruments.
- (3) A person who is an approved analyst for the purposes of the Corresponding Act is also an approved analyst for the purposes of this Act.
- (4) A police officer who is an approved operator for the purposes of the Corresponding Act is also an approved operator for the purposes of this Act.

*Division 3 – Application of Act*

**9. Which vessels does Act apply to?**

- (1) This Act applies to every vessel other than –
  - (a) a vessel under the control of the Australian Defence Force; or
  - (b) a warship, naval auxiliary or other vessel operating exclusively in the non-commercial government service of a foreign country.

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- (2) Subsection (1) has effect regardless of whether the waters that a vessel is in are navigable.
- (3) In this section –
  - “**non-commercial**” includes scientific research.

**10. When does Act apply to vessels?**

- (1) Unless the contrary intention appears, this Act only applies to vessels that are –
  - (a) underway; or
  - (b) involved in maritime accidents.
- (2) A vessel is taken to be underway for the purposes of this Act if it is not secured.
- (3) To avoid doubt, a vessel is taken to be underway for the purposes of this Act even if it is –
  - (a) drifting, with or without a sea anchor; or
  - (b) moving otherwise than under its own power; or
  - (c) temporarily stranded, and not secured.
- (4) However, the fact that a vessel is not underway does not prevent police officers from exercising powers under this Act in respect of the vessel, or in respect of persons on or from the vessel, for the purposes of enforcing this Act, particularly as regards –

- (a) acts or omissions that occurred, or may have occurred, while the vessel was underway; or
- (b) acts or omissions that would or would be likely to occur if the vessel were to get underway.

## **11. Extra-territorial operation**

(1) If –

- (a) a person does, wholly or partly outside Tasmania, an act or thing that constitutes an offence under section 13(1), section 14(1), section 14(2), section 16(1), section 17(1) or section 17(2); and
- (b) there is a real and substantial link between doing the act or thing and Tasmania –

that section, and the other provisions of this Act, applies to that act or thing as if it had been done wholly in Tasmania.

(2) For the purposes of subsection (1), there is a real and substantial link with Tasmania if –

- (a) a significant part of the conduct relating to, or constituting, the doing of the act or thing occurred in Tasmania; or

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- (b) where the act or thing was done wholly or partly outside Tasmania, substantial harmful effects arose in Tasmania.

**12. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**PART 2 – RESTRICTIONS ON USE OF ALCOHOL BY  
MARINERS**

*Division 1 – Commercial vessels*

**13. Person who has consumed alcohol not to operate  
commercial vessel**

- (1) A person must not operate a commercial vessel if there is alcohol in the person's breath or blood.

Penalty: The penalty provided for this offence by section 41.

- (2) However, it is a defence in proceedings for an offence under subsection (1) if the defendant establishes that –
- (a) at the time of the alleged offence, there was an emergency threatening the safety of the commercial vessel or persons aboard the commercial vessel; and
  - (b) the emergency was unrelated to the conduct of the defendant; and
  - (c) it was necessary for the defendant to operate the commercial vessel in a particular capacity at that time in order to deal with the emergency; and
  - (d) the defendant did not operate the commercial vessel in that capacity for any longer than was reasonably necessary to deal with the emergency.

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**14. Person who has consumed alcohol not to be allowed to operate commercial vessel**

- (1) The owner of a commercial vessel must not cause or allow a person who has alcohol in his or her breath or blood to operate the commercial vessel.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 50 penalty units; and
  - (b) a second offence, a fine not exceeding 100 penalty units; and
  - (c) a third or subsequent offence, a fine not exceeding 200 penalty units.
- (2) The person in charge of a commercial vessel must not cause or allow another person to operate the commercial vessel if that other person has alcohol in his or her breath or blood.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 50 penalty units; and
- (b) a second offence, a fine not exceeding 100 penalty units; and

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- (c) a third or subsequent offence, a fine not exceeding 200 penalty units.
- (3) However, it is a defence in proceedings for an offence under subsection (1) or (2) if the defendant establishes that, at the time of the alleged offence, the defendant did not know and could not reasonably have been expected to know that the person who the defendant caused or allowed to operate the commercial vessel had alcohol in his or her breath or blood.
- (4) It is also a defence in proceedings for an offence under subsection (1) or (2) if the defendant establishes that –
  - (a) at the time of the alleged offence, there was an emergency threatening the safety of the commercial vessel or persons aboard the commercial vessel; and
  - (b) the emergency was unrelated to the conduct of the defendant or the person who the defendant caused or allowed to operate the commercial vessel; and
  - (c) it was necessary for the defendant to cause or allow that person to operate the commercial vessel in a particular capacity at that time in order to deal with the emergency; and
  - (d) the defendant did not cause or allow that person to operate the commercial vessel in that capacity for any longer than was

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reasonably necessary to deal with the emergency.

***Division 2 – Other vessels***

**15. Application of Division**

This Division applies to vessels other than commercial vessels.

**16. Person who has consumed more than certain amount of alcohol not to operate non-commercial vessel**

- (1) A person must not operate a vessel to which this Division applies if there is more than the permitted concentration of alcohol in the person's breath or blood.

Penalty: The penalty provided for this offence by section 41.

- (2) However, it is a defence in proceedings for an offence under subsection (1) if the defendant establishes that, at the time of the alleged offence –
- (a) another person had overall control of the vessel's means of steering and propulsion; and
  - (b) that other person was an adult who was competent to exercise that control; and



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- (c) that other person did not have more than the permitted concentration of alcohol in his or her breath or blood.
- (3) It is also a defence in proceedings for an offence under subsection (1) if the defendant establishes that –
- (a) at the time of the alleged offence, there was an emergency threatening the safety of the vessel or persons aboard the vessel; and
  - (b) the emergency was unrelated to the conduct of the defendant; and
  - (c) it was necessary for the defendant to operate the vessel in a particular capacity at that time in order to deal with the emergency; and
  - (d) the defendant did not operate the vessel in that capacity for any longer than was reasonably necessary to deal with the emergency.

**17. Person who has consumed more than certain amount of alcohol not to be allowed to operate non-commercial vessel**

- (1) The owner of a vessel to which this Division applies must not cause or allow a person who has more than the permitted concentration of alcohol in his or her breath or blood to operate the vessel.

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Penalty: In the case of –

- (a) a first offence, a fine not exceeding 25 penalty units; and
  - (b) a second offence, a fine not exceeding 50 penalty units; and
  - (c) a third or subsequent offence, a fine not exceeding 100 penalty units.
- (2) The person in charge of a vessel to which this Division applies must not cause or allow another person to operate the vessel if the other person has more than the permitted concentration of alcohol in his or her breath or blood.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 25 penalty units; and
  - (b) a second offence, a fine not exceeding 50 penalty units; and
  - (c) a third or subsequent offence, a fine not exceeding 100 penalty units.
- (3) However, it is a defence in proceedings for an offence under subsection (1) or (2) if the defendant establishes that, at the time of the

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alleged offence, the defendant did not know and could not reasonably have been expected to know that the person who the defendant caused or allowed to operate the vessel had more than the permitted concentration of alcohol in his or her breath or blood.

- (4) It is also a defence in proceedings for an offence under subsection (1) or (2) if the defendant establishes that –
- (a) at the time of the alleged offence, there was an emergency threatening the safety of the vessel or persons aboard the vessel; and
  - (b) the emergency was unrelated to the conduct of the defendant or the person who the defendant caused or allowed to operate the vessel; and
  - (c) it was necessary for the defendant to cause or allow that person to operate the vessel in a particular capacity at that time in order to deal with the emergency; and
  - (d) the defendant did not cause or allow that person to operate the vessel in that capacity for any longer than was reasonably necessary to deal with the emergency.

**PART 3 – ENFORCEMENT OF ALCOHOL  
RESTRICTIONS**

***Division 1 – Police may require breath tests, breath analyses  
and blood-samplings***

**18. Breath testing, &c., of vessel operators**

- (1) This section applies if it appears to a police officer that a person is, or has just ceased, operating a vessel.
- (2) To determine whether an offence has been committed under Part 2, the police officer may require the person to submit to a breath test.
- (3) The police officer may impose the requirement whether or not –
  - (a) the police officer suspects there is alcohol in the person's breath or blood;  
or
  - (b) the vessel is underway.
- (4) After the police officer imposes the requirement, the person also becomes liable to submit to a breath analysis if the police officer (or another police officer) reasonably suspects (from the result of the breath test or otherwise) that there is alcohol in the person's breath or blood.

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**19. Breath analysis, &c., of vessel operators suspected of having consumed alcohol**

- (1) This section applies if –
  - (a) it appears to a police officer that a person is, or has just ceased, operating a vessel; and
  - (b) the police officer reasonably suspects that there is alcohol in the person's breath or blood.
- (2) To determine whether an offence has been committed under Part 2, the police officer may require the person to submit to a breath analysis.
- (3) The police officer may impose the requirement whether or not the vessel is underway.
- (4) If the police officer requires the person to submit to a breath analysis, the police officer (or another police officer) may require the person firstly to submit to a breath test.

**20. Breath analysis, &c., of persons involved in maritime accidents**

- (1) This section applies if –
  - (a) it appears to a police officer that a maritime accident has occurred; and
  - (b) the police officer reasonably suspects that a person was aboard a vessel

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involved in the maritime accident when it occurred.

- (2) The police officer may require the person to submit to a breath analysis or blood-sampling.
- (3) The police officer may impose the requirement whether or not –
  - (a) the police officer suspects that there is alcohol in the person's breath or blood; or
  - (b) the person is, or was when the maritime accident occurred, operating the vessel; or
  - (c) any vessel apparently involved in the maritime accident is underway.
- (4) If the police officer requires the person to submit to a breath analysis or blood-sampling, the police officer (or another police officer) may require the person firstly to submit to a breath test.

***Division 2 – Liability to submit to breath test, breath analysis or blood-sampling***

**21. Liable person must submit to breath test, breath analysis or blood-sampling**

- (1) This section applies if a person is liable to submit to a breath test, breath analysis or blood-sampling under Division 1.

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- (2) The person must not, without reasonable excuse, fail to –
- (a) submit to the breath test, breath analysis or blood-sampling; or
  - (b) comply with such directions as the police officer requiring the person to submit to the breath test, breath analysis or blood-sampling (or another police officer) may give the person to enable it to be carried out.
- Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.
- (3) Without limiting the generality of subsection (2)(b), the person may be directed to –
- (a) go to such place (by such means and with such persons) as the police officer giving the direction nominates; and
  - (b) submit to the breath test, breath analysis or blood-sampling at that place.
- (4) However, it is a defence in proceedings for an offence under subsection (2) in respect of a breath analysis liability if the defendant establishes that –
- (a) the defendant was informed by the approved operator of a breath analysing instrument or a police officer that the defendant could elect to submit to a

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- blood-sampling instead of the breath analysis; and
- (b) the defendant made that election; and
  - (c) the blood-sampling was carried out, or could have practicably been carried out, within 3 hours after the relevant time.
- (5) In proceedings for an offence under subsection (2), the medical or physical condition of the defendant at the time of the alleged offence is not a reasonable excuse for the purposes of that subsection unless the court is satisfied by medical evidence that, by reason of that condition –
- (a) it was not possible, practicable or safe for the defendant to submit to the relevant procedure; or
  - (b) the defendant would have suffered an abnormally high level of pain, discomfort or distress in submitting to the relevant procedure; or
  - (c) it was otherwise unreasonable to expect the defendant to submit to the relevant procedure.



**22. Liable person failing to submit to breath test, breath analysis or blood-sampling may be taken into custody**

- (1) This section applies if a person who is liable to submit to a breath test, breath analysis or blood-sampling under Division 1 –
  - (a) fails to submit to the breath test, breath analysis or blood-sampling; or
  - (b) fails to comply with a direction under section 21(2)(b) given in connection with the breath test, breath analysis or blood-sampling, or is in such a condition or behaves in such a manner as to give the police officer who has given the direction (or another police officer) reasonable grounds to believe that the person will not comply with the direction.
- (2) A police officer may –
  - (a) take the person into custody; and
  - (b) convey the person, or cause the person to be conveyed, to some appropriate place; and
  - (c) detain the person at that place for so long as is necessary to enable a requirement to be imposed on the person under section 23.
- (3) The person, if taken into custody pursuant to subsection (2), must not –

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- (a) escape or attempt to escape from custody; or
- (b) obstruct or hinder his or her conveyance to a place pursuant to that subsection.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

**23. Person liable to submit to breath analysis may elect to have blood-sampling instead**

- (1) This section applies if –
  - (a) a person who is liable to submit to a breath analysis under Division 1 is being detained at a place pursuant to section 22(2); and
  - (b) a breath analysis can be carried out forthwith at the place.
- (2) A police officer may require the person to submit to a breath analysis at the place.
- (3) If the person fails to comply with the requirement, the approved operator of a breath analysing instrument at the place is to inform the person that he or she may elect to submit to a blood-sampling instead of the breath analysis.
- (4) However, the approved operator need not comply with subsection (3) if he or she does not believe that the blood-sampling could be

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practicably begun within 3 hours after the relevant time.

- (5) If the blood-sampling election is offered and the person makes that election, the approved operator is to arrange for a medical practitioner or nurse to carry out the blood-sampling.

**24. Offence to refuse breath analysis while in custody if alternative election not made, &c.**

- (1) This section applies if a person is liable to submit to a breath analysis under section 23(2).
- (2) The person must not fail to submit to the breath analysis.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (3) However, it is a defence in any proceedings for an offence under subsection (2) if the defendant establishes that –
- (a) the defendant was informed in accordance with section 23(3) that he or she could elect to submit to a blood-sampling instead of the breath analysis; and
- (b) the defendant made that election; and
- (c) the blood-sampling was, or could have practicably been, carried out within 3 hours after the relevant time.

**25. Duration of breath analysis liability**

- (1) A person's liability to submit to a breath analysis or blood-sampling under Division 1 or section 23(2) expires 3 hours after the relevant time if the breath analysis or blood-sampling is not begun within those 3 hours.
- (2) A police officer is to have regard to subsection (1) when enforcing this Act and, more specifically, is not to require a person to submit to a breath analysis under Division 1 or section 23, or to a blood-sampling under Division 1, unless the police officer believes that the breath analysis or blood-sampling could be practicably begun before the person's liability to submit to it expires.
- (3) However, a failure to comply with subsection (2) does not invalidate any action of a police officer.

**26. Offence to attempt to manipulate result of breath test, breath analysis or blood-sampling**

- (1) This section applies if a person has become liable under this Act to submit to a breath test, breath analysis or blood-sampling.
- (2) The person must not, before submitting to the breath test, breath analysis or blood-sampling, do anything with the intention of altering the concentration of alcohol in the person's blood.

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Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

**27. Enforcement procedures not to jeopardise safety of persons being given first aid, &c.**

- (1) This section applies if first aid or medical treatment is being administered to a person by –
  - (a) a medical practitioner; or
  - (b) a nurse; or
  - (c) an ambulance officer.
- (2) A police officer is not entitled to require the person to submit to a breath test, breath analysis or blood-sampling under this Act unless the person responsible for administering the first aid or medical treatment has –
  - (a) been informed that the police officer intends to impose the requirement; and
  - (b) been asked whether it is safe for the person to submit to the breath test, breath analysis or blood-sampling (or a question to that effect); and
  - (c) indicated, either by an affirmative answer to the question or by raising no objection on medical grounds, that it is safe for the person to submit to the breath test, breath analysis or blood-sampling.

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- (3) A requirement imposed on the person contrary to this section is void and the results of a breath test, breath analysis or blood-sampling carried out pursuant to that requirement are inadmissible in any proceedings against the person under any Act.
- (4) This section prevails over any section of Part 2 or any other section of this Part.
- (5) In this section –
  - “**ambulance officer**” means a person who is providing ambulance services –
    - (a) under the *Ambulance Service Act 1982*; or
    - (b) on an honorary or volunteer basis.

**28. Blood-sampling may be required even if breath test or analysis not safe or practicable**

- (1) This section applies if a police officer –
  - (a) is prevented by section 27 from requiring a person to submit to a breath test or breath analysis under this Act but is not similarly impeded as regards requiring a blood-sampling; or
  - (b) believes that, by reason of a person’s condition –

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- (i) it would be impracticable or unreasonable to require the person to submit to a breath test or breath analysis under this Act; or
  - (ii) it might not be safe to require the person to submit to a breath test or breath analysis under this Act.
- (2) The police officer may require the person to submit to a blood-sampling instead of the breath test or breath analysis.
- (3) The person must not, if the police officer's power under subsection (2) is exercised, fail without reasonable excuse to –
  - (a) submit to the blood-sampling; and
  - (b) comply with such directions as the police officer (or another police officer) may give the person to enable the blood-sampling to be carried out.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (4) Without limiting the generality of subsection (3)(b), the person may be directed to –
  - (a) go to such place (by such means and with such persons) as the relevant police officer nominates; and

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- (b) submit to the blood-sampling at that place.
- (5) In proceedings for an offence under subsection (3), the medical or physical condition of the defendant at the time of the alleged offence is not a reasonable excuse for the purposes of that subsection unless the court is satisfied by medical evidence that, by reason of that condition –
- (a) it was not possible, practicable or safe for the defendant to submit to the blood-sampling; or
  - (b) the defendant would have suffered an abnormally high level of pain, discomfort or distress in submitting to the blood-sampling; or
  - (c) it was otherwise unreasonable to expect the defendant to submit to the blood-sampling.

*Division 3 – Testing and analysis procedures*

**29. Rights and obligations on completion of breath analysis, &c.**

- (1) As soon as practicable after a person has submitted to a breath analysis –
  - (a) the approved operator of the breath analysing instrument must –



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- (i) read over to the person a written statement, in the prescribed form appropriate to the case, indicating the concentration of alcohol in the person's breath as determined by the breath analysis; and
    - (ii) hand the person the written statement; and
  - (b) the approved operator of the breath analysing instrument must, if satisfied that a blood-sampling could practicably be begun within 3 hours after the relevant time, inform the person that the person may immediately request a blood-sampling.
- (2) On being handed the written statement, the person may immediately request the approved operator of the breath analysing instrument that a blood-sampling be carried out if the person has been informed pursuant to subsection (1)(b) that he or she may make that request.
- (3) If the person makes that request –
- (a) the approved operator of the breath analysing instrument must arrange for the person's blood-sampling to be begun by a medical practitioner or nurse within 3 hours after the relevant time; and
  - (b) the person is not liable for any costs incurred in making or attempting to make those arrangements or in carrying out the blood-sampling.

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**30. Blood-sampling of person incapable of consenting, and related duty of medical practitioner**

- (1) This section applies if –
  - (a) a person is liable under this Act to submit to a blood-sampling; and
  - (b) the person is being treated by a medical practitioner; and
  - (c) the medical practitioner informs a police officer that the person is, by reason of a physical or medical condition, incapable of consenting to the blood-sampling.
- (2) The police officer may request the medical practitioner to carry out the blood-sampling.
- (3) It is the medical practitioner's duty to comply with the request unless he or she is of the opinion that to do so would be prejudicial to the person's proper care or treatment.
- (4) However, in order to comply with the request, the medical practitioner may treat any sample of blood that has already been taken from the person in connection with the person's diagnosis or treatment, and is available for analysis, as having been taken pursuant to the request.

**31. Duty of medical practitioner who refrains from carrying out blood-sampling in patient's interest**

- (1) This section applies if a medical practitioner refrains from carrying out a blood-sampling of a

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person under this Act on the grounds that to do so would, in the medical practitioner's opinion, be prejudicial to the person's proper care or treatment.

- (2) It is the medical practitioner's duty, if so requested by a police officer, to –
  - (a) express an opinion on the question whether the person has or, if the person is in hospital, had, at the time of his or her admission to the hospital, alcohol in his or her body; and
  - (b) answer, to the best of the medical practitioner's ability, any relevant questions that may be put to him or her by the police officer regarding that question.

**32. Duty of medical practitioner who carries out blood-sampling**

- (1) It is the duty of a medical practitioner who carries out a blood-sampling under this Act to comply with the provisions of this section in so far as they apply to that medical practitioner.
- (2) If the manner in which the blood-sampling is to be carried out is prescribed, the sampling is to be carried out in the prescribed manner.
- (3) The blood sample is to be divided into 3 parts, and this may be done either when the sample is taken or afterwards.

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- (4) As soon practicable after the blood sample is divided into 3 parts, each of those parts is to be enclosed in a container issued for the purposes by an approved analyst.
- (5) As soon as practicable after the 3 parts of the blood sample have been enclosed in containers, the containers are to be labelled in the prescribed manner.
- (6) Once the containers have been labelled in the prescribed manner –
  - (a) one of the containers is, as soon as practicable, to be tendered to the subject or, if the subject is in custody, delivered to a police officer; and
  - (b) the other 2 containers are, within 10 days, to be delivered to an approved analyst.

**33. Follow-up procedure for blood-sampling of person incapable of consenting**

- (1) This section applies if, under section 30, a medical practitioner carries out a blood-sampling of a person who is incapable of consenting to that procedure.
- (2) The police officer who requested that the blood-sampling be carried out (or another police officer) must, as soon as the police officer (or other police officer) considers it practicable to do so having regard to the person's condition –

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- (a) give written notice to the person that the blood-sampling has been carried out; and
  - (b) tender to the person the part of the blood sample referred to in section 32(6)(a); and
  - (c) give the person written notice to the effect that he or she may object to the blood sample being analysed but that doing so without a reasonable excuse is an offence under this Act.
- (3) The person is guilty of an offence if, after being given the written notice referred to in subsection (2)(c), he or she objects without reasonable excuse to the sample being analysed.

Penalty: Fine not exceeding 30 penalty units.

**34. Retention of blood sample during detention in custody**

- (1) This section applies if a container containing part of a blood sample is delivered to a police officer under section 32(6)(a).
- (2) If the manner in which the container is to be kept is prescribed, the container is to be kept in the prescribed manner.
- (3) If the subject is released from custody within 24 hours after the blood sample was taken, the container is to be tendered to the subject on his or her release.

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- (4) If the container is not tendered to the subject as provided by subsection (3), it must, on a written request made by or on behalf of the subject, be delivered to –
  - (a) the subject; or
  - (b) such other person at such place as is specified in the request.
- (5) A request under subsection (4) is to be made to such person or at such place as may be prescribed.
- (6) If a request under subsection (4) is purportedly signed by a legal practitioner acting for the subject, a person receiving or acting on the request is entitled to assume that it has been made on behalf of the subject.

**35. Analysis of blood samples by approved analyst**

- (1) This section applies if 2 containers containing parts of a sample of blood taken from a person under this Act are delivered to an approved analyst.
- (2) The approved analyst may analyse the part of the sample contained in one of the containers.
- (3) Except as a court may otherwise direct, the part of the sample contained in the second container must not be analysed or otherwise dealt with except on the joint written request of –

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- (a) the subject (or a person acting on behalf of the subject); and
  - (b) a legal practitioner acting on behalf of the Crown.
- (4) After analysing any part of the sample, the approved analyst must prepare a report of the analysis.
- (5) The report is to state the concentration of alcohol in the part of the sample analysed, expressed in grams of alcohol in 100 millilitres of blood, as determined by the analysis.
- (6) Within 21 days after completing the report of the analysis, the approved analyst must cause a copy of the report to be –
- (a) served on the subject (or a person acting on behalf of the subject); and
  - (b) provided to –
    - (i) if the analysis was done pursuant to a request under subsection (3), a person specified by the legal practitioner acting on behalf of the Crown who jointly made the request; or
    - (ii) if a request under subsection (3) was not made, a prescribed police officer.
- (7) For the purposes of subsection (6)(a) –

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- (a) the copy of the report must be served by posting it to the residential or postal address, or address of business or employment, of the person being served, as last known to the approved analyst; and
  - (b) the copy of the report is taken to have been served when it is posted.
- (8) For the purposes of subsection (6)(b), a copy of the report may be provided by any means or in any manner.

***Division 4 – Police powers***

**36. Ancillary police powers**

- (1) For the purposes of enforcing this Act, a police officer may, according to circumstance, do any one or any combination of the following:
  - (a) hail or signal a vessel;
  - (b) direct a person on a vessel to alter its speed or direction;
  - (c) direct a person on a vessel to bring it to a halt (with or without casting anchor or securing a line to anything and with or without shutting off any engines or taking in any sails);
  - (d) direct a person not to move a vessel for a period specified by the police officer;



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- (e) direct a person to take a vessel to a place nominated by the police officer;
  - (f) bring a police vessel alongside a vessel (with or without securing lines to the vessel);
  - (g) board and remain on a vessel;
  - (h) inspect, for the presence of an engine, a vessel boarded by the police officer;
  - (i) direct a person to temporarily surrender any key or lanyard required to start or operate an engine on a vessel;
  - (j) request a person to produce a mariners certificate, certificate of survey or other document for the police officer's inspection;
  - (k) direct a person to produce a mariners certificate, certificate of survey or other document within such period, of not less than 7 days, and at such reasonable place as the police officer specifies;
  - (l) direct a person to do (if necessary or expedient, by or within a specified time) one or more of the following:
    - (i) board, or disembark from, a police vessel or other vessel;
    - (ii) go onto, or get off, a jetty or other structure;
    - (iii) go to, or leave, a place ashore;

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- (m) direct a person to remain (either for a specified time or until further notice) –
    - (i) on a police vessel or other vessel;  
or
    - (ii) on a jetty or other structure; or
    - (iii) at a place ashore;
  - (n) detain a vessel for the purposes of establishing or confirming the identity of the vessel or the identity of persons on the vessel;
  - (o) direct a person to remain at or leave the scene of a maritime accident;
  - (p) direct a person to take or not take a specified action at the scene of a maritime accident;
  - (q) ask questions of persons on or near vessels, or persons at or near the scene of maritime accidents, and direct those persons to answer those questions.
- (2) A police officer enforcing this Act may be assisted by such persons as he or she considers necessary or expedient in the circumstances.
- (3) Nothing in subsection (1) is to be taken as limiting enforcement powers conferred on police officers under other Acts.
- (4) A person who is given a direction by a police officer pursuant to subsection (1) must not,

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without reasonable excuse, fail to comply with that direction.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (5) The Crown is not liable for any damage that may be caused to any vessel, cargo, structure or other thing as a result of an act or omission of a police officer exercising power under subsection (1) in good faith.

**37. Limitation on exercise of police powers**

- (1) It is the duty of a police officer exercising or seeking to exercise power under this Act –
- (a) to have regard to the weather conditions prevailing at that time; and
  - (b) not to endanger the safety of any person or vessel; and
  - (c) not to detain a person or vessel for longer than is reasonably necessary for the power to be exercised; and
  - (d) not to direct, without good cause, that a commercial vessel or fishing vessel be taken to a place outside its usual or scheduled area or routes of operation.
- (2) It is the duty of a police officer requiring a person to submit to a breath test under this Part to ensure, as far as practicable, that –

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- (a) the breath test is carried out as soon as practicable; and
  - (b) the breath test is carried out at the place where the requirement was imposed or at the nearest practicable place.
- (3) However, a failure of duty under this section does not invalidate the exercise of a power under this Act.

**38. Identification of offenders**

- (1) This section applies if a police officer reasonably suspects that a person has contravened another section of this Act.
- (2) The police officer may require the person to state one or more of the following:
  - (a) the person's name;
  - (b) the person's age;
  - (c) the person's address.
- (3) If the power under subsection (2) is exercised, the person must not –
  - (a) refuse or fail to comply with the police officer's requirement; or
  - (b) state a false name, age or address to the police officer.

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Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (4) The police officer may arrest the person without warrant if the police officer believes that a person has contravened subsection (3).

**39. Police may direct certain persons not to operate vessels, &c.**

- (1) This section applies if a police officer reasonably suspects that –
- (a) a person operating or apparently about to operate a commercial vessel has consumed alcohol; or
  - (b) a person operating or apparently about to operate a vessel to which Division 2 of Part 2 applies has more than the permitted concentration of alcohol in the person's blood.
- (2) The police officer may –
- (a) direct the person not to operate the vessel for a period of time specified by the police officer; and
  - (b) give any person aboard the vessel such directions as the police officer reasonably considers necessary to ensure the safety of –

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- (i) the vessel and persons aboard the vessel; and
    - (ii) if applicable, other persons, other vessels or structures; and
  - (c) if it appears to the police officer that no person who may legally operate the vessel is available, take such steps as the police officer reasonably considers necessary to ensure the safety of the vessel and persons aboard the vessel including, if circumstances require –
    - (i) removing the vessel to a place of safety (if necessary by operating it or taking it in tow); or
    - (ii) temporarily preventing its further operation.
- (3) A person must not fail to comply with a direction under subsection (2).
- Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.
- (4) The Crown is not liable for any damage that may be caused to any vessel, cargo, structure or other thing as a result of an act or omission of a police officer exercising power under subsection (2)(c) in good faith.

***Division 5 – Penalties***

**40. Interpretation of Division**

In this Division –

**“disqualification order”** means the sentencing order by which a person is disqualified;

**“disqualify”**, a person convicted of an offence, means –

- (a) for an offence under Division 1 of Part 2 or an obstructive offence in respect of a commercial vessel, prohibit the person from operating commercial vessels; and
- (b) for an offence under Division 2 of Part 2 or an obstructive offence in respect of a vessel other than a commercial vessel, prohibit the person from operating vessels of such class or description as the court imposing the disqualification considers appropriate in the circumstances;

**“local mariners certificate”** means a mariners certificate issued by MAST;

**“obstructive offence”** means an offence against section 21(2), section 22(3), section 24(2), section 26(2),

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section 28(3),          section 33(3)          or  
section 38(3);

**“relevant matters”**, in relation to the  
commission of an offence against this  
Act, includes –

- (a) the nature and seriousness of the offence (including whether the safety of any persons, vessels or property was put at risk); and
- (b) the circumstances in which the offence was committed; and
- (c) the offender’s level of co-operation as regards the applicable investigation and enforcement requirements of this Act; and
- (d) the offender’s antecedents and character; and
- (e) the number and type of mariners certificates, if any, held by the offender.

**41. Penalties for direct breaches of marine alcohol restrictions**

- (1) This section applies if a court convicts a person of an offence under Part 2 that is specified in column 1 of the table at the foot of this section (“the table”).



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- (2) The court must, regardless of any other penalty it may impose for the offence –
  - (a) impose the fine that is specified in column 3 of the table for the offence; and
  - (b) disqualify the person for the period that is specified in column 4 of the table for the offence.
- (3) However, if the convicted person satisfies the court that there are special circumstances why the specified fine or period of disqualification (or both) should not be imposed, the court may impose a lesser fine or period of disqualification (or both).
- (4) For the purposes of subsection (2), the fine and the period of disqualification are to be ascertained by reference to the concentration of alcohol in the convicted person's breath or blood as specified in column 2 of the table.
- (5) On disqualifying the convicted person, the court may also do either or both of the following:
  - (a) suspend or cancel a local mariners certificate held by the convicted person;
  - (b) prohibit the person from applying, for a period specified by the court, for a local mariners certificate specified by the court.
- (6) A suspension under subsection (5) may be for –

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- (a) the same period as the period of disqualification; or
  - (b) such lesser period as the court thinks fit.
- (7) For the purposes of exercising any of its discretions under this section, the court may have regard to such matters as it thinks fit in the circumstances, including any relevant matters.
- (8) The court is to cause copies or notice of its sentencing orders to be given to MAST and MAST may inform a corresponding maritime authority of those orders.

Column 1 Offence	Column 2 Concentration of alcohol  (grams of alcohol in 210L of breath or in 100ml of blood)	Column 3 Fine  (in penalty units)	Column 4 Disqualification period  (in months)
Section 13(1)	Not more than 0.05	2	3
	More than 0.05 but not more than 0.100	4	6
	More than 0.100 but not more than 0.150	6	9
	More than 0.150 but not more than 0.200	8	12
	More than 0.200	10	15
Section 16(1)	More than 0.05 but not more than 0.100	2	3
	More than 0.100 but not more than 0.150	4	6

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Column 1  Offence	Column 2  Concentration of alcohol  (grams of alcohol in 210L of breath or in 100ml of blood)	Column 3  Fine  (in penalty units)	Column 4  Disqualification period  (in months)
	More than 0.150 but not more than 0.200	6	9
	More than 0.200	8	12

**42. Additional penalty of disqualification for certain offences**

- (1) This section applies if a court convicts a person of –
  - (a) an offence under Part 2 that is not specified in column 1 of the table at the foot of section 41; or
  - (b) an obstructive offence.
- (2) The court may, in addition to any other penalty it may impose for the offence, disqualify the person for a period not exceeding 3 years.
- (3) The disqualification may be absolute, or limited in its effect according to such factors, whether as to time, geographic area, maritime activity or otherwise, as the court thinks fit.
- (4) On exercising its power under subsection (2), the court may also do either or both of the following:

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- (a) suspend or cancel a local mariners certificate held by the convicted person;
  - (b) prohibit the person from applying, for a period specified by the court, for a local mariners certificate specified by the court.
- (5) The suspension under subsection (4) may be for –
- (a) the same period as the period of disqualification; or
  - (b) such lesser period as the court thinks fit.
- (6) In exercising its discretions under this section, the court may have regard to such matters as it thinks fit, including –
- (a) any relevant matters; and
  - (b) the weight that the court gives to the factors of deterrence and punishment in sentencing.
- (7) The court is to cause copies or notice of its sentencing orders to be given to MAST and MAST may inform a corresponding maritime authority of those orders.

**43. Offence to operate vessel contrary to disqualification order**

- (1) This section applies if a person is subject to a disqualification order.

- (2) The person must not contravene the disqualification order.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

**44. Offence to apply for local mariners certificate if prohibited from doing so**

- (1) This section applies if, pursuant to section 41(5)(b) or section 42(4)(b), a person is prohibited from applying for a specified kind of local mariners certificate for a specified period.
- (2) The person must not, during the specified period, apply for a local mariners certificate of the specified kind.

Penalty: Fine not exceeding 100 penalty units.

- (3) However, the person does not commit any offence under subsection (2) by applying for a restricted mariners certificate under Division 6 during the specified period.

***Division 6 – Restricted mariners certificates***

**45. Interpretation of Division**

In this Division –

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**“disqualify”** and **“disqualification order”**  
have the same meaning as in Division 5;

**“obstructive offence”** has the same meaning  
as in Division 5.

**46. Disqualified person may apply for restricted mariners certificate**

- (1) A person who is subject to a disqualification order may apply to a court of petty sessions for an order authorising the issue of a restricted mariners certificate.
- (2) A restricted mariners certificate is a mariners certificate that authorises the person to operate a vessel of a particular class or description, despite being prohibited from doing so by the disqualification order.
- (3) The application must –
  - (a) be made in writing; and
  - (b) state the name, age and residential address of the applicant and an address for service of notices; and
  - (c) contain details of every mariners certificate held by the applicant at the time of making the application (including any that are suspended); and
  - (d) contain details of every other mariners certificate held by the applicant during the 10-year period immediately

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preceding the making of the application (including any that were surrendered or for any reason cancelled); and

- (e) as far as practicable, give details of the convictions, if any, recorded against the applicant for offences against the laws of Tasmania or any other jurisdiction in the 10-year period immediately preceding the making of the application and involving the operation of a vessel, including –
  - (i) the date on which each of the offences was committed; and
  - (ii) the courts by which, and the dates on which, the applicant was convicted and particulars of penalties imposed or other orders made in respect of the offences or, if any of the offences were dealt with by infringement notice of any kind, the infringement notice penalties; and
- (f) give details of the disqualification order and state whether any similar disqualification has previously been imposed on the applicant (in Tasmania or elsewhere) and, if so, the period of the disqualification and the reasons for it; and

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- (g) state the grounds on which the applicant asks for the order authorising the issue of the restricted mariners certificate; and
  - (h) contain details of the severe and unusual hardship that would be suffered by the applicant, or the applicant's dependants, if the application were refused; and
  - (i) state the conditions on which the applicant asks the court to authorise the issue of the restricted mariners certificate; and
  - (j) be verified by statutory declaration made by the applicant; and
  - (k) be accompanied by the prescribed fee, if any; and
  - (l) be filed with the clerk of the court.
- (4) At least 7 days before the application is to be heard by the court, the applicant must give a copy of the application to –
- (a) the chief executive officer of MAST; and
  - (b) the Commissioner of Police.

**47. Courts may make order authorising issue of restricted mariners certificate**

- (1) A court of petty sessions may, on an application under section 46, make an order authorising the



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issue of a restricted mariners certificate if it is satisfied that –

- (a) the applicant's disqualification is imposing or will impose severe and unusual hardship on the applicant or the applicant's dependants; and
  - (b) the restricted mariners certificate should be issued to mitigate or alleviate that hardship; and
  - (c) the issue of the restricted mariners certificate will not be contrary to the public interest.
- (2) However, the court is not to make an order under subsection (1) in respect of a conviction for an offence under this Act if –
- (a) the offence was committed during any period of disqualification, or within 3 years after the end of any period of disqualification, imposed under this Act; or
  - (b) the offence was under section 13(1) or section 16(1) and the offender had alcohol in his or her blood of a concentration equal to or greater than 0.200 grams of alcohol in 210 litres of breath or 100 millilitres of blood; or
  - (c) the offence was an obstructive offence; or

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- (d) at the time of the offence the applicant was not authorised by a mariners certificate to operate, in the relevant capacity, the vessel in respect of which the offence was committed or cannot satisfy the court that he or she would, but for an unintentional failure to comply with an administrative requirement, have been so authorised to operate the vessel in that capacity at that time; or
  - (e) at the time of the offence the applicant was operating a vessel prescribed for this paragraph.
- (3) The court may make an order under subsection (1) on such terms as the court thinks fit and, without limiting the generality of this, may provide for a restricted mariners certificate to have general application or application that is qualified by such factors as time, geographic area or maritime activity.
- (4) MAST must, on application by a person in whose favour an order under subsection (1) has been made and on payment of the prescribed fee, if any, issue the person with a restricted mariners certificate that conforms with the terms of the order.
- (5) MAST has power to do such things as may be necessary or expedient for the purpose of discharging its function under subsection (4).
- (6) A court of petty sessions may, on application by the holder of a restricted mariners certificate

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supported by such evidence as the court considers necessary and appropriate in the circumstances, vary the terms or conditions of the certificate.

- (7) A court that has dealt with, or is about to deal with, the holder of a restricted mariners certificate for an offence relating to the operation of a vessel, or a court of petty sessions, may, on its own initiative or on application made by or on behalf of the Commissioner of Police or MAST, vary the terms or conditions of the restricted mariners certificate or revoke the certificate.

**48. Offence to contravene conditions of restricted mariners certificate, &c.**

- (1) This section applies if a person (referred to in this section as “the disqualified person”) is issued with a restricted mariners certificate under section 47.
- (2) The disqualified person must not –
- (a) contravene any term or condition of the restricted mariners certificate; or
  - (b) contravene any order of a court made in relation to the restricted mariners certificate (including the order that authorised the issue of that certificate).

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Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (3) A person must not knowingly employ, or knowingly cause or allow, the disqualified person to operate a vessel in contravention of –
- (a) any term or condition of the restricted mariners certificate; or
  - (b) any order of a court made in relation to the restricted mariners certificate (including the order that authorised the issue of that certificate).

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

*Division 7 – Supplementary provisions*

**49. Notice of offence**

- (1) This section applies if a person who holds a mariners certificate issued by a corresponding maritime authority is convicted of an offence under this Act.
- (2) MAST may inform the corresponding maritime authority of the conviction and, if applicable, of any disqualification or prohibition imposed on the person for the offence.

**PART 4 – EVIDENCE**

**50. Presumptions regarding breath tests and analyses, &c.**

- (1) In any proceedings –
- (a) the concentration of alcohol in a sample of blood taken from a person in accordance with this Act is to be taken to be the actual concentration of alcohol in the person's blood when the sample was taken, unless it is established on the balance of probabilities that the concentration of alcohol in the person's blood at that time was not greater than the permitted concentration; and
  - (b) the concentration of alcohol in a person's breath as determined by a properly carried out breath analysis under this Act is to be taken to be the actual concentration of alcohol in the person's breath when he or she submitted to the breath analysis, unless it is established on the balance of probabilities that the concentration of alcohol in the person's breath at that time was not greater than the permitted concentration; and
  - (c) if there is conflict between the evidence referred to in paragraph (a) and the evidence referred to in paragraph (b), the evidence referred to in paragraph (a) prevails.

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- (2) If, in any proceedings, it is established that the concentration of alcohol in the breath or blood of a person who became liable to submit to a breath analysis or blood-sampling under this Act was, at any time within 4 hours after the relevant time, equal to or not less than a particular concentration (being a concentration not less than the permitted concentration), that particular concentration is to be taken to have been the concentration of alcohol in the person's breath or blood at the time of the relevant act of operating a vessel unless it is established that the concentration of alcohol in the person's breath or blood at the time of that act was not greater than the permitted concentration.
- (3) If, in any proceedings against a person for an offence under section 13(1), it is established that the person became liable to submit to a breath analysis or blood-sampling under this Act and had alcohol in his or her breath or blood at any time within 4 hours after the relevant time, it is to be presumed, unless the contrary is proved, that the person had alcohol in his or her breath or blood at the time of the relevant act of operating a vessel.
- (4) For the purposes of this section, a breath analysis is properly carried out if it is carried out by means of a breath analysing instrument in proper working order operated by an approved operator in an approved way.
- (5) In this section, unless the contrary intention appears –

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**“approved way”**, of operating a breath analysing instrument, means –

- (a) if the regulations prescribe an approved way of operating the instrument, the way so prescribed; or
- (b) if the regulations do not prescribe an approved way of operating the instrument but regulations under the Corresponding Act prescribe an approved way or manner of operating the instrument, the way or manner prescribed under the Corresponding Act;

**“proceedings”** means proceedings for an offence under this Act or proceedings on a charge of manslaughter arising out of the operation of a vessel;

**“relevant act”**, of operating a vessel, in relation to a person against or in respect of whom proceedings are brought, means the act of operating a vessel alleged to be an ingredient of the offence or crime with which the defendant is charged in the proceedings.

**51. Restrictions on admission of evidence of breath analyses**

Evidence of the concentration of alcohol in the breath of a person as determined by a breath

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analysing instrument is not admissible in any proceedings unless –

- (a) such a statement as is referred to in section 29(1) was read over to the person, and handed to the person, on completion of the analysis; and
- (b) if the person made such a request as is referred to in section 29(2) –
  - (i) a sample of the person’s blood was taken by a medical practitioner or nurse in accordance with this Act and that blood-sampling began within 3 hours after the relevant time; or
  - (ii) the person refused to submit to a blood-sampling after appropriate arrangements had been made under that section in response to the request.

**52. Evidence as to carrying out breath analyses**

If, in any proceedings, a person gives evidence –

- (a) that at a specified time and place he or she carried out a breath analysis of a person by means of a breath analysing instrument; and
- (b) that, at that specified time, the person giving the evidence was an approved operator; and



- (c) that, at that specified time, the instrument was in proper working order –

that evidence is *prima facie* evidence of the particulars so stated and of the fact that, when the analysis was carried out, the instrument was in proper working order.

**53. Evidence of matters related to failure to submit to breath analysis**

If, in any proceedings, a person gives evidence –

- (a) that at a specified time and place a named person failed to submit to a breath analysis; and
- (b) that at that time and place a breath analysis could have been properly carried out by the person giving evidence by means of a breath analysing instrument that he or she then had with him or her; and
- (c) that at that time a breath analysing instrument was in proper working order; and
- (d) that at that time the person giving the evidence was an approved operator –

that evidence is *prima facie* evidence of the particulars so stated.

**54. Evidentiary certificates and records**

In any proceedings, an evidentiary certificate or evidentiary record is *prima facie* evidence of the matters contained in that evidentiary certificate or evidentiary record.

**55. Limitation on tendering of evidentiary certificates and records**

- (1) An evidentiary certificate or evidentiary record is not capable of being tendered in evidence by or on behalf of a party to any proceedings unless, at least 14 days before the hearing of the proceedings (or such lesser period before the hearing of the proceedings as the court may approve), a copy of the evidentiary certificate or evidentiary record was served on the other party to the proceedings.
- (2) If an evidentiary certificate or evidentiary record is endorsed with a certificate of service purporting to be signed by a person by whom a copy of the evidentiary certificate or evidentiary record was served, the certificate of service is *prima facie* evidence of the particulars stated in the certificate of service.
- (3) Subject to this section, an evidentiary certificate or evidentiary record may be tendered in evidence in proceedings whether or not the person by whom the evidentiary certificate or evidentiary record was signed or made, or any person who, under the supervision of the first-mentioned person, was involved with the

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analysis to which the evidentiary certificate or evidentiary record relates, is called as a witness in those proceedings.

- (4) Where a person by whom an evidentiary certificate or evidentiary record was signed or made, or any person who, under the supervision of the first-mentioned person, was involved with the analysis to which the evidentiary certificate or evidentiary record relates, is called by the defendant as a witness in proceedings, that person may be cross-examined by the defendant as to the facts or matters set out in the evidentiary certificate or evidentiary record.
- (5) In any proceedings, no evidence is to be given by or on behalf of any person of the result of the analysis of a sample of the person's blood that was taken otherwise than pursuant to a requirement or direction under this Act unless, at least 4 days before the hearing (or such lesser period before the hearing as the court may approve), notice has been given in writing to the prosecutor or the prosecutor's agent stating the intention to give that evidence.

**56. Section 177A of *Evidence Act 2001* not to apply to evidentiary certificate, &c.**

Section 177A of the *Evidence Act 2001* does not apply in relation to an evidentiary certificate or evidentiary record.

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**57. Evidence as to breath analyses, &c., inadmissible in certain proceedings**

- (1) Except as is otherwise expressly provided in this Act, the fact that a person has been convicted of an offence under Part 2 or Part 3 is not admissible as evidence in any proceedings that the person was, at any time, drunk, under the influence of intoxicating liquor or incapable of operating a vessel.
- (2) Despite anything in this or any other Act, where a person, on being notified under section 33(2) that a sample of the person's blood has been taken for analysis, objects to the sample being analysed, no evidence as to the analysis is admissible in any proceedings to which he or she is a party.
- (3) This section has effect notwithstanding the provisions of any contract of insurance and the provisions of any such contract are, to the extent that they exclude, limit, modify or restrict the operation of this section, void.
- (4) In this section –

**“proceedings”** means all legal proceedings, whether civil, criminal or arbitral.

**PART 5 – MISCELLANEOUS**

**58. Limitation on obligations of medical practitioners**

Except as is otherwise expressly provided in this Act, nothing in this Act is to be taken as requiring a medical practitioner to carry out a blood-sampling in respect of any person.

**59. Avoidance of certain provisions in insurance contracts**

A provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of an insurer under a contract of insurance in the event of a vessel owner or vessel operator –

- (a) being convicted of an offence under this Act; or
- (b) having alcohol in his or her breath or blood, or more than a specified concentration of alcohol in his or her breath or blood, as indicated by breath test, breath analysis or blood-sampling under this Act.

**60. Service of documents**

Except as is otherwise expressly provided in this Act, a notice or other document is effectively given to or served on a person under this Act if –

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- (a) in the case of a natural person, it is –
  - (i) handed to the person; or
  - (ii) left at, or sent by post to, the person’s postal or residential address or place of business or employment last known to the giver or server of the notice or document; or
  - (iii) faxed to the person’s fax number; or
  - (iv) emailed to the person’s email address; and
- (b) in the case of any other person, it is –
  - (i) left at, or sent by post to, the person’s principal or registered office or principal place of business; or
  - (ii) faxed to the person’s fax number; or
  - (iii) emailed to the person’s email address.

**61. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may –
  - (a) provide for fees and charges payable in respect of any matter under the Act; and
  - (b) prescribe, or provide for the form and content of, forms; and
  - (c) prescribe, for this Act, any matter that corresponds to a matter in respect of which regulations may be made under the Corresponding Act.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined by the Commissioner of Police or supervising analyst.
- (5) Regulations made under section 31 of the Corresponding Act for or in respect of any provision or matter under that Act may also be used and have application for the purposes of a corresponding provision or matter under this Act and, to that end, those regulations may, if necessary or expedient, be modified or adapted so as to enable those regulations to have such use or application.

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**62. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Police and Emergency Management; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Police and Emergency Management.

**63. Consequential Amendments**

The legislation specified in Schedule 2 is amended as specified in that Schedule.



**SCHEDULE 1 – EVIDENTIARY CERTIFICATES AND  
RECORDS**

Sections 3 and 54

**PART 1 – CERTIFICATES**

1. A certificate that –
  - (a) purports to be signed by the supervising analyst under this Act or the Corresponding Act; and
  - (b) contains any particulars, relating to a breath analysing instrument, that are required to be contained in such a certificate by the regulations (or by regulations under the Corresponding Act).
  
2. A certificate that –
  - (a) states that, on the day and at the time stated in the certificate, the signatory took a sample of the blood of the person named in the certificate; and
  - (b) states that when that sample was so taken the signatory was a medical practitioner or nurse; and
  - (c) contains particulars of the manner in which the sample was taken or of any action taken by the signatory consequent

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upon, or in relation to, the taking of that sample.

**3.** A certificate that –

- (a) states that a container containing a part of a sample of blood taken from the person named in the certificate was kept at a particular place during a particular period; and
- (b) contains particulars of the manner in which the container was kept; and
- (c) states that the person from whom the sample was taken was detained in custody during a particular period and specifies the place at which the person was so kept in custody; and
- (d) states the time at which the container was delivered to any person and contains particulars of the request pursuant to which it was so delivered; and
- (e) states that the signatory was a police officer at the time the container was kept as mentioned in the certificate.

**4.** A certificate that –

- (a) states that at a particular time and place a container containing a part of a sample of blood was delivered by the signatory to

the person named in the certificate and stated therein to be an approved analyst; and

- (b) contains particulars with respect to the container or any label or marks on the container; and
- (c) contains particulars with respect to the manner in which the container was kept or otherwise dealt with before being so delivered; and
- (d) states that the person by whom the container was so delivered was at that time a police officer.

**5.** A certificate that –

- (a) contains particulars of the result of an analysis of a sample of blood done by, or under the supervision of, the signatory; and
- (b) contains particulars with respect to the container in which the sample was received by the signatory, and any labels or markings on the container; and
- (c) states that when the analysis was done the signatory was an approved analyst.

**6.** A certificate stating –

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- (a) that the person named in the certificate submitted to a breath analysis carried out by the signatory; and
- (b) that when the breath analysis was carried out the signatory was an approved operator; and
- (c) that the apparatus used by the signatory to carry out the breath analysis was a breath analysing instrument within the meaning of this Act and that the instrument was in proper working order; and
- (d) that in carrying out the analysis the signatory operated the breath analysing instrument in the prescribed manner; and
- (e) that the analysis was made on the day and completed at the time stated in the certificate; and
- (f) that the concentration of alcohol in 210 litres of breath, as determined by the analysis to be present in the breath of the person who submitted to the analysis, is that specified in the certificate; and
- (g) that the statement required by section 29 to be read over to the person, and handed to the person, was so read over to and handed to the person.

**7. A certificate stating –**

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- (a) that at a particular time and place the person named in the certificate was required or directed by the signatory to submit to a breath analysis; and
- (b) that the person then failed or refused to submit to a breath analysis in accordance with the requirement or direction; and
- (c) that at that time and place a breath analysis could have been properly carried out by the signatory by means of a breath analysing instrument that he or she then had with him or her; and
- (d) that at that time that breath analysing instrument was in proper working order; and
- (e) that at that time the signatory did or did not inform the person that he or she could elect to submit to the taking of a sample of blood for analysis instead of submitting to a breath analysis; and
- (f) that the person did or did not so elect to the taking of a sample of blood for analysis; and
- (g) that at that time the signatory was an approved operator.

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**PART 2 – RECORDS**

1. A record that purports to be a record kept by an approved operator as prescribed and containing any particulars relating to the performance by that approved operator of his or her functions under this Act.

**SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS**

Section 63

***Criminal Law (Detention and Interrogation) Act 1995***

1. Section 5 is amended by omitting subsection (2) and substituting the following subsection:

(2) This section does not apply to questioning or investigation in connection with an offence under –

- (a) section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (b) section 13(1), 16(1), 21(2), 22(3), 24(2), 26(2), 28(3), 33(3) or 38(3) of the *Marine Safety (Misuse of Alcohol) Act 2006*.

2. Section 6 is amended by omitting subsection (8) and substituting the following subsection:

(8) This section does not apply to questioning or investigation in connection with an offence under –

- (a) section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (b) section 13(1), 16(1), 21(2), 22(3), 24(2), 26(2), 28(3), 33(3) or 38(3)

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of the *Marine Safety (Misuse of Alcohol) Act 2006*.

3. Section 14(5)(b) is amended by inserting “or *Marine Safety (Misuse of Alcohol) Act 2006*” after “*Road Safety (Alcohol and Drugs) Act 1970*”.

***Justices Act 1959***

1. Section 34(1) is amended by omitting paragraph (c) and substituting the following paragraph:

(c) in the case of an offence against the *Marine Safety (Misuse of Alcohol) Act 2006* or *Road Safety (Alcohol and Drugs) Act 1970*, an approved operator under those Acts –

***Road Safety (Alcohol and Drugs) Act 1970***

1. Section 12(3) is amended by inserting “diagnosis or” after “with, the medical”.
2. Section 21(b) is amended by omitting “percentage” and substituting “concentration”.
3. Section 31 is amended as follows:



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- (a) by omitting “The Governor may” and substituting “(1) The Governor may”;
- (b) by inserting after subsection (1) the following subsections:
  - (2) If the Related Act expressly or impliedly provides, a regulation made pursuant to subsection (1) for in respect of any provision or matter under this Act may also be used and have application for the purposes of a corresponding provision or matter under the Related Act and, to that end, the regulation may, if necessary or expedient, be modified or adapted so as to enable the regulation to have such use or application.
  - (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
  - (4) The regulations may authorise any matter to be from time to time determined by the Commissioner of Police or supervising analyst.
  - (5) In this section –

“**Related Act**” means the  
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***Victims of Crime Compensation Act 1994***

1. Section 3 is amended by inserting after paragraph (e) in the definition of “serious offence” the following paragraph:

(ea) an offence under the *Marine Safety (Misuse of Alcohol) Act 2006*;

***Youth Justice Act 1997***

1. Section 3(1) is amended by inserting “*Marine Safety (Misuse of Alcohol) Act 2006*, the” after “under the” in paragraph (c)(ii) of the definition of “prescribed offence”.