

**Authorised Version No. 106**  
**Marine (Drug, Alcohol and Pollution**  
**Control) Act 1988**

**No. 52 of 1988**

Authorised Version incorporating amendments as at  
1 July 2022

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**Authorised Version No. 106**  
**Marine (Drug, Alcohol and Pollution**  
**Control) Act 1988**

**No. 52 of 1988**

Authorised Version incorporating amendments as at  
1 July 2022

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to provide for safe marine operations in Victoria by—

S. 1  
substituted by  
No. 65/2010  
s. 376.

- (a) prohibiting masters and other persons involved in vessel operations from being under the influence of prescribed drugs or impaired by alcohol when undertaking those vessel operations; and
- (b) allocating roles, responsibilities and liabilities to the Director and others to ensure there is a capacity and obligation to respond to marine incidents that have the potential to result in pollution.

**2 Commencement**

This Act comes into operation on a day or days to be proclaimed.

**3 Definitions**

(1) In this Act—

*accompanying operator offence* means an offence under section 28(1) which is committed by a person who is taken to be in charge of a vessel by reason of the operation of section 27(1AAA);

S. 3(1) def. of  
*accompany-  
ing operator  
offence*  
inserted by  
No. 23/2001  
s. 17.

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S. 3(1) def. of  
*approved  
health  
professional*  
inserted by  
No. 14/2000  
s. 27(1),  
amended by  
Nos 97/2005  
s. 182(Sch. 4  
item 34(a)),  
13/2010  
s. 51(Sch.  
item 35.1).

*approved health professional* means—

- (a) a person registered under the Health Practitioner Regulation National Law—
  - (i) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
  - (ii) in the registered nurses division of that profession;
- (b) a person approved under subsection (4) to take a blood sample for the purposes of Part 4;

S. 3(1) def. of  
*Australian  
Builders Plate  
Standard*  
inserted by  
No. 17/2009  
s. 3(1),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

S. 3(1) def. of  
*Australian  
fishing vessel*  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)), new  
def. of  
*Australian  
fishing vessel*  
inserted by  
66/2012  
s. 3(3),  
repealed by  
No. 36/2013  
s. 84(1)(a).

\* \* \* \*

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|  |   |   |   |   |  |
|--|---|---|---|---|--|
| *  | * | * | * | * | S. 3(1) def. of <i>Board</i> repealed by No. 77/2001 s. 3(a).  |
| <i>breath analysing instrument</i> has the same meaning as in the <b>Road Safety Act 1986</b> ;                          |   |   |   |   | S. 3(1) def. of <i>breath analysing instrument</i> inserted by No. 17/1994 s. 15.  |
| <i>certificate of competency</i> has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law; |   |   |   |   | S. 3(1) def. of <i>certificate of competency</i> inserted by No. 9/2004 s. 3(1)(a), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)), new def. of <i>certificate of competency</i> inserted by 66/2012 s. 3(3), substituted by No. 36/2013 s. 84(1)(b). |
| *  | * | * | * | * | S. 3(1) def. of <i>certificate of survey</i> inserted by No. 9/2004 s. 3(1)(a), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).   |
| <i>channel operator</i> has the same meaning as in the <b>Port Management Act 1995</b> ;                                 |   |   |   |   | S. 3(1) def. of <i>channel operator</i> inserted by No. 82/1995 s. 153(1), amended by No. 45/2010 s. 44(a).  |

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| S. 3(1) def. of<br><i>coastal waters</i><br>repealed by<br>No. 77/2001<br>s. 22(a).  | * | * | * | * | * |
| S. 3(1) def. of<br><i>commercial marine<br/>operations</i><br>inserted by<br>No. 17/2009<br>s. 5,<br>repealed by<br>No. 65/2010<br>s. 377(1)(a) (as<br>amended by<br>No. 78/2011<br>s. 35(1)). | * | * | * | * | * |
| S. 3(1) def. of<br><i>commercial vessel</i><br>inserted by<br>No. 66/2012<br>s. 3(3),<br>repealed by<br>No. 36/2013<br>s. 84(1)(a).  | * | * | * | * | * |

***corresponding law*** means a law that is declared under subsection (3)(a) to be a corresponding law;

S. 3(1) def. of  
*dentist*  
inserted by  
No. 66/2012  
s. 3(3).

***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;

S. 3(1) def. of  
*Department*  
inserted by  
No. 78/2011  
s. 44(a),  
amended by  
No. 70/2013  
s. 4(Sch. 2  
item 29).

***Department*** means the Department of Transport, Planning and Local Infrastructure;



***Director*** means the Director, Transport Safety within the meaning of section 3 of the **Transport Integration Act 2010**;

S. 3(1) def. of *Director* inserted by No. 77/2001 s. 3(b), substituted by No. 6/2010 s. 201(1) (Sch. 5 item 1(a)) (as amended by No. 45/2010 s. 20).

***Director of the Victorian Institute of Forensic Medicine*** means the Director within the meaning of the **Victorian Institute of Forensic Medicine Act 1985**;

S. 3(1) def. of *Director of the Victorian Institute of Forensic Medicine* inserted by No. 14/2000 s. 27(1), amended by No. 65/2010 s. 377(1)(b).

***domestic commercial vessel*** has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law;

S. 3(1) def. of *domestic commercial vessel* inserted by No. 36/2013 s. 84(1)(c).

***drug*** has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of *drug* inserted by No. 66/2012 s. 3(3).

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| S. 3(1) def. of <i>fishing vessel</i> repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)), new def. of <i>fishing vessel</i> inserted by No. 66/2012 s. 3(3), repealed by No. 36/2013 s. 84(1)(a).       | * | * | * | * | * |
| S. 3(1) def. of <i>government vessel</i> repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)), new def. of <i>government vessel</i> inserted by No. 66/2012 s. 3(3), repealed by No. 36/2013 s. 84(1)(a). | * | * | * | * | * |
| S. 3(1) def. of <i>harbour master</i> inserted by No. 82/1995 s. 153(1), substituted by No. 9/2004 s. 3(1)(b), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).                                      | * | * | * | * | * |

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| *   | * | * | * | * | S. 3(1) def. of <i>harbour master licence</i> inserted by No. 9/2004 s. 3(1)(a), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).  |
| <i>hire and drive vessel</i> has the same meaning as in the <b>Marine Safety Act 2010</b> ; |   |   |   |   |  |
| *   | * | * | * | * | S. 3(1) def. of <i>hire and drive vessel</i> substituted by No. 36/2013 s. 84(1)(d).   |
| *   | * | * | * | * | S. 3(1) def. of <i>licensed harbour master</i> inserted by No. 82/1995 s. 153(1), amended by No. 77/2001 s. 31(1)(a), substituted by No. 9/2004 s. 3(1)(c), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)). |
| *   | * | * | * | * | S. 3(1) def. of <i>local authority</i> amended by Nos 77/2001 s. 16(1)(a)(b), 85/2003 s. 34(1)(a), 45/2010 s. 44(b), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).  |

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S. 3(1) def. of  
*local port*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(c).

*local port* has the same meaning as in the **Port  
Management Act 1995**;

S. 3(1) def. of  
*local port  
manager*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(d).

*local port manager* means, in relation to a local  
port, the person or body appointed under  
section 44A of the **Port Management  
Act 1995** as the port manager of that port;

S. 3(1) def. of  
*mandatory  
marine safety  
decision*  
inserted by  
No. 6/2010  
s. 201(1)  
(Sch. 5  
item 1(b)) (as  
amended by  
No. 45/2010  
s. 20),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \* \*

S. 3(1) def. of  
*marine  
incident*  
inserted by  
No. 65/2010  
s. 377(1)(e) (as  
amended by  
No. 78/2011  
s. 35(2)).

*marine incident* has the same meaning as it has in  
the **Marine Safety Act 2010**;

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | S. 3(1) def. of <i>marine infringement</i> substituted by No. 77/2001 s. 22(b), amended by Nos 9/2004 s. 3(1)(d)(i)(ii), 45/2010 s. 44(e), repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)). |
|---|---|---|---|---|---|

*marine licence* has the same meaning as it has in the **Marine Safety Act 2010**;

|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  | S. 3(1) def. of <i>marine licence</i> inserted by No. 65/2010 s. 377(1)(e) (as amended by No. 78/2011 s. 35(2)). |
|--|--|--|--|--|--|

*master*, in relation to a vessel, means a person (other than a person who is acting as the pilot of that vessel) having command or charge of the vessel;

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | S. 3(1) def. of <i>member of the police force</i> inserted by No. 9/2004 s. 3(1)(a), repealed by No. 37/2014 s. 10(Sch. item 106.1(b)). |
|---|---|---|---|---|---|

*National Regulator* means the National Marine Safety Regulator within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law;

|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  | S. 3(1) def. of <i>National Regulator</i> inserted by No. 36/2013 s. 84(1)(c). |
|--|--|--|--|--|--|

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S. 3(1) def. of  
*navigation aid*  
inserted by  
No. 82/1995  
s. 153(1),  
substituted by  
No. 77/2001  
s. 22(c),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

S. 3(1) def. of  
*operator  
licence*  
inserted by  
No. 93/2000  
s. 3(a),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

*owner*, in relation to a vessel, includes the  
charterer and any person having possession  
of the vessel;

S. 3(1) def. of  
*permissible  
non-  
prescription  
drug*  
inserted by  
No. 66/2012  
s. 3(3).

*permissible non-prescription drug* has the same  
meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of  
*pharmacist*  
inserted by  
No. 66/2012  
s. 3(3).

*pharmacist* means a person registered under the  
Health Practitioner Regulation National Law  
to practise in the pharmacy profession (other  
than as a student);

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

S. 3(1) def. of *pilot* amended by No. 9/2004 s. 3(1)(e), substituted by No. 66/2012 s. 3(1).

\* \* \* \*

S. 3(1) def. of *pilotage services* inserted by No. 28/1999 s. 4, repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).

*pilotage services provider* means a person registered by the Director under Part 3B to provide pilotage services;

S. 3(1) def. of *pilotage services provider* inserted by No. 28/1999 s. 4, amended by No. 77/2001 s. 31(1)(a).

\* \* \* \*

S. 3(1) def. of *pilot exempt master* repealed by No. 65/2010 s. 377(1)(a) (as amended by No. 78/2011 s. 35(1)).

*police officer* has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 106.1(a)).

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S. 3(1) def. of  
*port*  
inserted by  
No. 82/1995  
s. 153(1).

*port* includes any of the following waters, or any part of those waters—

- (a) any harbour or haven, whether natural or artificial;
- (b) any estuary, channel, river, creek or roadstead;
- (c) any navigable water in which vessels may lie for shelter or for the transfer of cargo or passengers;

S. 3(1) def. of  
*Port Authority*  
repealed by  
No. 82/1995  
s. 153(2).

\* \* \* \*

S. 3(1) def. of  
*port corporation*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(f),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

S. 3(1) def. of  
*port management body*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
Nos 45/2010  
s. 44(g)(h),  
38/2011 s. 36,  
10/2016  
ss 167,  
179(Sch. 1  
item 5.1(b)),  
19/2022  
s. 93(a).

*port management body* means—

- (a) in relation to the port of Melbourne, Ports Victoria when it is performing functions and exercising powers in the port of Melbourne;
- (b) in relation to—
  - (i) the waters declared under section 5 of the **Port Management Act 1995** to be the port of Geelong, Ports Victoria, or, if there is an



agreement with a channel operator  
in relation to those waters, that  
channel operator; and

- (ii) the waters declared under  
section 5 of the **Port  
Management Act 1995** to be  
the port of Portland, Ports  
Victoria, or, if there is an  
agreement with a channel operator  
in relation to those waters, that  
channel operator; and

- (iii) port of Hastings waters, Ports  
Victoria, or, if there is an  
agreement with a channel operator  
in relation to those waters, that  
channel operator;

\* \* \* \* \*

*port of Melbourne* has the same meaning as in the  
**Port Management Act 1995**;

S. 3(1) def. of  
*port of  
Melbourne*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(i).

\* \* \* \* \*

S. 3(1) def. of  
*Port of  
Melbourne  
Corporation*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(j),  
repealed by  
No. 10/2016  
s. 179(Sch. 5  
item 5.1(c)).

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S. 3(1) def. of  
*port of  
Melbourne  
waters*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
amended by  
No. 45/2010  
s. 44(k),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

S. 3(1) def. of  
*port waters*  
inserted by  
No. 82/1995  
s. 153(1),  
amended by  
No. 45/2010  
s. 44(l).

*port waters* has the same meaning as in the **Port  
Management Act 1995**;

S. 3(1) def. of  
*Ports Victoria*  
inserted by  
No. 19/2022  
s. 93(c).

*Ports Victoria* has the same meaning as in  
section 3 of the **Transport Integration  
Act 2010**;

S. 3(1) def. of  
*prescribed  
concentration  
of alcohol*  
substituted by  
No. 93/2000  
s. 3(b) (as  
amended by  
No. 23/2001  
s. 23),  
amended by  
Nos 90/2001  
s. 3(1)(a),  
94/2003  
s. 34(1)(a)(b),  
66/2012  
s. 3(2),  
36/2013  
s. 84(1)(e),  
35/2019 s. 9.

*prescribed concentration of alcohol* means—

- (a) in the case of a person who is operating  
a vessel underway, or is the master of a  
vessel underway or at anchor, any  
concentration of alcohol present in the  
blood or breath of that person, if either  
or both of the following apply—
  - (i) the person is under the age of  
21 years;
  - (ii) the vessel is a domestic  
commercial vessel; and

- (ab) in the case of a person who is a pilot of a vessel underway or at anchor, any concentration of alcohol present in the blood or breath of that person; and
- (b) in the case of any other person—
  - (i) a concentration of alcohol present in the blood of that person of 0·05 grams per 100 millilitres of blood; or
  - (ii) a concentration of alcohol present in the breath of that person of 0·05 grams per 210 litres of exhaled air;

*prescribed concentration of drugs* has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of *prescribed concentration of drugs* inserted by No. 66/2012 s. 3(3).

*prescribed illicit drug* has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of *prescribed illicit drug* inserted by No. 66/2012 s. 3(3).

*prescription drug* has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of *prescription drug* inserted by No. 66/2012 s. 3(3).

*recreational vessel* has the same meaning as in the **Marine Safety Act 2010**;

S. 3(1) def. of *recreational vessel* substituted by No. 36/2013 s. 84(1)(f).

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S. 3(1) def. of  
*registered  
medical  
practitioner*  
inserted by  
No. 23/1994  
s. 118(Sch. 1  
item 34.1),  
amended by  
No. 97/2005  
s. 182(Sch. 4  
item 34(b)),  
substituted by  
No. 13/2010  
s. 51(Sch.  
item 35.2).

*registered medical practitioner* means a person  
registered under the Health Practitioner  
Regulation National Law to practise in the  
medical profession (other than as a student);

S. 3(1) def. of  
*registered  
recreational  
vessel*  
inserted by  
No. 65/2010  
s. 377(1)(e) (as  
amended by  
No. 78/2011  
s. 35(2)).

*registered recreational vessel* has the same  
meaning as it has in the **Marine Safety  
Act 2010**;

S. 3(1) def. of  
*regulated hire  
and drive  
vessel*  
inserted by  
No. 90/2001  
s. 3(1)(b),  
substituted by  
No. 65/2010  
s. 377(1)(c).

*regulated hire and drive vessel* has the same  
meaning as it has in the **Marine Safety  
Act 2010**;

S. 3(1) def. of  
*regulated  
recreational  
vessel*  
inserted by  
No. 93/2000  
s. 3(a),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \* \*

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|---|---|---|---|---|---|
| * | * | * | * | * | S. 3(1) def. of<br><i>relevant<br/>marine safety<br/>law</i><br>inserted by<br>No. 17/2009<br>s. 5,<br>amended by<br>Nos 6/2010<br>s. 201(1)<br>(Sch. 5<br>item 1(c)) (as<br>amended by<br>No. 45/2010<br>s. 20), 45/2010<br>s. 44(m),<br>repealed by<br>No. 65/2010<br>s. 377(1)(a) (as<br>amended by<br>No. 78/2011<br>s. 35(1)). |
|---|---|---|---|---|---|

*Secretary* means the Secretary to the Department;

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 3(1) def. of<br><i>Secretary</i><br>inserted by<br>No. 78/2011<br>s. 44(a). |
|---|---|---|---|---|--|

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 3(1) def. of<br><i>speed</i><br>repealed by<br>No. 77/2001<br>s. 22(a). |
|---|---|---|---|---|--|

*State waters* means—

- (a) the territorial sea adjacent to the State;  
and
- (b) the sea on the landward side of the  
territorial sea adjacent to the State that  
is not within the limits of the State; and
- (c) waters within the limits of the State;

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S. 3(1) def. of  
*trading vessel*  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)), new  
def. of *trading*  
*vessel*  
inserted by  
No. 66/2012  
s. 3(3),  
repealed by  
No. 36/2013  
s. 84(1)(a).

\* \* \* \*

S. 3(1) def. of  
*transport*  
*safety*  
*infringement*  
inserted by  
No. 65/2010  
s. 377(1)(e) (as  
amended by  
No. 78/2011  
s. 35(2)).

*transport safety infringement* has the same  
meaning as it has in section 228S of the  
**Transport (Compliance and  
Miscellaneous) Act 1983;**

S. 3(1) def. of  
*Uniform*  
*Shipping*  
*Laws Code*  
substituted by  
No. 77/2001  
s. 22(d),  
repealed by  
No. 65/2010  
s. 377(1)(a) (as  
amended by  
No. 78/2011  
s. 35(1)).

\* \* \* \*

S. 3(1) def. of  
*vessel*  
amended by  
No. 9/2004  
s. 3(1)(f)(i)(ii),  
substituted by  
No. 78/2011  
s. 44(b).

*vessel* has the same meaning as it has in the  
**Marine Safety Act 2010;**

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***Victorian Marine Pollution Contingency Plan***

means the plan (as in force from time to time) established under arrangements developed by Commonwealth, State and Territory Ministers in connection with the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances and in accordance with the state emergency management plan prepared under Part 6A of the **Emergency Management Act 2013**;

\* \* \* \* \*

S. 3(1) def. of *Victorian Marine Pollution Contingency Plan* inserted by No. 82/1995 s. 153(1), amended by Nos 77/2001 s. 18(a)(b), 73/2013 s. 96, 36/2018 s. 38(1), 35/2019 s. 10.

S. 3(1) def. of *Victorian Ports Corporation (Melbourne)* inserted by No. 10/2016 s. 179(Sch. 1 item 5.1(a)), repealed by No. 19/2022 s. 93(b).

\* \* \* \* \*

S. 3(1) def. of *Victorian Channels Authority* inserted by No. 82/1995 s. 153(1), substituted as *Victorian Regional Channels Authority* by No. 85/2003 s. 34(2)(a), substituted by No. 45/2010 s. 44(n), repealed by No. 19/2022 s. 93(b).

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S. 3(1) def. of  
*waterway manager*  
inserted by  
No. 9/2004  
s. 3(1)(a),  
substituted by  
No. 65/2010  
s. 377(1)(d).

*waterway manager* has the same meaning as it  
has in the **Marine Safety Act 2010**.

S. 3(2)  
substituted by  
No. 90/2001  
s. 3(2),  
repealed by  
No. 65/2010  
s. 377(2).

\* \* \* \* \*

(3) The Minister may, by Order published in the  
Government Gazette—

(a) declare a law of the Commonwealth or  
another State or a Territory of the  
Commonwealth which creates an offence  
substantially similar to any one of the  
offences created by section 28 to be a  
corresponding law; or

S. 3(3)(b)  
substituted by  
No. 9/2004  
s. 3(2),  
repealed by  
No. 65/2010  
s. 377(2).

\* \* \* \* \*

S. 3(3)(c)  
repealed by  
No. 36/2013  
s. 84(2).

\* \* \* \* \*

S. 3(3A)  
inserted by  
No. 9/2004  
s. 3(3),  
amended by  
No. 30/2010  
s. 90,  
repealed by  
No. 65/2010  
s. 377(2).

\* \* \* \* \*



- (4) The Director of the Victorian Institute of Forensic Medicine may, in writing, approve a person to take blood samples for the purposes of Part 4 if the Director is of the opinion that the person has the appropriate qualifications, training and experience to take such samples. **S. 3(4) inserted by No. 14/2000 s. 27(2).**
- (5) In the case of a contravention in the port of Melbourne of a relevant marine safety law that is constituted by a contravention of the **Port Services Act 1995**, for the purposes of Divisions 4 and 5 of Part 8, a reference to an *inspector* is taken to include a reference to a port safety officer appointed under Part VIIA of the **Transport Act 1983**. **S. 3(5) inserted by No. 93/2009 s. 3.**
- (6) On and from the commencement of section 375 of the **Marine Safety Act 2010**, a reference to the **Marine Act 1988** in any Act (other than in the **Marine Safety Act 2010**) or in any other instrument made under any Act or in any other document of any kind, must be read and construed as a reference to the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, unless the context otherwise requires. **S. 3(6) inserted by No. 65/2010 s. 375(2).**

### **3A Transport Integration Act 2010**

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

**S. 3A inserted by No. 6/2010 s. 24(5)(Sch. 1 item 6) (as amended by No. 45/2010 s. 5).**

## **4 Act does not apply to defence force vessels**

This Act does not apply to or in relation to a vessel belonging to the naval, military or air forces of the Commonwealth or of any other country.

## **5 Act binds the Crown**

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Commonwealth or a State or Territory of the Commonwealth liable to be prosecuted for an offence.
- (3) Subsection (2) does not affect any liability of any servant or agent of the Commonwealth or of a State or Territory of the Commonwealth to be prosecuted for an offence.

## **6 Application of Act**

- (1) Unless specifically provided otherwise by a provision of this Act, this Act applies to and in relation to the following vessels, and the owner, master and crew of any such vessel—
  - (a) a vessel within State waters; and
  - (b) a vessel connected with Victoria, wherever it may be.
- (2) For the purpose of this section, a vessel is connected with Victoria if it—
  - (a) is registered or deemed to be registered under the Shipping Registration Act 1981 of the Commonwealth with a home port in Victoria; or
  - (b) is owned by a body corporate that is established under Victorian law or that has its principal office or place of business in Victoria, or is in the possession of such a body corporate by virtue of a charter; or
  - (c) is owned by any person whose chief office or place of business in respect of the management of the vessel is in Victoria, or is

S. 6  
amended by  
No. 20/1993  
s. 16,  
substituted by  
No. 36/2013  
s. 85.

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- in the possession of such a person by virtue  
of a charter; or
- (d) is registered or licensed or required to be  
registered or licensed under Victorian law.

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| Pt 2 (Heading and ss 7–14) amended by Nos 44/1989 s. 41(Sch. 2 item 26.1), 20/1993 s. 17, 82/1995 s. 154(1), 51/1996 s. 14(1)(2), 77/2001 s. 31(1)(b)(c), 9/2004 ss 4, 5, 17/2009 s. 3(2), 93/2009 s. 4, repealed by No. 65/2010 s. 390(1).  | * | * | * | * | * |
| Pt 3 (Heading and ss 15–26) amended by Nos 20/1993 ss 18–20, 82/1995 ss 154(2)–(4), 155, 156(1)(2), 157, 158, 51/1996 ss 14(3)–(10), 93/2000 ss 4–6, 77/2001 ss 23, 24, 31(1)(b)–(e), 90/2001 ss 4, 7(1), 85/2003 s. 34(2)(b), 9/2004 ss 6, 7, 25(Sch. item 1), 68/2009 s. 97(Sch. item 84.1), 45/2010 s. 45, repealed by No. 65/2010 s. 390(1). | * | * | * | * | * |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | <b>Pt 3A</b><br>(Heading and<br>ss 26A–26I)<br>inserted by<br>No. 82/1995<br>s. 159,<br>amended by<br>Nos 51/1996<br>s. 18, 77/2001<br>s. 31(1)(b),<br>9/2004 ss 8, 9,<br>45/2010 ss 46,<br>47, 38/2011<br>ss 37, 38,<br>repealed by<br>No. 65/2010<br>s. 390(1). |
| * | * | * | * | * | <b>Pt 3B</b><br>(Heading and<br>ss 26J–26T)<br>inserted by<br>No. 28/1999<br>s. 5,<br>amended by<br>Nos 77/2001<br>s. 31(1)<br>(b)(f)(g),<br>10/2004<br>s. 15(Sch. 1<br>item 18),<br>repealed by<br>No. 65/2010<br>s. 390(1).                                     |

## **Part 4—Offences involving alcohol or other drugs**

### **27 Interpretation**

S. 27(1)  
amended by  
No. 94/2003  
s. 34(2)(a)(b),  
substituted by  
No. 66/2012  
s. 4(1).

- (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.

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- (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 or affirmed evidence given by him or her which is corroborated by the material evidence of another person.
- S. 27(1AA) inserted by No. 93/2000 s. 7, repealed by No. 65/2010 s. 378(1), new s. 27(1AA) inserted by No. 66/2012 s. 4(1), amended by No. 6/2018 s. 68(Sch. 2 item 85.1).
- (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—
- S. 27(1AB) inserted by No. 66/2012 s. 4(1).
- (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.
- (1A) For the purposes of an alleged offence against paragraph (e) or (f) of section 28(1) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the person charged or found by an analyst to be present in the sample of blood taken from the person charged (as the case requires) was not due solely to the consumption of alcohol 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 or affirmed evidence given
- S. 27(1A) inserted by No. 20/1993 s. 4(1), amended by Nos 94/2003 ss 34(3), 35(1), 65/2010 s. 378(2), 66/2012 s. 4(2), 6/2018 s. 68(Sch. 2 item 85.1).

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by him or her which is corroborated by the material evidence of another person.

S. 27(1B)  
inserted by  
No. 66/2012  
s. 4(3),  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 85.1).

- (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 or affirmed evidence given by him or her which is corroborated by the material evidence of another person.

S. 27(1AAA)  
inserted by  
No. 23/2001  
s. 18,  
substituted by  
No. 65/2010  
s. 378(3).

- (1AAA) A person is taken to be the master of a vessel under way, if that person is accompanying a person who is in control of the vessel, for the purpose of enabling the person who is in control of the vessel to comply with—

- (a) any condition of the marine licence of the person; or
- (b) any requirement of regulations made under this Act or the **Marine Safety Act 2010**—

that the person be accompanied by a licensed master while in control of the vessel.

S. 27(2)  
substituted by  
No. 20/1993  
s. 4(2).

- (2) If a person who is convicted of an offence against—
- (a) any one of the paragraphs of section 28(1);  
or



(b) section 31A(2) as in force from time to time—

has at any time been found guilty or been convicted of—

(c) an offence against the same or any other of those paragraphs or that section; or

(d) an offence against any previous enactment corresponding to any of those paragraphs or that section or any corresponding law; or

S. 27(2)(d)  
amended by  
No. 93/2009  
s. 47(1)(a).

(e) an offence against section 318(1) of the **Crimes Act 1958** (in relation to a vessel) where the culpable driving is constituted by behaviour referred to in section 318(2)(c) or (d) of that Act—

S. 27(2)(e)  
inserted by  
No. 93/2009  
s. 47(1)(b),  
amended by  
No. 56/2013  
s. 29.

the conviction for the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

(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.

S. 27(2A)  
inserted by  
No. 66/2012  
s. 4(4).

(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 police officer to enter that dwelling without a warrant.

S. 27(2B)  
inserted by  
No. 66/2012  
s. 4(4),  
amended by  
No. 37/2014  
s. 10(Sch  
item 106.2).

(3) In this Part—

S. 27(3)  
substituted by  
No. 65/2010  
s. 378(4).

*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;

S. 27(3) def. of  
*at anchor*  
inserted by  
No. 66/2012  
s. 4(5)(a).

***operate***, in relation to a vessel, means to facilitate or control the movement or navigation of a vessel or a thing connected to a vessel;

***registered mooring*** means any floating fixture, marker, pile, buoy, cable or chain attached to anchors or a weight the position of which is either registered with, or recorded by, the local port manager, port management body or waterway manager and compliant with any applicable rules of the local port manager, port management body or waterway manager;

S. 27(3) def. of vessel under way substituted as def. of vessel underway by No. 66/2012 s. 4(5)(b).

***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.

## 28 Offences involving alcohol or other drugs

(1) A person is guilty of an offence if—

S. 28(1)(a) amended by No. 65/2010 s. 379(1)(a), substituted by No. 66/2012 s. 5(1).

- (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
- (b) the person operates a vessel or is a master or pilot of a vessel underway or at anchor while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; or S. 28(1)(b) amended by Nos 23/2001 s. 19(a), 94/2003 s. 34(4), 65/2010 s. 379(1)(a), 66/2012 s. 5(2).
- (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 S. 28(1)(ba) inserted by No. 66/2012 s. 5(3).
- (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 S. 28(1)(bb) inserted by No. 66/2012 s. 5(3).
- (c) the person refuses to undergo a preliminary breath test in accordance with section 29 when required under that section to do so; or S. 28(1)(c) amended by No. 17/1994 s. 16(a).
- (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 S. 28(1)(ca) inserted by No. 66/2012 s. 5(4).
- (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 S. 28(1)(cb) inserted by No. 66/2012 s. 5(4).

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S. 28(1)(d)  
substituted by  
No. 17/1994  
s. 16(b),  
amended by  
No. 66/2012  
s. 5(5).

(d) the person refuses to comply with a requirement made under section 31(1), (2), (2AA), (2A) or (9A); or

S. 28(1)(e)  
substituted by  
No. 20/1993  
s. 5(1),  
amended by  
Nos 46/2002  
s. 15, 65/2010  
s. 379(1)(b),  
66/2012  
s. 5(6)(a).

(e) within 3 hours after operating a vessel or being a master or pilot of a vessel underway or at anchor, the person furnishes a sample of breath for analysis by a breath analysing instrument under section 31 and—

S. 28(1)(e)(i)  
amended by  
No. 94/2003  
ss 34(5), 35(2).

(i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in his or her breath; and

S. 28(1)(e)(ii)  
amended by  
Nos 94/2003  
ss 34(5), 35(2),  
65/2010  
s. 379(1)(c),  
66/2012  
s. 5(6)(b).

(ii) the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after operating the vessel or being the master or pilot of the vessel underway or at anchor; or

S. 28(1)(ea)  
inserted by  
No. 66/2012  
s. 5(7).

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

S. 28(1)(eb)  
inserted by  
No. 66/2012  
s. 5(7).

(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

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|---|---|
| (f) 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—   | S. 28(1)(f) substituted by No. 20/1993 s. 5(1), amended by Nos 17/1994 s. 16(c), 65/2010 s. 379(1)(d), 66/2012 s. 5(8)(a)(b). |
| (i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 32 and the analyst has found that at the time of analysis the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and | S. 28(1)(f)(i) amended by No. 23/2001 s. 19(b).   |
| (ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after operating the vessel or being the master or pilot of the vessel underway or at anchor; or  | S. 28(1)(f)(ii) amended by Nos 65/2010 s. 379(1)(d), 66/2012 s. 5(8)(c).  |
| (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—   | S. 28(1)(g) inserted by No. 66/2012 s. 5(9).  |
| (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  |   |

S. 28(1)(h)  
inserted by  
No. 66/2012  
s. 5(9).

- (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.

S. 28(1A)  
inserted by  
No. 49/2004  
s. 3,  
amended by  
No. 66/2012  
s. 5(10)(a).

(1A) A person may be convicted or found guilty of an offence under paragraph (c), (ca), (d), (ea) or (eb) of subsection (1) even if—

- (a) in the case of an offence under paragraph (c), a prescribed device was not presented to the person at the time of the making of the requirement; and

S. 28(1A)(ab)  
inserted by  
No. 66/2012  
s. 5(10)(b).

(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

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|--|--|
| <p>(ii) a police officer 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</p> | <p>S. 28<br/>(1A)(ab)(ii)<br/>amended by<br/>No. 37/2014<br/>s. 10(Sch.<br/>item 106.2).</p> |
| <p>(b) in the case of an offence under paragraph (d)—</p>  |  |
| <p>(i) a breath analysing instrument was not available at the place where the requirement was made at the time it was made; and</p>  |  |
| <p>(ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made; and</p>              |  |
| <p>(iii) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and</p>                |  |
| <p>(iv) 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</p>         | <p>S. 28(1A)<br/>(b)(iv)<br/>amended by<br/>No. 66/2012<br/>s. 5(10)(c).</p>                 |
| <p>(c) in the case of an offence under paragraph (ea)—</p>   |  |
| <p>(i) the police officer requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and</p>          |  |
| <p>S. 28(1A)(c)<br/>inserted by<br/>No. 66/2012<br/>s. 5(10)(d).</p>   |  |
| <p>S. 28<br/>(1A)(c)(i)<br/>amended by<br/>No. 37/2014<br/>s. 10(Sch.<br/>item 106.2).</p>   |  |

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S. 28  
(1A)(c)(ii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.2).

(ii) the police officer requiring a sample of urine had not nominated a registered medical practitioner or approved health professional to whom the 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

S. 28(1A)(d)  
inserted by  
No. 66/2012  
s. 5(10)(d).

(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.



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|---|---|
| (1B) To avoid doubt, in proceedings for an offence under paragraph (d) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(b)(i) or (ii) is not a reason of a substantial character for a refusal for the purposes of section 31(9).            | S. 28(1B)<br>inserted by<br>No. 49/2004<br>s. 3.                            |
| (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). | S. 28(1C)<br>inserted by<br>No. 66/2012<br>s. 5(11).                        |
| (2) A person who is guilty of an offence under subsection (1)(a) is liable—   | S. 28(2)<br>amended by<br>Nos 23/2001<br>s. 20(1),<br>65/2010<br>s. 379(2). |
| (a) for a first offence, to a fine of not more than 25 penalty units or to imprisonment for not more than 3 months; and   |   |
| (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  | S. 28(2)(b)<br>substituted by<br>No. 66/2012<br>s. 6(1).                    |
| (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.  | S. 28(2)(c)<br>inserted by<br>No. 66/2012<br>s. 6(1).                       |
| (2A) A person who is guilty of an offence under paragraph (b), (e) or (f) of subsection (1) is liable—  | S. 28(2A)<br>inserted by<br>No. 66/2012<br>s. 6(2).                         |
| (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) A person who is guilty of an offence under paragraph (ba), (c), (ca), (cb), (d) or (ea) of subsection (1) is liable—

S. 28(3)  
amended by  
Nos 23/2001  
s. 20(2),  
65/2010  
s. 379(2),  
66/2012  
s. 6(3)(a).

(a) for a first offence, to a fine of not more than 12 penalty units; and

(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

S. 28(3)(b)  
substituted by  
No. 66/2012  
s. 6(3)(b).

(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.

S. 28(3)(c)  
inserted by  
No. 66/2012  
s. 6(3)(b).

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

S. 28(3A)  
inserted by  
No. 23/2001  
s. 20(3),  
repealed by  
No. 65/2010  
s. 379(3), new  
s. 28(3A)  
inserted by  
No. 66/2012  
s. 6(4).

(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.

S. 28(3B)  
inserted by  
No. 66/2012  
s. 6(4).

- (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.

S. 28(3C)  
inserted by  
No. 66/2012  
s. 6(4).

- (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.

S. 28(3D)  
inserted by  
No. 66/2012  
s. 6(4).

(4) It is a defence to a charge under subsection (1)(e) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.

(5) It is a defence to a charge under paragraph (f), (g) or (h) of subsection (1) for the person charged to prove that the result of the analysis was not a correct result.

S. 28(5)  
amended by  
No. 66/2012  
s. 6(5).

(5A) In any proceedings for an offence under paragraph (e) or (f) of subsection (1) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the presumption created by section 27(1A) but is otherwise inadmissible.

S. 28(5A)  
inserted by  
No. 20/1993  
s. 5(2),  
amended by  
No. 68/2009  
s. 97(Sch.  
item 84.2).

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S. 28(6A)  
inserted by  
No. 66/2012  
s. 6(6).

- (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.

S. 28(6)(7)  
repealed by  
No. 65/2010  
s. 379(3).

\* \* \* \* \*

S. 28(8)  
inserted by  
No. 93/2000  
s. 8.

- (8) On convicting a person, or finding a person guilty, of an offence under subsection (1) the court must cause to be entered in the records of the court—

S. 28(8)(a)  
amended by  
No. 94/2003  
s. 34(6).

- (a) in the case of an offence under subsection (1)(b), the level of concentration of alcohol found to be present in that person's blood or breath; and
- (b) in the case of an offence under subsection (1)(e), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and
- (c) in the case of an offence under subsection (1)(f), the level of concentration of alcohol found to be present in the sample of blood.

S. 28(9)  
inserted by  
No. 66/2012  
s. 6(7).

- (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.

S. 28(10)  
inserted by  
No. 66/2012  
s. 6(7).

**28A Provisions about cancellation and disqualification**

S. 28A  
inserted by  
No. 93/2000  
s. 9 (as  
amended by  
No. 23/2001  
s. 24),  
amended by  
Nos 90/2001  
s. 7(1),  
65/2010 s. 380,  
substituted by  
No. 66/2012  
s. 7.

- (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—

S. 28A(1)  
amended by  
No. 36/2013  
s. 86(1).

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

S. 28A(2)  
amended by  
No. 36/2013  
s. 86(2).

- (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, cancel that licence and, whether or not the offender holds a marine licence, 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.

S. 28A(3)  
amended by  
No. 36/2013  
s. 86(3).

- (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 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, cancel that licence and, whether or not the offender holds a marine licence, 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, cancel that licence and, whether or not the offender holds a marine licence, 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, cancel that licence and, whether or not the offender holds a marine licence, 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.

**S. 28A(5)**  
amended by  
No. 36/2013  
s. 86(4).

**S. 28A(6)**  
amended by  
No. 36/2013  
s. 86(5).

**S. 28A(7)**  
amended by  
No. 36/2013  
s. 86(6).

S. 28A(8)  
amended by  
No. 36/2013  
s. 86(7).

- (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, cancel that licence and, whether or not the offender holds a marine licence, 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.

S. 28A(9)  
amended by  
No. 36/2013  
s. 86(8).

- (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, cancel that licence and, whether or not the offender holds a marine licence, 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.

S. 28AB  
inserted by  
No. 36/2013  
s. 87.

**28AB Recommendation about cancellation or disqualification—certificates of competency**

- (1) A court may recommend to the National Regulator or a delegate of the National Regulator that the National Regulator take any of the following actions in relation to a person convicted of an offence under section 28(1)—

- (a) cancel a certificate of competency that the person holds;
  - (b) disqualify the person from obtaining a certificate of competency for a specified period.
- (2) A recommendation must not be made under this section unless a similar action could be taken under section 28A to cancel a marine licence of a person convicted of the same offence or disqualify such a person from holding a marine licence.
- (3) A court may make a recommendation under this section in addition to imposing any penalty for the offence concerned.

**28B Previous convictions**

In determining for the purpose of section 28A(1) or (2) or section 28C whether an offence (in this section referred to as *the relevant offence*) is a first offence, any other offence in respect of which a conviction was recorded or a finding of guilt was made 10 years or more before the commission of the relevant offence is to be disregarded if not to do so would make the relevant offence a subsequent offence for the purpose of that provision.

S. 28B  
inserted by  
No. 93/2000  
s. 9 (as  
amended by  
No. 23/2001  
s. 24).

S. 28C  
(Heading)  
amended by  
Nos 65/2010  
s. 381(1),  
66/2012  
s. 8(1),  
substituted by  
No. 36/2013  
s. 88(1).  
S. 28C  
inserted by  
No. 93/2000  
s. 9 (as  
amended by  
No. 23/2001  
s. 24).

## **28C Immediate suspension of marine licence in certain circumstances**

S. 28C(1)  
amended by  
Nos 90/2001  
s. 7(1),  
68/2009  
s. 97(Sch.  
item 84.3),  
65/2010  
s. 381(2),  
66/2012  
s. 8(2)(b)–(d),  
36/2013  
s. 88(2),  
37/2014  
s. 10(Sch.  
item 106.2).

(1) If a person is charged by a police officer with an offence under—

S. 28C(1)(a)  
substituted by  
No. 94/2003  
s. 34(7).

(a) section 28(1)(b), (e) or (f) where it is alleged that the concentration of alcohol—

S. 28C(1)(a)(i)  
amended by  
No. 66/2012  
s. 8(2)(a).

(i) in the blood of that person was  
0·10 grams or more per 100 millilitres  
of blood; or

S. 28C(1)(a)(ii)  
amended by  
No. 66/2012  
s. 8(2)(a).

(ii) in the breath of that person was  
0·10 grams or more per 210 litres of  
exhaled air; or

(b) section 28(1)(c), or (d)—

where the person was operating a vessel or the master or pilot of a vessel underway or at anchor, any police officer may, at any time after the filing or signing of the charge-sheet charging the offence in accordance with section 6 of the **Criminal Procedure Act 2009** 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 is immediately suspended until the charge has been determined and requiring the accused to surrender the licence document immediately to the person who gave the notice.

- (1A) If a person is charged by a police officer with an offence under paragraph (ba), (ca), (ea) or (eb) of section 28(1), any police officer 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 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.
- (2) For the purposes of this section a person is charged with an offence when a copy of the information that is signed by the police officer is given to the person.
- (3) Immediately on the giving of a notice under subsection (1) or (1A), the marine licence of the accused is suspended until the charge has been determined by a court.

S. 28C(1A)  
inserted by  
No. 66/2012  
s. 8(3),  
amended by  
Nos 36/2013  
s. 88(3),  
37/2014  
s. 10(Sch.  
item 106.2).

S. 28C(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.2).

S. 28C(3)  
amended by  
Nos 65/2010  
s. 381(3),  
66/2012  
s. 8(4),  
36/2013  
s. 88(4).

S. 28C(4)  
amended by  
Nos 77/2001  
s. 31(1)(b),  
36/2013  
s. 88(5).

- (4) A person who gives a notice under subsection (1) or (1A) must cause a copy of that notice to be sent immediately to the Director.
- (5) A person who, without just cause or excuse, refuses or fails to surrender a document as required by a notice under subsection (1) is guilty of an offence and liable to a penalty of not more than 5 penalty units.
- (6) The accused has the burden of proving just cause or excuse.

S. 28D  
(Heading)  
amended by  
No. 65/2010  
s. 382(1).  
S. 28D  
inserted by  
No. 93/2000  
s. 9 (as  
amended by  
No. 23/2001  
s. 24).

#### **28D Appeal to court against suspension of marine licence**

- (1) A person to whom a notice is given under section 28C(1) may appeal against that notice to the Magistrates' Court.
- (2) A person who appeals under subsection (1) must give 14 days' written notice of the appeal (including particulars of any alleged exceptional circumstances) to the Chief Commissioner of Police and a registrar of the Magistrates' Court.
- (3) In determining the appeal the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court.
- (4) On an appeal under subsection (1) the court may make an order—
  - (a) confirming the notice; or
  - (b) cancelling the notice.
- (5) The Magistrates' Court must not make an order under subsection (4) cancelling a notice unless it is satisfied that exceptional circumstances exist which justify the making of such an order.

- (6) If on the subsequent hearing of the charge the accused's marine licence is cancelled and the accused is disqualified from obtaining a marine licence for a specified time, the court must take into account, in fixing the period of disqualification, the period of suspension under section 28C.

S. 28D(6)  
amended by  
No. 65/2010  
s. 382(2).

## **29 Preliminary breath tests**

S. 29  
amended by  
Nos 20/1993  
s. 6, 23/2001  
s. 21,  
substituted by  
No. 65/2010  
s. 383.

- (1) A police officer may at any time require—

S. 29(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.2).

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

S. 29(1)(a)  
substituted by  
No. 66/2012  
s. 9(1)(a).

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

S. 29(1)(ab)  
inserted by  
No. 66/2012  
s. 9(1)(a).

- (b) any person operating 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

S. 29(1)(b)  
amended by  
No. 66/2012  
s. 9(1)(b).

- (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

S. 29(1)(ba)  
inserted by  
No. 66/2012  
s. 9(1)(c).

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S. 29(1)(c)  
amended by  
No. 66/2012  
s. 9(1)(d).

(c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours been operating a vessel or the master or pilot of a vessel underway or at anchor when it was involved in a marine incident; or

S. 29(1)(d)  
amended by  
Nos 66/2012  
s. 9(1)(e),  
37/2014  
s. 10(Sch.  
item 106.2).

(d) any person who 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 a marine incident, if it has not been established to the satisfaction of the police officer which of the occupants was the person operating the vessel or the master or pilot of the vessel when it was involved in the marine incident—

to undergo a preliminary breath test by a prescribed device.

S. 29(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.2).

(2) A person required to undergo a preliminary breath test must do so by exhaling continuously into the device to the satisfaction of the police officer.

S. 29(3)  
substituted by  
No. 66/2012  
s. 9(2).

(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.

### **30 Preliminary breath testing stations**

S. 30(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.3(a)).

(1) A police officer may set up a preliminary breath testing station on or in the vicinity of any State waters.



(2) A preliminary breath testing station—

- (a) consists of any facilities that are necessary to enable the making of preliminary breath tests or preliminary oral fluid tests in quick succession; and

S. 30(2)(a)  
amended by  
No. 66/2012  
s. 10(1).

- (b) must be identified by suitable signs, lights or other devices.

(3) A police officer who is on duty and wearing uniform may request or signal any person operating a vessel or who is the master or pilot of a vessel underway, at anchor or aground to go to a preliminary breath testing station.

S. 30(3)  
amended by  
Nos 65/2010  
s. 384, 66/2012  
s. 10(2),  
37/2014  
s. 10(Sch.  
item 106.3(a)).

(4) Police officers who are on duty at a preliminary breath testing station must make sure that no person is detained there any longer than is necessary.

S. 30(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.3(b)).

### 31 Breath analysis

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

S. 31(1)  
amended by  
Nos 20/1993  
s. 7(1),  
17/1994  
s. 17(1)(2),  
94/2003  
ss 34(8), 35(3),  
65/2010  
s. 385(1),  
substituted by  
No. 66/2012  
s. 11(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.4(a)(i)).

- (a) the test in the opinion of the police officer in whose presence it is made indicates that the person's breath contains alcohol;

S. 31(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.4(a)(ii)).

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S. 31(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.4(a)(ii)).

(b) the person, in the opinion of the police officer, refuses or fails to carry out the test in the manner specified in section 29(2).

S. 31(1A)  
inserted by  
No. 66/2012  
s. 11(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.4(b)).

(1A) A police officer 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 police officer 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.

S. 31(2)  
amended by  
Nos 20/1993  
s. 7(2),  
17/1994  
s. 17(2),  
65/2010  
s. 385(1),  
substituted by  
No. 66/2012  
s. 11(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.4(c)).

(2) A police officer may require any person whom that police officer 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 police officer 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.

(2AA) A police officer 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—

**S. 31(2AA)**  
inserted by  
No. 66/2012  
s. 11(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.4(d)).

- (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.

(2A) The person who required a sample of breath under subsection (1), (2) or (2AA) may require the person who furnished it to furnish one or more further samples if it appears to him or her that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 210 litres of exhaled air because the amount of sample furnished was insufficient or because of a power failure or

**S. 31(2A)**  
inserted by  
No. 17/1994  
s. 17(3),  
amended by  
Nos 58/1995  
s. 28(a)(b),  
94/2003  
ss 34(9), 35(4),  
66/2012  
s. 11(3).

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malfunctioning of the instrument or for any other reason whatsoever.

- (3) A breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Police.
- (4) As soon as practicable after a sample of a person's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the person whose breath has been analysed a certificate in the prescribed form produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her breath.

S. 31(4)  
substituted by  
No. 17/1994  
s. 17(4),  
amended by  
Nos 100/1995  
s. 33(1),  
94/2003  
ss 34(10),  
35(5).

S. 31(4A)  
inserted by  
No. 20/1993  
s. 7(3),  
repealed by  
No. 17/1994  
s. 17(5).

\* \* \* \* \*

- (5) A person who furnishes a sample of breath under this section must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.
- (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.

S. 31(6)  
amended by  
Nos 20/1993  
s. 7(4),  
65/2010  
s. 385(1),  
substituted by  
No. 66/2012  
s. 11(4).

S. 31(7)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item  
34.2(a)(b)),  
repealed by  
No. 17/1994  
s. 17(5).

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S. 31(8)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 34.3),  
repealed by  
No. 17/1994  
s. 17(5).

- (9) A person must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis 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.

S. 31(9)  
amended by  
No. 17/1994  
s. 17(6).

- (9A) The person who required a sample of breath under subsection (1), (2), (2AA) or (2A) from a person may require that person to allow a registered medical practitioner or an approved health professional nominated by the person requiring the sample to take from him or her a sample of that person's blood for analysis if it appears to him or her that—

S. 31(9A)  
inserted by  
No. 17/1994  
s. 17(7),  
amended by  
Nos 100/1995  
s. 33(2),  
14/2000  
ss 27(3), 28,  
94/2003 s. 36,  
65/2010  
s. 385(1),  
66/2012  
s. 11(5),  
37/2014  
s. 10(Sch.  
item 106.4(d)).

- (a) that person is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or
- (b) the breath analysing instrument is incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by that person for any reason whatsoever—

S. 31(9A)(b)  
amended by  
No. 94/2003  
ss 34(11),  
35(6).

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

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S. 31(9A)(c)  
inserted by  
No. 66/2012  
s. 11(5)(b).

(c) the sample has been taken;

S. 31(9A)(d)  
inserted by  
No. 66/2012  
s. 11(5)(b).

(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.

S. 31(9B)  
inserted by  
No. 17/1994  
s. 17(7),  
amended by  
Nos 100/1995  
s. 33(2),  
14/2000  
s. 27(4),  
repealed by  
No. 55/2017  
s. 34.

\* \* \* \* \*

S. 31(9C)  
inserted by  
No. 17/1994  
s. 17(7).

(9C) A person who allows the taking of a sample of his  
or her blood in accordance with subsection (9A)  
must not be convicted or found guilty of refusing  
to furnish under this section a sample of breath for  
analysis.

S. 31(9D)  
inserted by  
No. 17/1994  
s. 17(7),  
amended by  
Nos 100/1995  
s. 33(2),  
14/2000  
s. 27(3).

(9D) 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 (9A).

Penalty applying to this subsection: 12 penalty  
units.

S. 31(9E)  
inserted by  
No. 17/1994  
s. 17(7),  
amended by  
Nos 100/1995  
s. 33(2),  
14/2000  
s. 27(5)(a)(b).

(9E) 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 (9A).

- |  |  |
|--|--|
| (10) A person who is required under this section to furnish a sample of breath for analysis may, immediately after being given the certificate referred to in subsection (4), request the person making the requirement to arrange for the taking in the presence of a police officer 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 police officer.  | S. 31(10) amended by Nos 17/1994 s. 17(8)(a)(b), 100/1995 s. 33(2), 14/2000 s. 27(3), 37/2014 s. 10(Sch. item 106.4(d)). |
| * * * * *  | S. 31(11) repealed by No. 55/2017 s. 34.   |
| (12) Nothing in subsection (10) relieves a person from any penalty under section 28(1)(d) for refusing to furnish a sample of breath.  | S. 31(12) amended by No. 17/1994 s. 17(9).   |
| (12A) Evidence derived from a sample of breath furnished in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under subsection (10) if reasonable efforts were made to comply with the request.   | S. 31(12A) inserted by No. 17/1994 s. 17(10).  |
| (12B) If the question whether a breath analysing instrument was incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a person is relevant on a hearing for an offence against section 28(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this subsection, a document—<br><br>(a) purporting to be a print-out produced by that instrument in respect of that sample; and | S. 31(12B) inserted by No. 17/1994 s. 17(10), amended by No. 94/2003 ss 34(11), 35(6).                                   |

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S. 31(12B)(b)  
amended by  
No. 100/1995  
s. 33(3).

(b) purporting to be signed by the person who  
operated the instrument—

is admissible in evidence and, in the absence of  
evidence to the contrary, is proof of the facts and  
matters contained in it.

S. 31(12C)  
inserted by  
No. 100/1995  
s. 33(4),  
amended by  
No. 65/2010  
s. 385(2).

(12C) A document referred to in subsection (12B) does  
not cease to be admissible in evidence or, in the  
absence of evidence to the contrary, to be proof of  
the facts and matters contained in it only because  
of the fact that it refers to the **Road Safety  
Act 1986** and not to the **Marine (Drug, Alcohol  
and Pollution Control) Act 1988** and the  
reference to the **Road Safety Act 1986** in that  
document and in each other document produced  
by the breath analysing instrument in respect of  
the sample of breath must be construed for all  
purposes as a reference to the **Marine (Drug,  
Alcohol and Pollution Control) Act 1988**.

(13) An approval or authority given under or for the  
purposes of this section 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.

S. 31A  
inserted by  
No. 20/1993  
s. 8.

### 31A Blood samples to be taken in certain cases

(1) In this section—

S. 31A(1)  
def. of  
*designated  
place*  
repealed by  
No. 7/1995  
s. 4(1).

\* \* \* \* \*



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***doctor*** means a registered medical practitioner and includes a police surgeon.

S. 31A(1)  
def. of  
*doctor*  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 34.4).

(2) If a person of or over the age of 15 years enters or is brought to a place for examination or treatment in consequence of a marine incident (whether within Victoria or not) involving a vessel, the person must allow an approved health professional or a doctor to take from that person at that place a sample of that person's blood for analysis if—

S. 31A(2)  
amended by  
Nos 7/1995  
s. 4(2),  
65/2010  
s. 386(1),  
66/2012 s. 12,  
55/2017  
s. 35(1).

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

S. 31A(2)(a)  
inserted by  
No. 66/2012  
s. 12.

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

S. 31A(2)(b)  
inserted by  
No. 66/2012  
s. 12.

(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.

Penalty: For a first offence, 12 penalty units.

For a subsequent offence, 25 penalty units or imprisonment for 3 months.

(2A) On convicting a person, or finding a person guilty, of an offence under subsection (2) involving a registered recreational vessel or a regulated hire and drive vessel the court must—

S. 31A(2A)  
inserted by  
No. 93/2000  
s. 10,  
amended by  
Nos 90/2001  
s. 7(1),  
65/2010  
s. 386(2)(a).

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S. 31A  
(2A)(a)(i)  
amended by  
No. 65/2010  
s. 386(2)(b).

(a) for a first offence—

- (i) in the case of an offender who is the holder of a marine licence, cancel the licence and disqualify the person from obtaining a marine licence for the time that the court thinks fit (not being less than 12 months);

S. 31A  
(2A)(a)(ii)  
amended by  
No. 65/2010  
s. 386(2)(b).

- (ii) in the case of an offender who is not the holder of a marine licence, disqualify the person from obtaining a marine licence for the time that the court thinks fit (not being less than 12 months).

(b) for a second or subsequent offence—

S. 31A  
(2A)(b)(i)  
amended by  
No. 65/2010  
s. 386(2)(b).

- (i) in the case of an offender who is the holder of a marine licence, cancel the licence and disqualify the person from obtaining a marine licence for the time that the court thinks fit (not being less than 24 months);

S. 31A  
(2A)(b)(ii)  
amended by  
No. 65/2010  
s. 386(2)(b).

- (ii) in the case of an offender who is not the holder of a marine licence, disqualify the person from obtaining a marine licence for the time that the court thinks fit (not being less than 24 months).

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|---|---|
| (3) Subsection (2) does not apply if, in the opinion of the doctor first responsible for the examination or treatment of the person, the taking of a blood sample from that person would be prejudicial to that person's proper care and treatment.   | S. 31A(3)<br>amended by<br>Nos 7/1995<br>s. 4(3),<br>65/2010<br>s. 386(3),<br>37/2014<br>s. 10(Sch.<br>item 106.5),<br>substituted by<br>No. 55/2017<br>s. 35(2). |
| (4) A person to whom subsection (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by an approved health professional or doctor at a place which he or she enters or to which he or she is brought for examination or treatment.   | S. 31A(4)<br>amended by<br>Nos 7/1995<br>s. 4(4),<br>55/2017<br>s. 35(3).   |
| (5) If a sample of a person's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceedings except for the purposes of section 32.  |   |
| (6) A person must not hinder or obstruct an approved health professional or doctor attempting to take a sample of the blood of any other person in accordance with this section.<br><br>Penalty: 12 penalty units.  | S. 31A(6)<br>amended by<br>No. 55/2017<br>s. 35(4).   |
| (7) No action lies against an approved health professional or doctor in respect of anything properly and necessarily done by the approved health professional or doctor in the course of taking any sample of blood which the approved health professional or doctor believes on reasonable grounds was required or allowed to be taken from any person under this section. | S. 31A(7)<br>amended by<br>No. 55/2017<br>s. 35(5).   |

S. 31AA  
inserted by  
No. 66/2012  
s. 13.

### **31AA Drug assessment**

S. 31AA(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.6(a)).

- (1) A police officer 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 police officer 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

S. 31AA(1)(f)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.6(a)(i)).

- (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 police officer, 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 police officer 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 police officer 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).

**S. 31AA(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.6(b)).**

- (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—

S. 31AA(10)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.6(c)).

(a) the statement of any police officer 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

S. 31AA(10)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.6(c)(i)).

(b) a certificate purporting to be signed by the Chief Commissioner of Police that a police officer named in it is authorised by the Chief Commissioner under subsection (3) to carry out an assessment of drug impairment—

S. 31AA(10)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.6(c)(i)).

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

### **31AB Blood and urine samples**

S. 31AB  
inserted by  
No. 66/2012  
s. 13.

(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 police officer carrying it out, indicates that the person may be impaired by a drug or drugs, any police officer may require the person to do either or both of the following—

S. 31AB(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.7(a)(i)).

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

S. 31AB(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.7(a)(ii)).

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S. 31AB(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.7(a)(ii)).

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

and for that purpose may further require the person to accompany a police officer 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.

S. 31AB(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.7(b)).

- (2) A police officer 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.

S. 31AB(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.7(b)),  
repealed by  
No. 55/2017  
s. 36.

\* \* \* \* \*



- (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 police officer 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.

S. 31AB(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.7(b)).

### **31AC Destruction of identifying information**

S. 31AC  
inserted by  
No. 66/2012  
s. 13.

- (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 police officer 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

S. 31AC(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.8).

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.

S. 31AD  
inserted by  
No. 66/2012  
s. 13.

### **31AD Preliminary oral fluid tests**

S. 31AD(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.8).

- (1) A police officer 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 police officer which  
of the occupants was operating the vessel or  
the master or pilot of the vessel when it was  
involved in the accident—

S. 31AD(1)(f)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.8).

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 police officer 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 police officer 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.

S. 31AD(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.8).

S. 31AD(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.8).

### **31AE Oral fluid testing and analysis**

S. 31AE  
inserted by  
No. 66/2012  
s. 13.

S. 31AE(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(a)(i)).

- (1) If a person undergoes a preliminary oral fluid test when required to do so under section 31AD by a police officer and—

S. 31AE(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(a)(ii)).

- (a) the test, in the opinion of the police officer in whose presence it is made, indicates that the person's oral fluid contains a prescribed illicit drug; or

S. 31AE(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(a)(ii)).

- (b) the person, in the opinion of the police officer, refuses or fails to carry out the test in the manner specified in section 31AD(4)—

any police officer 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 police officer 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 police officer 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.

S. 31AE(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(b)).

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S. 31AE(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(c)).

- (4) The police officer 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 police officer 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.

S. 31AE(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(d)).

- (5) Only a police officer 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.

S. 31AE(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(e)).

- (6) The Chief Commissioner of Police may only authorise a police officer for the purposes of this section if satisfied that the police officer 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.

S. 31AE(8)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(f)).

- (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 police officer, a sufficient sample of oral fluid has been captured by the device or unit.



- (9) A police officer 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. **S. 31AE(9) amended by No. 37/2014 s. 10(Sch. item 106.9(f)).**
- (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 police officer 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 police officer must retain a part of the sample and deliver another part to the person by whom the sample was provided. **S. 31AE(11) amended by No. 37/2014 s. 10(Sch. item 106.9(g)).**
- (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 police officer 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 police officer who required the sample to take from the person a sample of that person's blood for analysis if it appears to the police officer that— **S. 31AE(13) amended by No. 37/2014 s. 10(Sch. item 106.9(h)).**

- (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 police officer 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.

S. 31AE(14)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.9(i)),  
repealed by  
No. 55/2017  
s. 37.

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- (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 police officer making the requirement to arrange for the taking, in the presence of any police officer, 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 police officer in whose presence the sample is taken.

**S. 31AE(18)**  
**amended by**  
**No. 37/2014**  
**s. 10(Sch.**  
**item 106.9(i)).**

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**S. 31AE(19)**  
**repealed by**  
**No. 55/2017**  
**s. 37.**

(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.

S. 31AE(22)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(j)(ii)).

(22) In any proceeding under this Act—

S. 31AE(22)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(j)(i)).

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

S. 31AE(22)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
106.9(j)(i)).

(b) a certificate purporting to be signed by the Chief Commissioner of Police certifying that a particular police officer 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 police officer.

### 32 Evidentiary provisions—blood tests

S. 32(1)  
substituted by  
No. 5/2016  
s. 6(1).

(1) In this section—

***approved analyst*** means an approved analyst within the meaning of section 57 of the **Road Safety Act 1986**;

***approved laboratory*** means an approved laboratory within the meaning of section 57 of the **Road Safety Act 1986**;

***properly qualified analyst*** means—

- (a) an approved analyst; or
- (b) a person who conducts an analysis in an approved laboratory; or
- (c) a person who is considered by the court to have scientific qualifications, training and experience that qualifies the person to carry out the analysis and

to express the opinion to which this section relates.

(2) If the question—

S. 32(2)  
amended by  
Nos 20/1993  
s. 9(1)(c),  
93/2009  
s. 47(2),  
66/2012  
s. 14(1).

(a) whether any person was or was not at any time under the influence of alcohol or any other drug; or

S. 32(2)(a)  
amended by  
No. 20/1993  
s. 9(1)(a).

(b) as to the presence of alcohol or any other drug or the concentration of alcohol in the blood of any person at any time—

S. 32(2)(b)  
amended by  
No. 20/1993  
s. 9(1)(b).

or if a finding on the analysis of a blood sample is relevant on a hearing for an offence against section 28(1) or on 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 or, in the case of a master or pilot, arising out of the direction of the operation of a vessel, then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(c) of the taking, after that person was operating a vessel or the master or pilot of a vessel underway or at anchor, of a sample of blood from that person by a registered medical practitioner or an approved health professional; and

S. 32(2)(c)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 34.5),  
14/2000  
s. 27(6),  
23/2001 s. 22,  
65/2010 s. 387,  
66/2012  
s. 14(2).

(d) of the analysis of that sample of blood by a properly qualified analyst within 12 months after it was taken; and

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S. 32(2)(e)  
amended by  
No. 20/1993  
s. 9(1)(d).

(e) of the presence of alcohol or any other drug and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis.

S. 32(3)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 34.5),  
14/2000  
s. 27(6).

(3) A certificate in the prescribed form purporting to be signed by a registered medical practitioner or an approved health professional as to the taking, in accordance with subsection (2), of a sample of blood from a person is admissible in evidence in any proceedings referred to in that subsection and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 32(4)  
substituted by  
No. 5/2016  
s. 6(2).

(4) A certificate in the prescribed form as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood—  
  
(a) purporting to be signed by an approved analyst; and  
  
(b) stating that the sample of blood was analysed in an approved laboratory—

is admissible in evidence in any proceedings referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 32(5)  
amended by  
Nos 17/1994  
s. 18(1),  
94/2003  
s. 37(1).

(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.

S. 32(5A)  
inserted by  
No. 94/2003  
s. 37(2).

(5A) 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.
- (6) 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. **S. 32(6) amended by Nos 17/1994 s. 18(1), 100/1995 s. 33(5)(a)(b), 94/2003 s. 37(3).**
- (7) 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 other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly. **S. 32(7) substituted by No. 20/1993 s. 9(2), amended by No. 17/1994 s. 18(2).**
- (8) The court must not grant leave under subsection (7) unless it is satisfied— **S. 32(8) substituted by No. 20/1993 s. 9(2).**
- (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 blood referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or

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S. 32(8)(b)(ii)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 34.5),  
14/2000  
s. 27(6).

- (ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or

S. 32(8)(b)(iii)  
substituted by  
No. 7/1995  
s. 4(5),  
repealed by  
No. 55/2017  
s. 38.

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- (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.

S. 32(8A)  
inserted by  
No. 17/1994  
s. 18(3).

- (8A) 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 other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under subsection (7).

S. 32(9)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 34.5),  
14/2000  
s. 27(7)(a)(b).

- (9) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the person to be examined or from whom a sample of blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the person was in fact incapable by reason of his



or her mental condition from effectively giving consent to the examination or collection.

- (10) Except as provided in sections 31(9A) and 31A, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the person from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.
- (11) The mere failure or refusal of a person to express consent must not be used in evidence against that person or referred to in any way against that person's interests in any proceedings.

S. 32(10)  
amended by  
Nos 17/1994  
s. 18(4),  
93/2000 s. 11.

### 32A Evidentiary provisions—urine tests

S. 32A  
inserted by  
No. 66/2012  
s. 15.

- (1) In this section—

*approved analyst* means an approved analyst within the meaning of section 57A of the **Road Safety Act 1986**;

S. 32A(1)  
def. of  
*approved analyst*  
substituted by  
No. 5/2016  
s. 7(1)(a).

*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;

*approved laboratory* means an approved laboratory within the meaning of section 57A of the **Road Safety Act 1986**;

S. 32A(1)  
def. of  
*approved laboratory*  
inserted by  
No. 5/2016  
s. 7(1)(c).

*prescribed legal proceeding* means—

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

S. 32A(1)  
def. of  
*properly  
qualified  
analyst*  
amended by  
No. 5/2016  
s. 7(1)(b).

- (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
- (ab) a person who carries out an analysis in an approved laboratory; 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, as to the presence in any sample of urine of a substance that is, or is capable of being, a drug for the purposes of this Act—
- (a) purporting to be signed by an approved analyst; and
  - (b) stating that the urine sample was analysed in an approved laboratory—
- 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.

**S. 32A(4)**  
**substituted by**  
**No. 5/2016**  
**s. 7(2).**

- (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.

S. 32B  
inserted by  
No. 66/2012  
s. 15.

### **32B Evidentiary provisions—oral fluid tests**

- (1) In this section—

S. 32B(1)  
def. of  
*approved  
analyst*  
substituted by  
No. 5/2016  
s. 8(1)(a).

*approved analyst* means an approved analyst within the meaning of section 57B of the **Road Safety Act 1986**;

S. 32B(1)  
def. of  
*approved  
laboratory*  
inserted by  
No. 5/2016  
s. 8(1)(c).

*approved laboratory* means an approved laboratory within the meaning of section 57B of the **Road Safety Act 1986**;

*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
  - (ab) a person who carries out an analysis in an approved laboratory; 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;

S. 32B(1)  
def. of  
*properly  
qualified  
analyst*  
amended by  
No. 5/2016  
s. 8(1)(b).

S. 32B(4)  
substituted by  
No. 5/2016  
s. 8(2).

- (c) of the presence of a prescribed illicit drug in that sample of oral fluid at the time of analysis.
- (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, as to the presence in any sample of oral fluid of a substance that is a prescribed illicit drug—
  - (a) purporting to be signed by an approved analyst; and
  - (b) stating that the sample of oral fluid was analysed in an approved laboratory—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.

S. 32C  
(Heading)  
amended by  
No. 5/2016  
s. 9(1).

S. 32C  
inserted by  
No. 66/2012  
s. 15.

S. 32C(1)  
repealed by  
No. 5/2016  
s. 9(2).

### 32C Approved experts

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- (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.

### 33 Evidentiary provisions—breath tests

- (1) If the question—

- (a) whether any person was or was not at any time under the influence of alcohol; or
- (b) as to the presence or the concentration of alcohol in the breath of any person at any time—

S. 33(1)  
amended by  
Nos 20/1993  
s. 10(1),  
93/2009  
s. 47(2),  
66/2012 s. 16.

S. 33(1)(b)  
amended by  
No. 94/2003  
ss 34(12),  
35(7).

or if a result of a breath analysis is relevant on a hearing for an offence against section 28(1) or on 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 or, in the case of a master or pilot, arising out of the direction of the operation of a vessel, then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section—

- (c) evidence may be given of the concentration of alcohol indicated to be present in the breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 31; and
- (d) the concentration of alcohol so indicated is, subject to compliance with section 31(4), evidence of the concentration of alcohol present in the breath of that person at the time his or her breath is analysed by the instrument.

S. 33(1)(c)  
amended by  
No. 94/2003  
ss 34(12),  
35(7).

S. 33(1)(d)  
amended by  
No. 94/2003  
ss 34(12),  
35(7).

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 4—Offences involving alcohol or other drugs

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S. 33(2)  
amended by  
Nos 20/1993  
s. 10(2)(a)–(c),  
17/1994  
s. 19(1)(a)–(d),  
100/1995  
s. 33(6),  
94/2003  
ss 34(12),  
35(7).

- (2) A document purporting to be a certificate in the prescribed form produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in any proceedings referred to in subsection (1), subject to subsection (2E), is conclusive proof of—

S. 33(2)(a)  
inserted by  
No. 17/1994  
s. 19(1)(b).

- (a) the facts and matters contained in it; and

S. 33(2)(b)  
inserted by  
No. 17/1994  
s. 19(1)(b).

- (b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and

S. 33(2)(c)  
inserted by  
No. 17/1994  
s. 19(1)(b).

- (c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 31; and

S. 33(2)(d)  
inserted by  
No. 17/1994  
s. 19(1)(b).

- (d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and

S. 33(2)(e)  
inserted by  
No. 17/1994  
s. 19(1)(b).

- (e) the fact that the instrument was in proper working order and properly operated; and

S. 33(2)(f)  
inserted by  
No. 17/1994  
s. 19(1)(b),  
substituted by  
No. 100/1995  
s. 33(7).

- (f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed—

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court

or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter.

- (2AA) A certificate referred to in subsection (2) does not cease to be admissible in evidence or to be conclusive proof of the facts and matters referred to in that subsection only because of the fact that it refers to the **Road Safety Act 1986** and not to the **Marine (Drug, Alcohol and Pollution Control) Act 1988** and the reference to the **Road Safety Act 1986** in that certificate and in each other certificate produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the **Marine (Drug, Alcohol and Pollution Control) Act 1988**. S. 33(2AA)  
inserted by  
No. 100/1995  
s. 33(8),  
amended by  
No. 65/2010  
s. 388.
- (2A) A notice under subsection (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing. S. 33(2A)  
inserted by  
No. 17/1994  
s. 19(2).
- (2B) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under subsection (2). S. 33(2B)  
inserted by  
No. 17/1994  
s. 19(2).
- (2C) If an accused person gives notice to the informant in accordance with subsection (2) that he or she requires the person giving a certificate to be called as a witness and the court is satisfied that that person— S. 33(2C)  
inserted by  
No. 17/1994  
s. 19(2).
- (a) is dead; or
- (b) is unfit by reason of his or her bodily or mental condition to testify as a witness; or

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 4—Offences involving alcohol or other drugs

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S. 33(2C)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 106.10).

(c) has ceased to be a police officer or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or

(d) cannot with reasonable diligence be found—  
the court must order that subsection (2) has effect as if the notice had not been given.

S. 33(2D)  
inserted by  
No. 17/1994  
s. 19(2).

(2D) A certificate referred to in subsection (2) remains admissible in evidence even if the accused person gives a notice under that subsection but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that subsection.

S. 33(2E)  
inserted by  
No. 17/1994  
s. 19(2),  
amended by  
No. 100/1995  
s. 33(9).

(2E) Nothing in subsection (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in subsection (2) and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.

S. 33(3)  
substituted by  
No. 94/2003  
s. 38.

- (3) In any proceeding under this Act—
- (a) the statement of any person that on a particular date he or she was authorised by the Chief Commissioner of Police under section 31 to operate breath analysing instruments; or
  - (b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner under section 31 to operate breath analysing instruments—

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

- (4) Evidence by a person authorised to operate a breath analysing instrument under section 31—
- (a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument within the meaning of this Act; and
  - (b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her; and
  - (c) that, in relation to the breath analysing instrument, all regulations made under this Act with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

- (5) The statement on oath or by affirmation of a person authorised to operate a breath analysing instrument under section 31 when called as a witness that any apparatus used by him or her on any occasion under section 31 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions—
- (a) "Alcotest 7110" and "3530791"; or
  - (b) "Alcotest 9510 AUS" and "8320869"—

whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Act.

S. 33(5)  
substituted by  
No. 17/1994  
s. 19(3),  
amended by  
Nos 55/2017  
s. 39, 6/2018  
s. 68(Sch. 2  
item 85.2).

S. 33A  
inserted by  
No. 20/1993  
s. 11.

### 33A Avoidance of certain provisions in contracts of insurance

S. 33A(1)  
amended by  
Nos 94/2003  
s. 34(13),  
65/2010 s. 389,  
55/2017 s. 40.

- (1) Any covenant, term, condition, or other 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 the master of a vessel having a concentration of alcohol present in his or her breath or blood as indicated by an analysis of his or her breath or blood of not more than 0.05 grams per 210 litres of exhaled air or 100 millilitres of blood (as the case requires).
- (2) Subsection (1) applies to a contract of insurance whether entered into before or after the commencement of section 11 of the **Marine (Amendment) Act 1993**.

S. 33B  
inserted by  
No. 66/2012  
s. 17.

### 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.

## Part 5—Pollution

### 34 Definitions etc.

(1) In this Part—

S. 34(1) def. of  
*agent*  
amended by  
No. 82/1995  
s. 154(8)(a).

*agent*, in relation to a vessel, means any person who performs for or on behalf of the owner of the vessel any function or duty under or for the purposes of this Act and includes any person who, within the State, on behalf of the owner of the vessel, undertakes or performs the functions of ships' husbandry or makes any arrangements for or in connection with the repair or berthing of the vessel or the carriage, loading or unloading of cargo, stores or bunkers on the vessel or from the vessel;

S. 34(1) def. of  
*appropriate authority*  
amended by  
Nos 82/1995  
s. 154(8)(b),  
77/2001  
s. 31(1)(h),  
66/2012 s. 20.

*appropriate authority* means the Secretary;

*discharge* means any discharge or escape, howsoever caused;

*occupier*—

- (a) in relation to a place on land, means the person exercising personally or through servants or agents, any right of occupation of the land or, if there is no such person, the owner of the land; and
- (b) in relation to a vehicle, includes the person in charge of the vehicle and the owner of the vehicle but does not include the occupier of the land on or

over which the vehicle stands or moves;  
and

- (c) in relation to a pipeline, means the person who undertakes the carriage of oil or an oily mixture by means of the pipeline;

*oil* and *oily mixture* have the same meanings as in Division 1 of Part 2 of the **Pollution of Waters by Oil and Noxious Substances Act 1986**;

*oil residues* means those parts of an oily mixture that remain after undergoing a separation process;

*place on land* includes—

- (a) any structure or apparatus on land; and
- (b) anything or vehicle resting on or moving over land; and
- (c) anything resting on or lying under the bed, shore or bank of any navigable waters; and
- (d) anything afloat (other than a vessel) if it is anchored or attached to the bed, shore or bank of any navigable waters or is used in any operation for the exploration of the sea-bed and sub-soil or the exploitation of the natural resources of the sea-bed and sub-soil;

*prohibited discharge* means a discharge into State waters of—

- (a) oil; or
- (b) an oily mixture; or
- (c) an undesirable substance;

***public statutory body*** includes any Minister of the Crown and any municipality;

***tanker*** means a vessel constructed or adapted for carrying a cargo of oil in bulk;

***transfer operation*** means any operation involved in the preparation for, or the commencement, carrying on or termination of, the transfer of oil or an oily mixture or a liquid substance or a mixture containing a liquid substance from or to any vessel, whether to or from a place on land or to or from another vessel;

***undesirable substance*** means—

- (a) any solid ballast, rubbish, gravel, earth, stone or wreck; or
- (b) any dangerous, flammable, corrosive or offensive substance, whether solid, liquid or gaseous; or
- (c) any article or thing or any substance (whether solid, liquid or gaseous) which is capable of constituting a hazard to navigation or of preventing or hindering the proper use of State waters—

but does not include oil or an oily mixture.

- (2) A discharge of oil or an oily mixture onto or into any land, water, structure or thing is, if the whole or any part of the oil or oily mixture eventually enters State waters, to be taken for all purposes under this Part to be a discharge into State waters of the oil or oily mixture or of so much of it as enters State waters.

### 35 Saving of other laws

(1) This Part must be construed as being in addition to and not in derogation of any other law of the State. No. 6705 s. 5.

(2) To the extent that this Part is inconsistent with any of the provisions of the **Environment Protection Act 2017**, the provisions of the **Environment Protection Act 2017** prevail. No. 6705 s. 29.  
S. 35(2)  
amended by  
No. 39/2018  
s. 42.

\*                      \*                      \*                      \*

S. 36  
amended by  
No. 46/1991  
s. 38(1)(2),  
repealed by  
No. 82/1995  
s. 160.

\*                      \*                      \*                      \*

S. 37  
amended by  
No. 46/1991  
s. 39(1)(2),  
repealed by  
No. 82/1995  
s. 160.

### 38 Removal of pollution

(1) If a prohibited discharge occurs, or is likely to occur, the appropriate authority or any public statutory body may— No. 6705 s. 8.  
  
S. 38(1)  
substituted by  
No. 77/2001  
s. 19.

- (a) do anything necessary to prevent the discharge from occurring;
- (b) do anything necessary to mitigate the effect the discharge has, or will have, on the marine environment, any marine habitat (including any habitat used for aquaculture) or any marine or other wildlife;
- (c) remove, disperse, destroy or mitigate the discharge or any thing polluted by the discharge;

- (d) reinstate or restore any land, building, structure or vessel that has been damaged by the discharge.
- (2) The powers conferred by subsection (1) on a public statutory body that is a municipality are limited to the area within the boundaries of the municipal district of the municipality and the area immediately adjacent to that area but any other public statutory body and any appropriate authority may exercise those powers either within or outside the land or waters under its control.
- (3) Any appropriate authority or public statutory body may recover all costs and expenses incurred by it in or in connection with any exercise of the powers conferred by subsection (1)—
  - (a) if the discharge occurs or is likely to occur from any place on land, from the occupier of that place; or
  - (b) if the discharge occurs or is likely to occur from any vessel, from the owner of that vessel; or
  - (c) if the discharge occurs or is likely to occur from any apparatus, from the person in charge of the apparatus.
- (4) The Minister may reimburse a public statutory body for the costs and expenses incurred by it in or in connection with any exercise of the powers conferred by subsection (1) if the Minister is satisfied that the action taken by the public statutory body was reasonable or if the action was taken with the approval of, or at the request of, the Minister.

S. 38(3)(a)  
amended by  
No. 78/2011  
s. 45(1)(a).

S. 38(3)(b)  
amended by  
No. 78/2011  
s. 45(1)(a).

S. 38(3)(c)  
amended by  
No. 78/2011  
s. 45(1).

S. 38(4)  
amended by  
Nos 77/2001  
s. 31(1)(b),  
78/2011  
s. 45(2).

- (5) If the Minister reimburses a public statutory body under subsection (4), the Minister may recover the costs and expenses in accordance with subsection (3) as if those costs and expenses had been incurred by the Minister in or in connection with an exercise of the powers conferred by subsection (1).
- (6) Costs and expenses recoverable under this section may be recovered in the course of criminal proceedings in respect of the discharge or may be recovered in any court of competent jurisdiction as a debt due to the authority or body even if no proceedings have been taken in respect of the discharge.

\* \* \* \* \*

S. 38(7)  
repealed by  
No. 55/2017  
s. 41.

- (8) Proceedings under this section are in addition to and not in derogation of any proceedings which may be taken apart from this section.

- (9) In this section *prohibited discharge* means prohibited discharge within the meaning of section 34 and includes—

S. 38(9)  
inserted by  
No. 46/1991  
s. 40.

- (a) a discharge of a liquid substance or any mixture containing a liquid substance within the meaning of section 14 of the **Pollution of Waters by Oil and Noxious Substances Act 1986**; and
- (b) a discharge or disposal of any other substance, the discharge or disposal of which is prohibited by that Act.

S. 38A  
inserted by  
No. 46/1991  
s. 41.

### **38A Recovery of costs of analysis**

- (1) In this section, *work conducted* in relation to an appropriate authority or public statutory body, means any analysis, measurement, recording, evaluation, testing or inspection conducted by the authority or body through any of its officers, employees or agents.
- (2) In any proceedings under this Act in which legal costs are awarded to an appropriate authority or public statutory body or a person appointed by the authority or body to take proceedings, the court may include in those costs the reasonable market cost of any work conducted by the authority or body.
- (3) A document which—
  - (a) sets out charges for work similar to any work conducted by an appropriate authority or public statutory body; or
  - (b) purports to estimate the reasonable market cost of any work conducted by such an authority or body—

and which is signed by, or on behalf of, a person who purports to be a person who charges for doing any work similar to that conducted by the authority or body is evidence of the reasonable market cost of work conducted by the authority or body.

No. 6705  
s. 8A

### **39 Appropriate authority may issue written notice**

- (1) Without limiting or derogating from the provisions of section 38, if a prohibited discharge occurs or the appropriate authority is satisfied that a prohibited discharge is likely to occur from any place on land or from any apparatus used in a transfer operation, the appropriate authority may by notice in writing addressed to and served on the occupier of the place on land or the person in



charge of the apparatus or the occupier or person in charge of any place on land used for, or apparatus used in, a transfer operation require—

- (a) that any operation or activity in, on, or involving the use of the place on land or apparatus concerned be terminated; or
- (b) that all or a specified part of the oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance contained in the place on land or apparatus concerned or any part of that place or apparatus be removed; or
- (c) that the required removal of oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance from the place on land or apparatus concerned be carried out in a specified manner and to a specified place; or
- (d) that all or a specified part of the oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance in the place on land or apparatus concerned be retained there; or
- (e) that—
  - (i) no oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance; or
  - (ii) no further oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance; or
  - (iii) no oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance in excess of a specified amount—

- be received into the place on land or apparatus concerned; or
- (f) that any restrictions specified in the notice be complied with in the reception, or transfer of oil, oily mixture, liquid substance, mixture containing a liquid substance, or undesirable substance into, from or within the place on land or apparatus concerned; or
  - (g) that any equipment or machinery in or used with the place on land or apparatus concerned be operated or put into operating condition; or
  - (h) that specified repair or reconstruction work be carried out on the place on land or apparatus concerned or any part of that place or apparatus.
- (2) If a notice under subsection (1) is addressed to and served on the occupier of any place on land and any requirement specified in the notice is not complied with as soon as possible or (as the case requires) within the time (if any) specified in the notice, the occupier of that place is guilty of an indictable offence and liable to a penalty of not more than 500 penalty units.
- (3) If a requirement of a notice under subsection (1) is not complied with as soon as possible or within the time (if any) specified in the notice, the appropriate authority may cause the requirement to be complied with and for that purpose any officer of the authority or any other person authorised by the authority, acting in accordance with a warrant issued by a magistrate and using any force that is necessary and without doing unnecessary damage, may enter any place on land and may—

S. 39(3)  
amended by  
No. 57/1989  
s. 3(Sch.  
item 126.1).

- (a) take possession to any extent that is required of any vessel, place on land or apparatus used in a transfer operation; and
  - (b) take and retain possession of any substance or thing; and
  - (c) use and operate any machinery or equipment.
- (4) The appropriate authority may recover all costs and expenses incurred by it in or in connection with any exercise of the powers conferred by subsection (3) from the occupier of the place on land or the person in charge of the apparatus, as the case requires.
- (5) Costs and expenses recoverable under this section may be recovered in the course of proceedings for an offence under subsection (2) or may be recovered in any court of competent jurisdiction as a debt due to the appropriate authority even if no proceedings have been taken in respect of the offence.
- (6) A notice under this section may be served on a person—
- (a) by delivering the notice to the person personally; or
  - (b) by leaving the notice at the place on land or apparatus referred to in the notice with a person who is apparently not less than 18 years of age and who apparently has at that time the control or management of the land or apparatus.

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**Ss 40–44  
repealed.<sup>1</sup>**

No. 6705  
ss 22, 23.

#### **45 Power of Minister with respect to prohibited discharges**

- (1) If a prohibited discharge is occurring from a vessel, or the Minister is satisfied that a prohibited discharge is likely to occur from a vessel, the Minister may, for the purpose of preventing or reducing the extent of pollution or likely pollution of State waters, by notice in writing addressed to the owner of the vessel and served in accordance with this section do all or any of the following—
- (a) require any action to be taken in relation to the vessel or its cargo (including ballast, stores and fuel), or the vessel and its cargo, that is specified in the notice, by the time specified in the notice and such action may include—
    - (i) action to prevent a prohibited discharge occurring from the vessel; and
    - (ii) the removal of oil, an oily mixture, a liquid substance or a mixture containing a liquid substance, or an undesirable substance from the vessel, or a specified part of the vessel, in any manner that may be specified; and
    - (iii) the removal of the vessel to a specified place;
  - (b) prohibit the removal of the vessel from a place specified in the notice except with, and in accordance with, the approval of the Minister; or
  - (c) prohibit the removal from the vessel of any cargo (including ballast, stores and fuel) specified in the notice except with, and in accordance with, the approval of the Minister.

- (2) More than one notice may be served in respect of a vessel under subsection (1) and a subsequent notice may revoke or vary an earlier notice and, if an earlier notice is varied, it has effect as varied from the time when the other notice is served.
- (3) Service of a notice under subsection (1) in respect of a vessel must be effected—
  - (a) by serving it personally on the owner of the vessel or, if the owner is a company, on a director, secretary or other officer of the company; or
  - (b) by serving it personally on the agent of the vessel or, if the agent is a company, on a director, secretary or other officer of the company; or
  - (c) by serving it personally on the operator of the vessel or, if for any reason (including the absence of the operator from the vessel) it is not practicable to serve the notice on the operator, by handing it to any person on board the vessel who appears to be an officer of the vessel.
- (4) If service cannot be effected on any person under subsection (3), the notice must be taken to be properly served if its contents are transmitted to the operator or person in command of the vessel by any manner in which receipt of the contents is acknowledged by any person on board the vessel to have been received and understood.
- (5) A statement in writing purporting to be made and signed by a person employed as a communications officer whose duties include the transmission of messages to vessels at sea that he or she caused the contents of a notice under subsection (1) to be transmitted to a vessel at sea and received an acknowledgment of the message from some

person purporting to be on board the vessel is evidence, until the contrary is proved, of service of the contents of the notice on the operator of the vessel.

S. 45(6)  
inserted by  
No. 46/1991  
s. 45.

- (6) In this section, *prohibited discharge* has the same meaning as in section 38.

No. 6705  
ss 24–26.

#### **46 Non-compliance with notice under section 45(1)**

- (1) If a notice under section 45(1) is served in respect of a vessel and a requirement specified in the notice is not complied with or a prohibition specified in it is contravened, the owner of the vessel is guilty of an indictable offence and liable to a penalty of not more than 500 penalty units.
- (2) It is a defence to a charge under subsection (1) for the person charged to prove—
  - (a) that the failure to comply with the notice resulted from the need to save life at sea; or
  - (b) that compliance with the notice was not reasonably practicable in the circumstances.
- (3) If a requirement specified in a notice under section 45(1) is not complied with, the Minister may, whether or not the owner of the vessel has been convicted of an offence under subsection (1), cause such things to be done as the Minister thinks proper for the carrying out of the action required by the notice to be carried out.
- (4) If—
  - (a) a notice under section 45(1) is served in respect of a vessel which is not a tanker; and
  - (b) a requirement specified in the notice is not complied with or a prohibition specified in it is contravened; and

- (c) a prohibited discharge occurs from the vessel because the requirement was not complied with or the prohibition was contravened—

the Minister may, whether or not the owner of the vessel has been convicted of an offence under subsection (1), cause any things to be done that the Minister thinks proper to prevent, or reduce the extent of, the pollution of State waters or any part of the Victorian coast or to remove or reduce the effects of that pollution.

- (5) Subject to subsection (6), the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under subsection (3) or (4) in relation to a vessel—

- (a) is a debt due to the Crown by, and may be recovered from, the owner of the vessel; and
  - (b) is a charge on the vessel—

and the vessel may be detained by a person authorised by the Minister until the amount is paid or security for its payment is provided to the satisfaction of the Minister.

- (6) Subsection (5) does not apply in relation to the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under subsection (4) in relation to a prohibited discharge that has occurred from a vessel if—

- (a) the failure of the owner of the vessel to comply with the notice under section 45(1) resulted from the need to save life at sea; or
  - (b) compliance with the notice was not reasonably practicable in the circumstances.

No. 6705 s. 27.

#### **47 Prevention of pollution caused by escape of oil**

(1) In this section—

***adjusted net tonnage***, in relation to a tanker, means the number of tons that would be the net tonnage of the tanker if, in ascertaining that tonnage by reference to the gross tonnage of the tanker in accordance with the normal rules for measuring the tonnage of tankers, no deduction were made from the gross tonnage of the tanker in respect of engine-room space;

***incident*** means an occurrence or a series of occurrences having the same origin;

***oil*** includes an oily mixture, a liquid substance or a mixture containing a liquid substance;

***owner***, in relation to a tanker from which oil has escaped, means the owner of the tanker at the time the incident that caused the escape occurred or, if the incident consisted of a series of occurrences having the same origin, at the time of the first of the occurrences;

***third party***, in relation to a tanker, means any person other than—

- (a) the owner of the tanker; or
- (b) a servant or agent of the owner of the tanker; or
- (c) the operator, an officer or other member of the crew of the tanker or of any other tanker also owned by the owner of the tanker;

***tonnage factor***, in relation to a tanker, means a number equal to the number of tons included in the adjusted net tonnage of the tanker or, if the tanker cannot be measured in accordance with the normal rules for



measuring the tonnage of tankers, a number equal to 40% of the number of tons of oil that the tanker is capable of carrying in bulk as cargo and, for the purpose of this definition, one ton of oil is to be taken to occupy 40 cubic feet of space.

- (2) If oil escapes from a tanker, the Minister may, whether or not a notice has been served in respect of the tanker under section 45(1) and whether or not any notice so served has been complied with, cause such things to be done as the Minister thinks proper to prevent, or reduce the extent of, the pollution of State waters or any part of the Victorian coast or to remove or reduce the effects of that pollution.
- (3) If oil escapes from a tanker the owner of the tanker is liable to pay—
  - (a) the amount of any expense or other liability incurred by the Minister in, or by reason of, the exercise of his or her powers under subsection (2) in relation to the oil; and
  - (b) the amount of any damage to the environment or a State resource caused by contamination resulting from the escape of the oil; and
  - (c) the amount of any loss or damage suffered by any person caused by contamination resulting from the escape of the oil—

but, if the oil escaped without the fault or privity of the owner, the owner is liable only to the extent that the total of those amounts does not exceed the maximum liability applicable to the tanker under subsection (6) in relation to that incident.

- (4) The amount of any liability under paragraph (a) or (b) of subsection (3)—
- (a) is a debt due to the Crown by, and may be recovered from, the owner of the tanker; and
  - (b) is a charge on the tanker—
- and the tanker may be detained by a person authorised by the Minister until the amount is paid or security for its payment is provided to the satisfaction of the Minister.
- (5) Subsection (3) does not apply in relation to a tanker or the owner of a tanker if the owner of the tanker proves that the escape of the oil—
- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or
  - (b) was wholly caused by an act or omission done by a third party with intent to cause damage; or
  - (c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.
- (6) For the purposes of subsection (3) the maximum liability applicable to a tanker in relation to an incident that resulted in the escape of oil from a tanker without the fault or privity of the owner is—

- (a) an amount calculated by multiplying the amount of \$220 by the tonnage factor applicable to the tanker; or
- (b) the amount of \$23 240 000—

S. 47(6)(a)  
amended by  
No. 46/1991  
s. 46(a).

S. 47(6)(b)  
amended by  
No. 46/1991  
s. 46(b).

whichever amount is the less.

- (7) If oil has escaped from two or more tankers without the actual fault or privity of each owner and it is not reasonably practicable to identify the oil that has escaped from a particular tanker, all the oil that has escaped from those tankers is, for the purposes of this section, to be taken to have escaped from each of those tankers, but the Crown is not, by virtue of this subsection, entitled to recover from the owners of those tankers amounts that in the aggregate exceed the total amount of the expenses and liabilities incurred by the Minister in the exercise of his or her powers under subsection (2) in relation to the oil.

#### **48 Power to prosecute**

No. 6705 s. 19.

Any officer of an appropriate authority or any other person who is authorised in writing by an appropriate authority to do so either generally or in any particular case may prosecute for an offence under this Part or the regulations made for the purposes of this Part.

#### **49 Application of penalties**

No. 6705 s. 18.  
S. 49  
amended by  
No. 82/1995  
s. 161.

Any money that is recovered by way of fine for an offence against this Part or the regulations made for the purposes of this Part must be paid into the Consolidated Fund.

No. 6705 s. 17.

## **50 Evidence**

- (1) In any proceedings for an offence under this Part—
- (a) any record kept in pursuance of, or for the purposes of, this Part is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the record; and
  - (b) a copy of an entry in such a record, being a copy purporting to be certified by the person by whom the record is required to be kept as a true copy of the entry, is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the entry; and
  - (c) a document purporting to be such a record or purporting to be such a certified copy of an entry in such a record is, unless the contrary is proved, to be taken to be such a record or certified copy, as the case requires; and
  - (d) a map, plan or chart of any State waters purporting to be certified by an appropriate authority or by a person appointed by an appropriate authority for the purpose is admissible in evidence and, in the absence of evidence to the contrary, is proof of any matter that is apparent from, or can be calculated from, the map, plan or chart.
- (2) A statement in writing purporting to be signed by an officer of an appropriate authority or any other person authorised by an appropriate authority in that behalf—

No. 6705 s. 20.

- (a) to the effect that any person has been generally or specially appointed by the appropriate authority—
  - (i) to investigate any prohibited discharge or suspected prohibited discharge under section 41; or
  - (ii) to report to it under section 43 regarding the proper observance of, and the adequacy of, the prohibitions, restrictions and obligations imposed by or under this Part; or
  - (iii) to prosecute for an offence under this Part or the regulations made for the purposes of this Part; or
- (b) to the effect that any dispensation has been directed, any exemption has been granted or any conditions have been imposed or that any variation or revocation of any such condition, exemption or dispensation has been made under section 44—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters specified in the statement.

## **51 Service**

**No. 6705  
s. 17A**

Without limiting or derogating from the provisions of section 101, a notice, summons or other document required or permitted to be served on the owner or operator of a vessel for the purposes of this Part may be served on the agent of the vessel personally or by post and, when so served, must be taken to have been served on the owner or operator.

## 52 Delegation

The Minister may, by instrument, delegate to any person, any of his or her powers under this Part, other than this power of delegation.

Pt 6  
(Headings  
and ss 53–59)  
amended by  
Nos 57/1989  
s. 3(Sch.  
items 126.2,  
126.3),  
77/2001  
s. 31(1)(b)  
(2)(a),  
repealed by  
No. 65/2010  
s. 390(1).

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## Part 7—Marine infringements

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S. 60  
amended by  
Nos 82/1995  
s. 156(3)(4),  
77/2001  
s. 31(1)(e),  
32/2006 s. 69,  
repealed by  
No. 65/2010  
s. 390(2).

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S. 61  
amended by  
Nos 57/1989  
s. 3(Sch.  
items 126.4,  
126.5),  
51/1996 s. 15,  
32/2006 s. 70,  
68/2009  
s. 97(Sch.  
item 84.4),  
repealed by  
No. 65/2010  
s. 390(2).

### 61A Effect of certain transport safety infringements

S. 61A  
(Heading)  
inserted by  
No. 65/2010  
s. 389A(1) (as  
amended by  
Nos 78/2011  
s. 36, 43/2012  
s. 3(Sch.  
item 29.1)).

S. 61A  
inserted by  
No. 20/1993  
s. 12.

(1) Section 61 and Division 5 of Part 2 of the  
**Infringements Act 2006** does not apply to an  
offence under section 28(1)(b), (e) or (f) in  
circumstances where—

S. 61A(1)  
amended by  
No. 32/2006  
s. 71(1).

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 7—Marine infringements

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S. 61A(1)(a)  
substituted by  
No. 94/2003  
s. 34(14).

- (a) the concentration of alcohol—
  - (i) in the blood of the person is less than 0.15 grams per 100 millilitres of blood; or
  - (ii) in the breath of the person is less than 0.15 grams per 210 litres of exhaled air—
- as the case requires; and
- (b) the offence is a first offence having regard to the provisions of section 27(2).

S. 61A(2)  
amended by  
No. 65/2010  
s. 389A(2) (as  
amended by  
No. 78/2011  
s. 36).

- (2) Subject to section 61B, a transport safety infringement notice that is issued in respect of an offence referred to in subsection (1) takes effect, 28 days after the date of the notice, as a conviction for the offence specified in the notice, unless the person to whom the notice was issued objects, within that time and in accordance with this section, to the transport safety infringement notice.

S. 61A(3)  
amended by  
No. 65/2010  
s. 389A(3) (as  
amended by  
No. 78/2011  
s. 36).

- (3) Despite subsection (2), if a transport safety infringement notice is withdrawn under subsection (7)(b) the person to whom the notice was issued must for all purposes be taken not to have been convicted of the offence specified in the notice.

S. 61A(4)  
amended by  
No. 65/2010  
s. 389A(4) (as  
amended by  
No. 78/2011  
s. 36).

- (4) A person may object to the transport safety infringement notice by giving notice in writing of the objection to the person specified for that purpose in the transport safety infringement notice.

- (5) A notice of objection must state—

S. 61A(5)(a)  
amended by  
No. 65/2010  
s. 389A(5) (as  
amended by  
No. 78/2011  
s. 36).

- (a) that the person to whom the transport safety infringement notice was issued refuses to pay the penalty; and



- |   |   |
|---|---|
| <p>(b) that the person requests that the matter be dealt with by a court; and</p> <p>(c) that the person intends to defend any charge arising out of the facts specified in the transport safety infringement notice.</p>   | <p>S. 61A(5)(c) amended by No. 65/2010 s. 389A(5) (as amended by No. 78/2011 s. 36).</p>                                |
| <p>(6) The giving of notice of objection to the transport safety infringement notice has the effect that—</p>   |   |
| <p>(a) the transport safety infringement notice is cancelled; and</p>   | <p>S. 61A(6) amended by No. 65/2010 s. 389A(6) (as amended by No. 78/2011 s. 36).</p>                                   |
| <p>(b) the person to whom the transport safety infringement notice was issued may only be proceeded against by filing a charge-sheet charging the alleged offence.</p>  | <p>S. 61A(6)(b) amended by Nos 68/2009 s. 97(Sch. item 84.5), 65/2010 s. 389A(6) (as amended by No. 78/2011 s. 36).</p> |
| <p>(7) If a transport safety infringement notice is issued in respect of an offence referred to in subsection (1) and it subsequently appears that the offence in respect of which the notice was issued is not a transport safety infringement of a kind that is prescribed for the purposes of Division 4B of Part VII of the <b>Transport (Compliance and Miscellaneous) Act 1983</b>—</p> | <p>S. 61A(7) amended by No. 65/2010 s. 389A(7) (a)(b) (as amended by No. 78/2011 s. 36).</p>                            |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
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S. 61A(7)(a)  
amended by  
No. 65/2010  
s. 389A(7)(c)  
(as amended  
by  
No. 78/2011  
s. 36).

(a) the transport safety infringement notice operates as if the transport safety infringement were so prescribed; and

S. 61A(7)(b)  
amended by  
Nos 65/2010  
s. 389A(7)(d)  
(as amended  
by  
No. 78/2011  
s. 36), 37/2014  
s. 10(Sch.  
item 106.10).

(b) any police officer may withdraw the transport safety infringement notice by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which is in the prescribed form; and

S. 61A(7)(c)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 84.5).

(c) the person may be proceeded against by filing a charge-sheet charging the alleged offence.

S. 61A(8)  
inserted by  
No. 32/2006  
s. 71(2),  
amended by  
No. 65/2010  
s. 389A(8) (as  
amended by  
No. 78/2011  
s. 36).

(8) A transport safety infringement notice to which this section applies may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days after the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice in the prescribed form.

S. 61A(9)  
inserted by  
No. 32/2006  
s. 71(2),  
amended by  
No. 65/2010  
s. 389A(9) (as  
amended by  
No. 78/2011  
s. 36).

(9) If the appropriate amount specified in the notice as the penalty for the transport safety infringement has been paid before the notice is withdrawn the amount so paid must be refunded on the notice of withdrawal being given.

**61B Extension of time to object if no actual notice**

S. 61B  
inserted by  
No. 20/1993  
s. 12.

- (1) If a transport safety infringement notice that is issued in respect of an offence referred to in section 61A(1) is not delivered personally to the person to whom it was issued, and that person is not in fact aware, before the notice takes effect as a conviction, that it had been issued, the person may, within 7 days after becoming aware of it, apply in accordance with the regulations to the Magistrates' Court to have the time for objecting to the notice extended.
- (2) The court must not grant an extension of time unless it is satisfied that the person was not in fact aware, before the transport safety infringement notice took effect as a conviction, that it had been issued.
- (3) If the court grants an extension of time, and if a notice of objection is given, in accordance with section 61A(4) or with any order made by the court, before the expiry of the extended time, the giving of the notice has the effect that—
- (a) the conviction is set aside; and
  - (ab) any cancellation, disqualification or suspension that resulted from the conviction is set aside; and
  - (ac) anything done by the person before he or she became aware that the transport safety infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, that resulted from the conviction must be taken not to constitute that offence; and

S. 61B(1)  
amended by  
No. 65/2010  
s. 389B(1) (as  
amended by  
No. 78/2011  
s. 36).

S. 61B(2)  
amended by  
No. 65/2010  
s. 389B(2) (as  
amended by  
No. 78/2011  
s. 36).

S. 61B(3)(ab)  
inserted by  
No. 93/2000  
s. 12(1).

S. 61B(3)(ac)  
inserted by  
No. 93/2000  
s. 12(1),  
amended by  
No. 65/2010  
s. 389B(3) (as  
amended by  
No. 78/2011  
s. 36).

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S. 61B(3)(b)  
amended by  
Nos 32/2006  
s. 71(3)(a)(b),  
65/2010  
s. 389B(3) (as  
amended by  
No. 78/2011  
s. 36), 47/2014  
s. 282 (as  
amended by  
No. 29/2016  
s. 55).

S. 61B(3)(c)  
amended by  
No. 65/2010  
s. 389B(3) (as  
amended by  
No. 78/2011  
s. 36).

S. 61B(3)(d)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 84.6).

S. 61B(3A)  
inserted by  
No. 93/2000  
s. 12(2),  
amended by  
No. 65/2010  
s. 389B(4) (as  
amended by  
No. 78/2011  
s. 36).

S. 61B(3A)(b)  
amended by  
No. 65/2010  
s. 389B(4)(c)  
(as amended  
by  
No. 78/2011  
s. 36).

- (b) any of the procedures set out in the **Infringements Act 2006** or the **Fines Reform Act 2014** that are being used for the enforcement of the amount specified in the transport safety infringement notice as payable in respect of the offence for which the notice was issued must be discontinued and any warrant issued under that Act ceases to have effect; and
  - (c) the transport safety infringement notice is cancelled; and
  - (d) the person may only be proceeded against by filing a charge-sheet charging the alleged offence.
- (3A) In the case of any subsequent proceedings in relation to an offence in respect of which a transport safety infringement notice was issued to which subsection (3) applies, any period of cancellation, disqualification or suspension of a marine licence that—
- (a) resulted from the conviction; and
  - (b) occurred after the person became aware that the transport safety infringement notice had been issued—

must be taken into account by the court if the court convicts the person, or finds the person guilty, of the offence in respect of which the transport safety infringement notice was issued.

- (4) Despite anything to the contrary in any other Act, a charge-sheet referred to in subsection (3)(d) may be filed not later than 12 months after the date of the notice of objection.

S. 61B(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 84.7).

**61BA Suspension of marine licence for drink-operator transport safety infringements**

S. 61BA  
(Heading)  
inserted by  
No. 65/2010  
s. 389C(1) (as  
amended by  
Nos 78/2011  
s. 36, 43/2012  
s. 3(Sch.  
item 29.2)).

- (1) If—

S. 61BA  
inserted by  
No. 93/2000  
s. 13 (as  
amended by  
No. 23/2001  
s. 25).

- (a) a transport safety infringement notice has been issued to a person in respect of an offence under section 28(1) involving a registered recreational vessel or a regulated hire and drive vessel where the breath or blood alcohol concentration specified in the notice is the prescribed concentration of alcohol or more than the prescribed concentration of alcohol; and
- (b) the person to whom the transport safety infringement notice has been issued does not give a notice of objection to the transport safety infringement notice and the 28 day period has expired—

S. 61BA(1)(a)  
amended by  
Nos 90/2001  
s. 7(1),  
94/2003  
s. 34(15),  
65/2010  
s. 389C(2)(a)  
(as  
amended by  
No. 78/2011  
s. 36).

S. 61BA(1)(b)  
amended by  
No. 65/2010  
s. 389C(2)(b)  
(as  
amended by  
No. 78/2011  
s. 36).

and—

- (c) if the person is the holder of a marine licence, the licence is suspended for a period of 6 months; or

S. 61BA(1)(c)  
amended by  
No. 65/2010  
s. 389C(2)(c)  
(as  
amended by  
No. 78/2011  
s. 36).

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S. 61BA(1)(d)  
amended by  
No. 65/2010  
s. 389C(2)(d)  
(as  
amended by  
No. 78/2011  
s. 36).

(d) if the person is not the holder of a marine licence, he or she is disqualified from obtaining such a licence for a period of 6 months.

S. 61BA(2)  
amended by  
Nos 90/2001  
s. 7(1),  
65/2010  
s. 389C  
(3)(a)(b)(e) (as  
amended by  
No. 78/2011  
s. 36).

(2) If a person to whom a transport safety infringement notice has been issued in respect of an offence under section 28(1) involving a registered recreational vessel or a regulated hire and drive vessel—

S. 61BA(2)(a)  
amended by  
Nos 90/2001  
s. 7(2),  
65/2010  
s. 389C(3)(c)  
(as  
amended by  
No. 78/2011  
s. 36).

(a) is exempted under the regulations from the requirements of section 115, 115A or 115B because he or she holds an appropriate marine licence issued in another State, Territory or country; and

S. 61BA(2)(b)  
amended by  
No. 65/2010  
s. 389C(3)(d)  
(as  
amended by  
No. 78/2011  
s. 36).

(b) does not give notice of objection to the transport safety infringement notice and the 28 day period has expired—

the person is disqualified from operating a vessel in State waters for the period for which he or she would have been suspended under this section had the person held a marine licence under this Act.

(3) Any suspension or disqualification under subsection (1) or disqualification under subsection (2) takes effect on the expiry of the 28 day period.

(4) When any suspension has taken effect, the Director may, by notice in writing served on the person whose marine licence is suspended, require that person to surrender any marine licence document to the Director.

S. 61BA(4)  
amended by  
Nos 77/2001  
s. 31(1)(b),  
65/2010  
s. 389C(4) (as  
amended by  
No. 78/2011  
s. 36).

(5) A person on whom a notice is served under subsection (4) must comply with the notice within the time specified in it.

Penalty: 5 penalty units.

(6) Payment of a penalty in respect of a transport safety infringement notice to which subsection (1) applies may be made in accordance with the regulations.

S. 61BA(6)  
amended by  
No. 65/2010  
s. 389C(5) (as  
amended by  
No. 78/2011  
s. 36).

(7) A person to whom subsection (1) applies must, on or before the expiry of the 28 day period, surrender his or her marine licence document in accordance with the regulations.

S. 61BA(7)  
amended by  
No. 65/2010  
s. 389C(6) (as  
amended by  
No. 78/2011  
s. 36).

S. 61C  
(Heading)  
amended by  
No. 47/2014  
s. 283(1) (as  
amended by  
No. 29/2016  
s. 56).

S. 61C  
inserted by  
No. 20/1993  
s. 12,  
amended by  
Nos 74/2000  
s. 3(Sch. 1  
item 76),  
94/2003 s. 39,  
substituted by  
No. 32/2006  
s. 72,  
amended by  
Nos 65/2010  
s. 389D (as  
amended by  
No. 78/2011  
s. 36), 47/2014  
s. 283(2) (as  
amended by  
No. 29/2016  
s. 56).

S. 62  
amended by  
No. 57/1989  
s. 3(Sch.  
items 126.6–  
126.8),  
20/1993 s. 13,  
68/2009  
s. 97(Sch.  
items 84.8,  
84.9),  
repealed by  
No. 65/2010  
s. 390(2).

## **61C Application of the Infringements Act 2006 or the Fines Reform Act 2014 to certain offences**

Subject to sections 61A and 61B, the procedures set out in the **Infringements Act 2006** or the **Fines Reform Act 2014** may be used for the enforcement of the amount specified as payable in a transport safety infringement notice issued in respect of the offence referred to in section 61A(1).

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**Pt 7A  
(Heading and  
ss 62A–62ZY)  
inserted by  
No. 93/2009  
s. 5,  
amended by  
No. 74/2010  
s. 34,  
repealed by  
No. 65/2010  
s. 390(3) (as  
amended by  
No. 78/2011  
s. 37).**

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Pt 8 (Heading)  
amended by  
No. 77/2001  
s. 4(a).

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## Part 8—Administration and enforcement

Pt 8 Div. 1  
(Heading)  
amended by  
No. 77/2001  
s. 4(b),  
repealed by  
No. 65/2010  
s. 391(1).

\* \* \* \*

S. 63  
amended by  
No. 82/1995  
s. 162(1)(2),  
substituted by  
No. 77/2001  
s. 5,  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 123),  
repealed by  
No. 6/2010  
s. 201(1)  
(Sch. 5  
item 2.1) (as  
amended by  
No. 45/2010  
s. 20).

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S. 64  
amended by  
No. 82/1995  
s. 163(a)(b),  
repealed by  
No. 77/2001  
s. 31(2)(b).

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| *  | * | * | * | * | <p><b>S. 65</b><br/>amended by<br/>Nos 82/1995<br/>s. 164(1),<br/>28/1999 s. 6,<br/>93/2000 s. 14,<br/>77/2001 s. 6,<br/>6/2010<br/>s. 201(1)<br/>(Sch. 5<br/>item 2.3) (as<br/>amended by<br/>No. 45/2010<br/>s. 20),<br/>78/2011 s. 46,<br/>repealed by<br/>No. 65/2010<br/>s. 391(3) (as<br/>amended by<br/>No. 78/2011<br/>s. 38(1)).</p> |
| <b>66 Powers of the Director</b>   |   |   |   |   | <p><b>S. 66</b><br/>substituted by<br/>No. 77/2001<br/>s. 7.</p>  |
| (1) Without derogating from any other functions or powers of the Director under any other Act, the Director may do all things that are necessary or convenient to enable him or her to carry out his or her functions under this Act, including, but not limited to, the powers specified in Schedule 4. |   |   |   |   | <p><b>S. 66(1)</b><br/>substituted by<br/>No. 6/2010<br/>s. 201(1)<br/>(Sch. 5<br/>item 2.2) (as<br/>amended by<br/>No. 45/2010<br/>s. 20).</p>   |
| (2) Despite subsection (1), the Director must not exercise any of his or her powers in a way that is inconsistent with the regulations.  |   |   |   |   |   |
| *  | * | * | * | * | <p><b>S. 66(3)(4)</b><br/>repealed by<br/>No. 6/2010<br/>s. 201(1)<br/>(Sch. 5<br/>item 2.1) (as<br/>amended by<br/>No. 45/2010<br/>s. 20).</p>   |

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| S. 66A<br>inserted by<br>No. 82/1995<br>s. 165,<br>amended by<br>Nos 77/2001<br>s. 31(2)(c)(d),<br>85/2003<br>s. 34(2)(b),<br>9/2004<br>s. 25(Sch.<br>item 2),<br>repealed by<br>No. 65/2010<br>s. 391(2).     | * | * | * | * | * |
| S. 66B<br>inserted by<br>No. 82/1995<br>s. 165,<br>amended by<br>Nos 77/2001<br>s. 31(1)(b)(2)<br>(e), 85/2003<br>s. 34(2)(b),<br>9/2004<br>s. 25(Sch.<br>item 3),<br>repealed by<br>No. 65/2010<br>s. 391(2). | * | * | * | * | * |
| S. 66C<br>inserted by<br>No. 82/1995<br>s. 165,<br>amended by<br>No. 77/2001<br>s. 31(2)<br>(f)–(h),<br>repealed by<br>No. 65/2010<br>s. 391(2).   | * | * | * | * | * |
| S. 66D<br>inserted by<br>No. 82/1995<br>s. 165,<br>amended by<br>No. 77/2001<br>s. 31(1)(b),<br>repealed by<br>No. 66/2012<br>s. 21.   | * | * | * | * | * |

**67 Criminal liability of officers of bodies corporate—  
failure to exercise due diligence**

S. 67  
amended by  
No. 77/2001  
s. 31(1)(b),  
repealed by  
No. 65/2010  
s. 391(2),  
new s. 67  
inserted by  
No. 55/2017  
s. 42.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), 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.
- (2) For the purposes of subsection (1), the following provisions are specified—
  - (a) section 39(2);
  - (b) section 46(1).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
  - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

*body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;

*officer*, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

S. 68  
amended by  
No. 82/1995  
s. 166,  
substituted by  
No. 77/2001  
s. 8,  
repealed by  
No. 6/2010  
s. 201(1)  
(Sch. 5  
item 2.1) (as  
amended by  
No. 45/2010  
s. 20).

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | <p><b>S. 69</b><br/>substituted by<br/>No. 82/1995<br/>s. 167(1),<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1),<br/>substituted by<br/>No. 77/2001<br/>s. 8,<br/>amended by<br/>Nos 85/2003<br/>s. 34(2)(b),<br/>9/2004<br/>s. 25(Sch.<br/>item 4),<br/>repealed by<br/>No. 6/2010<br/>s. 201(1)<br/>(Sch. 5<br/>item 2.1) (as<br/>amended by<br/>No. 45/2010<br/>s. 20).</p> |
| * | * | * | * | * | <p><b>S. 70</b><br/>substituted by<br/>Nos 82/1995<br/>s. 167(1),<br/>77/2001 s. 8,<br/>amended by<br/>Nos 85/2003<br/>s. 34(2)(b),<br/>9/2004<br/>s. 25(Sch.<br/>item 5),<br/>repealed by<br/>No. 65/2010<br/>s. 391(2).</p>  |
| * | * | * | * | * | <p><b>S. 71</b><br/>substituted by<br/>Nos 82/1995<br/>s. 167(1),<br/>77/2001 s. 8,<br/>repealed by<br/>No. 65/2010<br/>s. 391(2).</p>   |
| * | * | * | * | * | <p><b>Ss 72–74</b><br/>substituted by<br/>No. 82/1995<br/>s. 167(1),<br/>repealed by<br/>No. 77/2001<br/>s. 31(2)(b).</p>  |

Pt 8 Div. 1A  
(Heading and  
ss 71A, 71B)  
inserted by  
No. 78/2011  
s. 47.

## **Division 1A—Functions and powers of the Secretary**

S. 71AA  
inserted by  
No. 66/2012  
s. 22.

### **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.

S. 71A  
inserted by  
No. 78/2011  
s. 47.

### **71A Functions of the Secretary**

- (1) The functions of the Secretary are—
  - (a) to advise the Minister on the operation and administration of marine pollution legislation; and
  - (b) to ensure adequate means exist in ports to enable an effective response to marine pollution incidents within ports; and
  - (c) to take action to deal with marine pollution incidents occurring in State waters that are not port waters; and



- (d) after consultation with the Environment Protection Authority, to develop, review, co-ordinate and administer the Victorian Marine Pollution Contingency Plan.
- (2) Without derogating from any other functions or powers of the Secretary under any other Act, the Secretary may do all things that are necessary or convenient to enable him or her to carry out his or her functions under this Act, including the powers specified in section 71B.

**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.
- (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.

**S. 71B**  
inserted by  
No. 78/2011  
s. 47,  
substituted by  
No. 66/2012  
s. 23.

- (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.

S. 71C  
inserted by  
No. 66/2012  
s. 24.

#### **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.

S. 71D  
inserted by  
No. 66/2012  
s. 24.

#### **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

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- (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.

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | <b>Pt 8 Div. 2<br/>(Heading and<br/>ss 72–75)<br/>inserted by<br/>No. 9/2004<br/>s. 10,<br/>repealed by<br/>No. 65/2010<br/>s. 391(5).</b>   |
| * | * | * | * | * | <b>Pt 8 Div. 2A<br/>(Heading and<br/>ss 76, 77)<br/>inserted by<br/>No. 9/2004<br/>s. 10,<br/>amended by<br/>No. 17/2009<br/>s. 3(3)–(5),<br/>repealed by<br/>No. 65/2010<br/>s. 391(5).</b> |
| * | * | * | * | * | <b>Ss 74A–74C<br/>inserted by<br/>No. 82/1995<br/>s. 167(1),<br/>repealed by<br/>No. 77/2001<br/>s. 31(2)(b).</b>  |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| S. 74D<br>inserted by<br>No. 82/1995<br>s. 167(1),<br>amended by<br>No. 44/2001<br>s. 3(Sch.<br>item 78),<br>repealed by<br>No. 77/2001<br>s. 31(2)(b).   | * | * | * | * | * |
| S. 74E<br>inserted by<br>No. 82/1995<br>s. 167(1),<br>repealed by<br>No. 77/2001<br>s. 31(2)(b).  | * | * | * | * | * |
| S. 75<br>repealed by<br>No. 77/2001<br>s. 31(2)(b).   | * | * | * | * | * |
| S. 76<br>amended by<br>No. 20/1993<br>s. 21,<br>substituted by<br>No. 82/1995<br>s. 168,<br>amended by<br>No. 93/2000<br>s. 15,<br>repealed by<br>No. 77/2001<br>s. 31(2)(b).                           | * | * | * | * | * |
| S. 77<br>amended by<br>Nos 44/1989<br>s. 41(Sch. 2<br>item<br>26.2(a)(b)),<br>85/1992 s. 11,<br>82/1995<br>s. 154(11)<br>(a)(b), 46/1998<br>s. 7(Sch. 1),<br>repealed by<br>No. 77/2001<br>s. 31(2)(b). | * | * | * | * | * |

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | <p><b>Pt 8 Div. 2</b><br/>(Heading and ss 78–81)<br/>amended by Nos 31/1994 s. 4(Sch. 2 items 50.1, 50.2), 46/1998 s. 7(Sch. 1), 11/2001 s. 3(Sch. items 46.1, 46.2), 77/2001 s. 31(1)(b), repealed by No. 77/2001 s. 31(2)(b).</p>  |
| * | * | * | * | * | <p><b>Pt 8 Div. 3</b><br/>(Heading and ss 82–85)<br/>amended by Nos 57/1989 s. 3(Sch. item 126.9), 20/1993 s. 22, 82/1995 s. 169, 52/1998 s. 311(Sch. 1 item 57), 28/1999 ss 7–10, 93/2000 s. 16, 77/2001 ss 10–15, 31(1)(b), 11/2002 s. 3(Sch. 1 item 44), 9/2004 ss 11–13, 10/2006 s. 5, 17/2009 s. 3(6), 69/2009 s. 54(Sch. Pt 2 item 34), repealed by No. 65/2010 s. 391(5).</p> |

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| Pt 8 Div. 4<br>(Heading and<br>ss 85AA–<br>85AG)<br>inserted by<br>No. 17/2009<br>s. 4,<br>repealed by<br>No. 65/2010<br>s. 391(5).  | * | * | * | * | * |
| Pt 8 Div. 5<br>(Heading and<br>ss 85AH–<br>85AM)<br>inserted by<br>No. 17/2009<br>s. 4,<br>repealed by<br>No. 65/2010<br>s. 391(5).  | * | * | * | * | * |
| Pt 8 Div. 6<br>(Heading and<br>ss 85AN–<br>85AP)<br>inserted by<br>No. 17/2009<br>s. 4,<br>repealed by<br>No. 65/2010<br>s. 391(5).  | * | * | * | * | * |
| Pt 8 Div. 7<br>(Heading and<br>ss 85AQ–<br>85AW)<br>inserted by<br>No. 17/2009<br>s. 4,<br>amended by<br>Nos 68/2009<br>s. 97(Sch.<br>item 84.10),<br>93/2009 ss 6,<br>7, 19/2010<br>s. 16, 65/2011<br>s. 107(Sch.<br>item 9),<br>repealed by<br>No. 65/2010<br>s. 391(5). | * | * | * | * | * |

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Part 9—General

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## Part 9—General

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | <b>S. 85A</b><br>inserted by<br>No. 82/1995<br>s. 170,<br>amended by<br>No. 77/2001<br>s. 31(3)(b),<br>repealed by<br>No. 65/2010<br>s. 392(1).  |
| * | * | * | * | * | <b>S. 86</b><br>repealed by<br>No. 65/2010<br>s. 392(1).   |
| * | * | * | * | * | <b>S. 86A</b><br>inserted by<br>No. 93/2000<br>s. 17,<br>repealed by<br>No. 65/2010<br>s. 392(1).  |
| * | * | * | * | * | <b>S. 87</b><br>amended by<br>Nos 82/1995<br>s. 154(12)(13),<br>77/2001<br>s. 31(1)(b)<br>(3)(c), 9/2004<br>s. 14, 69/2007<br>s. 68, 45/2010<br>s. 48,<br>repealed by<br>No. 65/2010<br>s. 392(1). |
| * | * | * | * | * | <b>S. 88</b><br>repealed by<br>No. 65/2010<br>s. 392(1).   |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| S. 89<br>amended by<br>Nos 77/2001<br>ss 25, 31(1)(b),<br>69/2009<br>s. 54(Sch. Pt 1<br>item 36.1),<br>repealed by<br>No. 65/2010<br>s. 392(1). | * | * | * | * | * |
| S. 89A<br>inserted by<br>No. 93/2000<br>s. 18,<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| S. 90<br>amended by<br>No. 20/1993<br>s. 23,<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| S. 91<br>substituted by<br>No. 77/2001<br>s. 26,<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| S. 91A<br>inserted by<br>No. 82/1995<br>s. 171,<br>amended by<br>No. 77/2001<br>s. 31(1)(b),<br>repealed by<br>No. 65/2010<br>s. 392(1).        | * | * | * | * | * |



Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 9—General

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | <p><b>S. 92</b><br/>amended by<br/>Nos 82/1995<br/>s. 154(14),<br/>28/1999 s. 11,<br/>substituted by<br/>No. 77/2001<br/>s. 27,<br/>amended by<br/>No. 9/2004<br/>s. 25(Sch.<br/>item 6),<br/>repealed by<br/>No. 65/2010<br/>s. 392(1).</p> |
| * | * | * | * | * | <p><b>S. 92A</b><br/>inserted by<br/>No. 82/1995<br/>s. 172,<br/>amended by<br/>Nos 77/2001<br/>s. 31(1)(b),<br/>85/2003<br/>s. 34(2)(b),<br/>9/2004<br/>s. 25(Sch.<br/>item 7),<br/>repealed by<br/>No. 65/2010<br/>s. 392(1).</p>          |
| * | * | * | * | * | <p><b>S. 93</b><br/>amended by<br/>Nos 82/1995<br/>s. 154(14),<br/>77/2001<br/>s. 31(3)(d),<br/>9/2004<br/>s. 25(Sch.<br/>item 8),<br/>repealed by<br/>No. 65/2010<br/>s. 392(1).</p>  |
| * | * | * | * | * | <p><b>S. 94</b><br/>amended by<br/>Nos 20/1993<br/>s. 24, 82/1995<br/>s. 173, 28/1999<br/>s. 12(a),<br/>9/2004 s. 15,<br/>repealed by<br/>No. 65/2010<br/>s. 392(1).</p>   |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 9—General

|  |   |   |   |   |   |
|--|---|---|---|---|---|
| S. 95<br>amended by<br>No. 28/1999<br>s. 12(b),<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| S. 96<br>amended by<br>Nos 20/1993<br>s. 25, 82/1995<br>s. 174, 28/1999<br>s. 12(c),<br>repealed by<br>No. 65/2010<br>s. 392(1).                     | * | * | * | * | * |
| S. 97<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| S. 98<br>substituted by<br>No. 82/1995<br>s. 175,<br>amended by<br>No. 77/2001<br>s. 31(1)(b)<br>(3)(e),<br>repealed by<br>No. 65/2010<br>s. 392(1). | * | * | * | * | * |
| S. 99<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |
| Ss 99A, 99B<br>inserted by<br>No. 77/2001<br>s. 28,<br>repealed by<br>No. 65/2010<br>s. 392(1).  | * | * | * | * | * |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
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Part 9—General

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | Ss 99C–99F<br>inserted by<br>No. 9/2004<br>s. 16,<br>repealed by<br>No. 65/2010<br>s. 392(1). |
| * | * | * | * | * | S. 100<br>repealed by<br>No. 65/2010<br>s. 392(1).  |

## 101 Service

- (1) If under this Act, the regulations or regulations made under the **Port Management Act 1995** that relate to local ports a notice, summons or other document is required or permitted to be served on a person it may be served in or out of the State by leaving it on board a vessel of the crew of which the person is a member with the person in charge of the vessel.
- (2) If under this Act, the regulations or regulations made under the **Port Management Act 1995** that relate to local ports a notice, summons or other document is required or permitted to be served on a person in respect of a recreational vessel, it may be served by posting it, addressed to the person, to the registered address, or the residential address, of the owner of the vessel.
- (3) If under this Act, the regulations or regulations made under the **Port Management Act 1995** that relate to local ports a notice, summons or other document is required or permitted to be served on the owner or master of a vessel, it may be served by serving it on the agent for the vessel or on the agent for the owner or operator of the vessel.

S. 101(1)  
amended by  
Nos 9/2004  
s. 17, 45/2010  
s. 49(1).

S. 101(2)  
amended by  
Nos 9/2004  
s. 17, 45/2010  
s. 49(2).

S. 101(3)  
inserted by  
No. 82/1995  
s. 176,  
amended by  
Nos 77/2001  
s. 29(1),  
9/2004 s. 17,  
45/2010  
s. 49(3).

S. 101(4)  
inserted by  
No. 77/2001  
s. 29(2).

- (4) It is sufficient service for the purposes of this section if the notice, summons or other document is placed in a secure manner, having regard to the circumstances, in a conspicuous position near the controls of the vessel.

S. 101A  
inserted by  
No. 93/2000  
s. 19,  
amended by  
Nos 77/2001  
s. 31(1)(b),  
17/2009  
s. 3(7),  
repealed by  
No. 65/2010  
s. 392(1).

\* \* \* \*

Ss 102–104  
repealed by  
No. 65/2010  
s. 392(1).

\* \* \* \*

## 105 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 5.

S. 105(1A)  
inserted by  
No. 9/2004  
s. 18,  
repealed by  
No. 65/2010  
s. 392(2).

\* \* \* \*

- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

- (b) so as to make, as respects the cases in relation to which the power is exercised—
  - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
  - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
  - (a) so as to apply—
    - (i) at all times or at a specified time; or
    - (ii) throughout the whole of the State or State waters or in a specified part of the State or State waters; or
    - (iii) as specified in both subparagraphs (i) and (ii); and
  - (b) so as to require a matter affected by the regulations to be—
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
    - (iii) as specified in both subparagraphs (i) and (ii); and
  - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

- (i) wholly or partially or as amended by the regulations; or
- (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
- (iii) as formulated, issued, prescribed or published from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

S. 105(4)  
amended by  
No. 77/2001  
s. 31(1)(b).

- (4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Director causes notice to be published in the Government Gazette of that amendment the document, code, standard, rule, specification or method is to be taken to have not been so amended.

S. 105(5)  
repealed by  
No. 65/2010  
s. 392(2).

\* \* \* \* \*

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Part 9—General

|  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
|  | * | * | * | * | * | S. 106<br>amended by<br>No. 77/2001<br>s. 31(1)(b),<br>repealed by<br>No. 65/2010<br>s. 392(1). |
|  | * | * | * | * | * | S. 107<br>repealed by<br>No. 65/2010<br>s. 392(1).  |
| <b>107A Supreme Court—limitation of jurisdiction</b>   |   |   |   |   |   | S. 107A<br>inserted by<br>No. 20/1993<br>s. 14.   |
| It is the intention of this section to alter or vary<br>section 85 of the <b>Constitution Act 1975</b> to the<br>extent necessary to prevent the bringing before the<br>Supreme Court of an action of a kind referred to<br>in section 31A(7). |   |   |   |   |   |   |
|  | * | * | * | * | * | S. 107AA<br>inserted by<br>No. 93/2000<br>s. 20,<br>repealed by<br>No. 65/2010<br>s. 392(1).    |
| <b>107B Supreme Court—limitation of jurisdiction</b>   |   |   |   |   |   | S. 107B<br>inserted by<br>No. 17/1994<br>s. 22.   |
| It is the intention of this section to alter or vary<br>section 85 of the <b>Constitution Act 1975</b> to the<br>extent necessary to prevent the bringing before the<br>Supreme Court of an action of a kind referred to<br>in section 31(9E). |   |   |   |   |   |   |
| <b>107C Supreme Court—limitation of jurisdiction</b>   |   |   |   |   |   | S. 107C<br>inserted by<br>No. 14/2000<br>s. 29.   |
| It is the intention of sections 31(9E) and 32(9),<br>as amended by section 27 of the <b>Road Safety<br/>(Amendment) Act 2000</b> , to alter or vary<br>section 85 of the <b>Constitution Act 1975</b> .  |   |   |   |   |   |   |

S. 108  
 amended by  
 Nos 82/1995  
 s. 177, 77/2001  
 s. 31(1)(b),  
 78/2010  
 s. 24(Sch. 1  
 items 18.1,  
 18.2),  
 repealed by  
 No. 65/2010  
 s. 392(1),  
 new s. 108  
 inserted by  
 No. 36/2018  
 s. 38(2).

## 108 Transitional provision—Emergency Management Legislation Amendment Act 2018

On and from the day that Part 3 of the **Emergency Management Legislation Amendment Act 2018** comes into operation, the Victorian Marine Pollution Contingency Plan as in force immediately before that day is taken to be established in accordance with the state emergency management plan prepared in accordance with Part 6A of the **Emergency Management Act 2013**.

S. 108A  
 inserted by  
 No. 9/2004  
 s. 19,  
 repealed by  
 No. 65/2010  
 s. 392(1).

\* \* \* \*

S. 109  
 amended by  
 Nos 31/1994  
 s. 3(Sch. 1  
 item 40),  
 93/2000 s. 21,  
 78/2010  
 s. 24(Sch. 1  
 items 18.3,  
 18.4),  
 repealed by  
 No. 65/2010  
 s. 392(1).

\* \* \* \*

S. 110  
 amended by  
 Nos 46/1991  
 s. 47, 20/1993  
 s. 27(2)(a)(b),  
 35/1996  
 s. 453(Sch. 1  
 item 55),  
 68/2009  
 s. 97(Sch.  
 items 84.11,  
 84.12),  
 repealed by  
 No. 65/2010  
 s. 392(2).

\* \* \* \*



Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | <p><b>Pt 10</b><br/>(Heading and<br/>ss 111–147)<br/>amended by<br/>Nos 20/1993<br/>s. 27(2)(c),<br/>23/1995<br/>ss 5, 6 (as<br/>amended by<br/>No. 27/1996<br/>s. 3), 82/1995<br/>s. 178, 27/1996<br/>s. 5, 51/1996<br/>ss 16, 17,<br/>77/2001<br/>ss 16(2), 17,<br/>repealed by<br/>No. 85/2003<br/>s. 34(1)(b),<br/>new Pt 10<br/>(Heading and<br/>ss 111, 112)<br/>inserted by<br/>No. 9/2004<br/>s. 20,<br/>repealed by<br/>No. 65/2010<br/>s. 393(1).</p> |
| * | * | * | * | * | <p><b>Pt 10AA</b><br/>(Headings<br/>and ss 112A–<br/>112I)<br/>inserted by<br/>No. 93/2009<br/>s. 8,<br/>amended by<br/>No. 19/2010<br/>s. 84,<br/>repealed by<br/>No. 65/2010<br/>s. 393(1).</p>   |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988

Pt 10A  
(Heading and  
ss 113–135)  
inserted by  
No. 93/2000  
s. 22,  
amended by  
Nos 77/2001  
s. 31(1)(b)(3)(f)  
(g), 90/2001  
ss 5, 6,  
7(3)–(7), 8, 9,  
68/2009  
s. 97(Sch.  
item 84.13),  
69/2009  
s. 54(Sch. Pt 1  
item 36.2),  
93/2009 s. 48,  
30/2010 s. 88,  
78/2011 s. 49,  
repealed by  
No. 65/2010  
s. 393(1).

\* \* \* \* \*

Pt 11  
(Heading and  
ss 148–161)  
amended by  
Nos 52/1988  
s. 159(4)(b),  
20/1993  
s. 27(2)(d),  
4/1996  
s. 134(6),  
93/2000 s. 23,  
77/2001 ss 9,  
21(2), 90/2001  
s. 7(1),  
46/2002 s. 16,  
9/2004 s. 21,  
30/2010 s. 89,  
repealed by  
No. 65/2010  
s. 393(1).

\* \* \* \* \*

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedules

## Schedules

### Schedule 1—Minimum disqualification periods

Section 28A

Sch. 1  
repealed by  
No. 65/2010  
s. 393(2),  
new Sch. 1  
inserted by  
No. 66/2012  
s. 18.

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

Marine (Drug, Alcohol and Pollution Control) Act 1988  
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Schs 2, 3  
repealed by  
No. 65/2010  
s. 393(2).

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\* \* \* \* \*

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

Sch. 4  
(Heading)  
amended by  
No. 77/2001  
s. 31(3)(h).

## Schedule 4—Particular powers of the Director

Section 66

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 1)<br>repealed by<br>No. 65/2010<br>s. 393(3)(a). |
| * | * | * | * | * | Sch. 4<br>items 1–3<br>repealed by<br>No. 65/2010<br>s. 393(3)(a).                        |
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 4)<br>repealed by<br>No. 9/2004<br>s. 22(1)(a).   |
| * | * | * | * | * | Sch. 4<br>items 4–6<br>repealed by<br>No. 9/2004<br>s. 22(1)(b).                          |
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 7)<br>repealed by<br>No. 65/2010<br>s. 393(3)(b). |
| * | * | * | * | * | Sch. 4<br>items 7, 8<br>repealed by<br>No. 65/2010<br>s. 393(3)(b).                       |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

|  |   |   |   |   |   |
|--|---|---|---|---|---|
| Sch. 4<br>item 8AA<br>inserted by<br>No. 28/1999<br>s. 13(1),<br>repealed by<br>No. 65/2010<br>s. 393(3)(b).                                       | * | * | * | * | * |
| Sch. 4<br>(Heading<br>preceding<br>item 8A)<br>inserted by<br>No. 82/1995<br>s. 179(1),<br>repealed by<br>No. 65/2010<br>s. 393(3)(c).             | * | * | * | * | * |
| Sch. 4 item 8A<br>inserted by<br>No. 82/1995<br>s. 179(1),<br>amended by<br>No. 9/2004<br>s. 22(2),<br>repealed by<br>No. 65/2010<br>s. 393(3)(c). | * | * | * | * | * |
| Sch. 4 item 8B<br>inserted by<br>No. 82/1995<br>s. 179(1),<br>repealed by<br>No. 65/2010<br>s. 393(3)(c).  | * | * | * | * | * |
| Sch. 4<br>(Heading<br>preceding<br>item 8C)<br>inserted by<br>No. 28/1999<br>s. 13(2),<br>repealed by<br>No. 65/2010<br>s. 393(3)(d).              | * | * | * | * | * |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | Sch. 4<br>items 8C–8F<br>inserted by<br>No. 28/1999<br>s. 13(2),<br>repealed by<br>No. 65/2010<br>s. 393(3)(d). |
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 9)<br>repealed by<br>No. 65/2010<br>s. 393(3)(e).                       |
| * | * | * | * | * | Sch. 4 item 9<br>repealed by<br>No. 65/2010<br>s. 393(3)(e).  |
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 10)<br>repealed by<br>No. 65/2010<br>s. 393(3)(f).                      |
| * | * | * | * | * | Sch. 4<br>items 10–13<br>repealed by<br>No. 65/2010<br>s. 393(3)(f).  |
| * | * | * | * | * | Sch. 4<br>(Heading<br>preceding<br>item 14)<br>repealed by<br>No. 65/2010<br>s. 393(3)(g).                      |
| * | * | * | * | * | Sch. 4<br>items 14, 15<br>repealed by<br>No. 65/2010<br>s. 393(3)(g).   |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

Sch. 4  
(Heading  
preceding  
item 15A)  
inserted by  
No. 82/1995  
s. 179(2).

## TONNAGE

Sch. 4  
item 15A  
inserted by  
No. 82/1995  
s. 179(2).

15A. To determine the tonnage of vessels.

Sch. 4  
(Heading  
preceding  
item 16)  
repealed by  
No. 65/2010  
s. 393(3)(h).

\* \* \* \*

Sch. 4  
items 16–18  
repealed by  
No. 65/2010  
s. 393(3)(h).

\* \* \* \*

Sch. 4  
item 18A  
inserted by  
No. 82/1995  
s. 179(3),  
amended by  
Nos 77/2001  
s. 31(3)(i),  
85/2003  
s. 34(2)(b),  
substituted by  
No. 9/2004  
s. 25(Sch.  
item 9(a)),  
repealed by  
No. 65/2010  
s. 393(3)(h).

\* \* \* \*



Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | Sch. 4<br>item 18B<br>inserted by<br>No. 82/1995<br>s. 179(3),<br>amended by<br>Nos 85/2003<br>s. 34(2)(b),<br>9/2004<br>s. 25(Sch.<br>item 9(b)),<br>repealed by<br>No. 65/2010<br>s. 393(3)(h).                                |
| * | * | * | * | * | Sch. 4<br>items 18C,<br>18D<br>inserted by<br>No. 82/1995<br>s. 179(3),<br>repealed by<br>No. 65/2010<br>s. 393(3)(h).   |
| * | * | * | * | * | Sch. 4<br>items 18E,<br>18F<br>inserted by<br>No. 82/1995<br>s. 179(3),<br>amended by<br>No. 85/2003<br>s. 34(2)(b),<br>substituted by<br>No. 9/2004<br>s. 25(Sch.<br>item 9(c)),<br>repealed by<br>No. 65/2010<br>s. 393(3)(h). |
| * | * | * | * | * | Sch. 4<br>item 18G<br>inserted by<br>No. 82/1995<br>s. 179(3),<br>amended by<br>Nos 85/2003<br>s. 34(2)(b),<br>9/2004<br>s. 25(Sch.<br>item 9(d)),<br>repealed by<br>No. 65/2010<br>s. 393(3)(h).                                |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
Schedule 4—Particular powers of the Director

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| Sch. 4<br>item 18H<br>inserted by<br>No. 82/1995<br>s. 179(3),<br>repealed by<br>No. 65/2010<br>s. 393(3)(h).   | * | * | * | * | * |
| Sch. 4<br>(Heading<br>preceding<br>item 19)<br>repealed by<br>No. 6/2010<br>s. 201(1)<br>(Sch. 5 item 3)<br>(as amended<br>by No.<br>45/2010 s. 20).                  | * | * | * | * | * |
| Sch. 4<br>item 19<br>substituted by<br>No. 20/1993<br>s. 26,<br>repealed by<br>No. 6/2010<br>s. 201(1)<br>(Sch. 5 item 3)<br>(as amended<br>by No.<br>45/2010 s. 20). | * | * | * | * | * |

## AGREEMENTS

- |  |  |
|--|--|
| Sch. 4<br>item 20<br>amended by<br>No. 82/1995<br>s. 154(15)(a).                               | 20. To enter into agreements or contracts with government departments or other public statutory bodies with respect to—  |
| Sch. 4<br>item 20(a)<br>amended by<br>Nos 82/1995<br>s. 154(15)(b),<br>77/2001<br>s. 31(3)(i). | (a) the exercise by the Director and the government department or other public statutory body of their respective functions or the carrying out or providing by the Director for the government department or other public statutory body of any works or services; or |

Marine (Drug, Alcohol and Pollution Control) Act 1988  
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Schedule 4—Particular powers of the Director

|   |   |
|---|---|
| (b) the use or joint use by the Director and the government department or other public statutory body of their respective facilities or the services of their respective staff. | Sch. 4<br>item 20(b)<br>amended by<br>Nos 82/1995<br>s. 154(15)(b),<br>77/2001<br>s. 31(3)(i).  |
| 21. To enter into agreements on marine matters with a department or public statutory body of the Commonwealth or of another State or a Territory of the Commonwealth.           |   |
| 21A. To enter into agreements with any person or body concerning the provision of services or facilities in relation to marine pollution incidents.                             | Sch. 4<br>item 21A<br>inserted by<br>No. 77/2001<br>s. 20.  |
| * * * * *   | Sch. 4<br>(Heading<br>preceding<br>item 22)<br>inserted by<br>No. 82/1995<br>s. 179(4),<br>repealed by<br>No. 78/2011<br>s. 48.   |
| * * * * *   | Sch. 4 item 22<br>inserted by<br>No. 82/1995<br>s. 179(4),<br>substituted by<br>No. 77/2001<br>s. 21(1),<br>amended by<br>Nos 9/2004<br>s. 25(Sch.<br>item 10),<br>45/2010 s. 50,<br>repealed by<br>No. 78/2011<br>s. 48. |

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Schedule 5—Subject matter for regulations

## Schedule 5—Subject matter for regulations

Section 105

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| Sch. 5<br>(Heading<br>preceding<br>item 1)<br>repealed by<br>No. 65/2010<br>s. 393(4)(a).                 | * | * | * | * | * |
| Sch. 5<br>items 1–5<br>repealed by<br>No. 65/2010<br>s. 393(4)(a).  | * | * | * | * | * |
| Sch. 5 item 6<br>amended by<br>No. 77/2001<br>s. 31(3)(j),<br>repealed by<br>No. 65/2010<br>s. 393(4)(a). | * | * | * | * | * |
| Sch. 5 item 7<br>repealed by<br>No. 65/2010<br>s. 393(4)(a).  | * | * | * | * | * |
| Sch. 5 item 8<br>amended by<br>No. 77/2001<br>s. 31(3)(j),<br>repealed by<br>No. 65/2010<br>s. 393(4)(a). | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 9)<br>repealed by<br>No. 9/2004<br>s. 23(1)(a).                   | * | * | * | * | * |
| Sch. 5<br>items 9–12<br>repealed by<br>No. 9/2004<br>s. 23(1)(b).   | * | * | * | * | * |

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | Sch. 5 item 13 amended by No. 77/2001 s. 31(3)(j), repealed by No. 9/2004 s. 23(1)(b).                       |
| * | * | * | * | * | Sch. 5 items 14, 15 repealed by No. 9/2004 s. 23(1)(b).  |
| * | * | * | * | * | Sch. 5 item 16 amended by No. 77/2001 s. 31(3)(j), repealed by No. 9/2004 s. 23(1)(b).                       |
| * | * | * | * | * | Sch. 5 (Heading preceding item 17) repealed by No. 65/2010 s. 393(4)(b).                                     |
| * | * | * | * | * | Sch. 5 items 17–23 repealed by No. 65/2010 s. 393(4)(b).   |
| * | * | * | * | * | Sch. 5 (Heading preceding item 23A) inserted by No. 82/1995 s. 180(1), repealed by No. 65/2010 s. 393(4)(c). |
| * | * | * | * | * | Sch. 5 items 23A–23E inserted by No. 82/1995 s. 180(1), repealed by No. 65/2010 s. 393(4)(c).                |

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| Sch. 5<br>(Heading<br>preceding<br>item 24)<br>repealed by<br>No. 65/2010<br>s. 393(4)(d).                 | * | * | * | * | * |
| Sch. 5<br>items 24, 25<br>repealed by<br>No. 65/2010<br>s. 393(4)(d).                                      | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 26)<br>repealed by<br>No. 65/2010<br>s. 393(4)(e).                 | * | * | * | * | * |
| Sch. 5 item 26<br>amended by<br>No. 9/2004<br>s. 23(1)(c),<br>repealed by<br>No. 65/2010<br>s. 393(4)(e).  | * | * | * | * | * |
| Sch. 5 item 27<br>repealed by<br>No. 65/2010<br>s. 393(4)(e).  | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 28)<br>repealed by<br>No. 65/2010<br>s. 393(4)(f).                 | * | * | * | * | * |
| Sch. 5 item 28<br>amended by<br>No. 77/2001<br>s. 31(3)(j),<br>repealed by<br>No. 65/2010<br>s. 393(4)(f). | * | * | * | * | * |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| * | * | * | * | * | Sch. 5<br>item 28A<br>inserted by<br>No. 93/2000<br>s. 24(1),<br>repealed by<br>No. 65/2010<br>s. 393(4)(f).      |
| * | * | * | * | * | Sch. 5 items<br>28B–28D<br>inserted by<br>No. 77/2001<br>s. 30(a),<br>repealed by<br>No. 65/2010<br>s. 393(4)(f). |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 29)<br>repealed by<br>No. 65/2010<br>s. 393(4)(g).                        |
| * | * | * | * | * | Sch. 5<br>items 29, 30<br>repealed by<br>No. 65/2010<br>s. 393(4)(g).   |
| * | * | * | * | * | Sch. 5<br>item 30A–30C<br>inserted by<br>No. 77/2001<br>s. 30(b),<br>repealed by<br>No. 65/2010<br>s. 393(4)(g).  |
| * | * | * | * | * | Sch. 5<br>items 31–34<br>repealed by<br>No. 65/2010<br>s. 393(4)(g).  |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 35)<br>repealed by<br>No. 65/2010<br>s. 393(4)(h).                        |

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No. 52 of 1988  
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Sch. 5  
items 35, 36  
repealed by  
No. 65/2010  
s. 393(4)(h).

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MARINE INFRINGEMENTS

Sch. 5 item 38  
substituted by  
No. 32/2006  
s. 73(1).

37. Prescribing marine infringements for which a marine infringement notice may be served.
38. In addition to the requirements of section 13 of the **Infringements Act 2006**, prescribing any particulars, not inconsistent with that Act, to be contained in an infringement notice.
39. The form of a withdrawal notice.
40. The method of service of a withdrawal notice.
41. The penalties for any marine infringements.

Sch. 5 item 42  
repealed by  
No. 32/2006  
s. 73(2).

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43. The form of the document setting out particulars of prior convictions.
44. The form of notices to be endorsed on the document setting out particulars of prior convictions.

Sch. 5  
Heading  
preceding  
item 44A  
inserted by  
No. 93/2009  
s. 9(1).

IMPOUNDMENT, IMMOBILISATION AND  
FORFEITURE OF RECREATIONAL VESSELS

Sch. 5  
item 44A  
inserted by  
No. 93/2009  
s. 9(1).

- 44A. The manner and circumstances in which a recreational vessel may be immobilised.



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|   |  |
|---|--|
| 44B. The matters that must be included in notices issued, given or served under Part 7A.  | Sch. 5<br>item 44B<br>inserted by<br>No. 93/2009<br>s. 9(1).   |
| 44C. Procedures and requirements to be complied with before a recreational vessel or an item or thing left in or on a recreational vessel may be recovered. | Sch. 5<br>item 44C<br>inserted by<br>No. 93/2009<br>s. 9(1).   |
| 44D. The circumstances in which a motor vehicle is not eligible for an impoundment or immobilisation order or a forfeiture order under section 62Q or 62R.  | Sch. 5<br>item 44D<br>inserted by<br>No. 93/2009<br>s. 9(1).   |
| * * * *   | Sch. 5<br>(Heading<br>preceding<br>item 45)<br>repealed by<br>No. 65/2010<br>s. 393(4)(i).             |
| * * * *   | Sch. 5<br>items 45, 46<br>repealed by<br>No. 65/2010<br>s. 393(4)(i).                                  |
| * * * *   | Sch. 5 item 47<br>amended by<br>No. 17/2009<br>s. 3(8),<br>repealed by<br>No. 65/2010<br>s. 393(4)(i). |
| * * * *   | Sch. 5<br>items 48–54<br>repealed by<br>No. 65/2010<br>s. 393(4)(i).                                   |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| Sch. 5 items 55, 56 amended by No. 77/2001 s. 31(3)(j), repealed by No. 65/2010 s. 393(4)(i). | * | * | * | * | * |
| Sch. 5 items 57, 58 repealed by No. 65/2010 s. 393(4)(i).                                     | * | * | * | * | * |
| Sch. 5 item 59 amended by No. 9/2004 s. 23(2), repealed by No. 65/2010 s. 393(4)(i).          | * | * | * | * | * |
| Sch. 5 (Heading preceding item 60) repealed by No. 65/2010 s. 393(4)(j).                      | * | * | * | * | * |
| Sch. 5 item 60 repealed by No. 65/2010 s. 393(4)(j).  | * | * | * | * | * |
| Sch. 5 items 60A—60G inserted by No. 82/1995 s. 180(2), repealed by No. 65/2010 s. 393(4)(j). | * | * | * | * | * |
| Sch. 5 item 60GA inserted by No. 77/2001 s. 30(c), repealed by No. 65/2010 s. 393(4)(j).      | * | * | * | * | * |

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | Sch. 5<br>items 60H–<br>60K<br>inserted by<br>No. 82/1995<br>s. 180(2),<br>repealed by<br>No. 65/2010<br>s. 393(4)(j). |
| * | * | * | * | * | Sch. 5<br>items 60L–<br>60P<br>inserted by<br>No. 77/2001<br>s. 30(d),<br>repealed by<br>No. 65/2010<br>s. 393(4)(j).  |
| * | * | * | * | * | Sch. 5<br>items 61, 62<br>repealed by<br>No. 65/2010<br>s. 393(4)(j).  |

## ALCOHOL

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| 62A. Devices for the purposes of section 29; the handling, storage, use and maintenance of those devices; the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results. | Sch. 5<br>Item 62A<br>inserted by<br>No. 5/1990<br>s. 18.      |
| 62B. The handling, storage, use and maintenance of breath analysing instruments used for the purposes of section 31 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results.               | Sch. 5<br>item 62B<br>inserted by<br>No. 5/1990<br>s. 18.      |
| 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.  | Sch. 5<br>item 62BA<br>inserted by<br>No. 66/2012<br>s. 19(a). |

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Sch. 5  
item 62BB  
inserted by  
No. 66/2012  
s. 19(a).

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

Sch. 5  
item 62BC  
inserted by  
No. 66/2012  
s. 19(a).

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.

Sch. 5  
item 62C  
inserted by  
No. 5/1990  
s. 18,  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 34.6),  
14/2000 s. 30,  
66/2012  
s. 19(b).

62C. The methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples or urine samples.

Sch. 5  
item 62CA  
inserted by  
No. 93/2000  
s. 24(2),  
amended by  
No. 68/2017  
s. 123.

62CA. The persons responsible for the safe-keeping of samples of blood and the methods of storage to be used by them.

Sch. 5  
item 62CB  
inserted by  
No. 93/2000  
s. 24(2),  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 106.11),  
68/2017 s. 123.

62CB. The delivering of portions of samples of blood to the people from whom they are taken and to police officers.

Sch. 5  
item 62D  
inserted by  
No. 5/1990  
s. 18.

62D. The methods to be used by analysts in determining the concentration of alcohol in a blood sample.

Marine (Drug, Alcohol and Pollution Control) Act 1988  
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|   |  |
|---|--|
| 62DA. The methods to be used by analysts in determining the presence of a substance in a blood, urine or oral fluid sample.                     | Sch. 5<br>item 62DA<br>inserted by<br>No. 66/2012<br>s. 19(c).                             |
| 62E. The procedures to be adopted in transmitting samples of blood, urine or oral fluid to an analyst for analysis.                             | Sch. 5<br>item 62E<br>inserted by<br>No. 5/1990<br>s. 18, 66/2012<br>s. 19(d).             |
| 62F. The regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood, urine or oral fluid samples. | Sch. 5<br>item 62F<br>inserted by<br>No. 5/1990<br>s. 18, 66/2012<br>s. 19(e).             |
| *                    *                    *                    *  | Sch. 5<br>(Heading<br>preceding<br>item 63)<br>repealed by<br>No. 65/2010<br>s. 393(4)(k). |
| *                    *                    *                    *  | Sch. 5 item 63<br>repealed by<br>No. 65/2010<br>s. 393(4)(k).                              |
| MARINE POLLUTION  | Sch. 5<br>(Heading<br>preceding<br>item 63A)<br>inserted by<br>No. 82/1995<br>s. 180(3).   |
| 63A. The implementation, administration and co-ordination of the Victorian Marine Pollution Contingency Plan.                                   | Sch. 5<br>item 63A<br>inserted by<br>No. 82/1995<br>s. 180(3).                             |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| Sch. 5<br>(Heading<br>preceding<br>item 64)<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                            | * | * | * | * | * |
| Sch. 5<br>items 64, 65<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).   | * | * | * | * | * |
| Sch. 5<br>items 65A,<br>65B<br>inserted by<br>No. 77/2001<br>s. 30(e),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l). | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 66)<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                            | * | * | * | * | * |
| Sch. 5<br>items 66–70<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).  | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 71)<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                            | * | * | * | * | * |
| Sch. 5<br>items 71–80<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).  | * | * | * | * | * |

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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 81)<br>inserted by<br>No. 82/1995<br>s. 180(4),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l). |
| * | * | * | * | * | Sch. 5<br>item 81<br>inserted by<br>No. 82/1995<br>s. 180(4),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                           |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 81AA)<br>inserted by<br>No. 93/2009<br>s. 9(2),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l). |
| * | * | * | * | * | Sch. 5<br>items 81AA,<br>81AB<br>inserted by<br>No. 93/2009<br>s. 9(2),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                 |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 81A)<br>inserted by<br>No. 90/2001<br>s. 10,<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).    |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| Sch. 5<br>items 81A–81I<br>inserted by<br>No. 90/2001<br>s. 10,<br>repealed by<br>No. 65/2010<br>s. 393(4)(I).  | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 82)<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(I).                        | * | * | * | * | * |
| Sch. 5<br>items 82–94<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(I).  | * | * | * | * | * |
| Sch. 5<br>items 95–99<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>amended by<br>No. 77/2001<br>s. 31(3)(I),<br>repealed by<br>No. 65/2010<br>s. 393(4)(I). | * | * | * | * | * |
| Sch. 5<br>items 100, 101<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(I).   | * | * | * | * | * |



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|   |   |   |   |   |  |
|---|---|---|---|---|--|
| * | * | * | * | * | Sch. 5<br>items 102, 103<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>amended by<br>No. 77/2001<br>s. 31(3)(j),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l). |
| * | * | * | * | * | Sch. 5<br>items 104, 105<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).  |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 106)<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                          |
| * | * | * | * | * | Sch. 5<br>item 106<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>amended by<br>No. 77/2001<br>s. 31(3)(j),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).       |
| * | * | * | * | * | Sch. 5<br>(Heading<br>preceding<br>item 107)<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).                          |

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|  |   |   |   |   |   |
|--|---|---|---|---|---|
| Sch. 5<br>item 107<br>inserted by<br>No. 93/2000<br>s. 25(Sch.),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).  | * | * | * | * | * |
| Sch. 5<br>(Heading<br>preceding<br>item 108)<br>inserted by<br>No. 77/2001<br>s. 30(f),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).   | * | * | * | * | * |
| Sch. 5<br>item 108<br>inserted by<br>No. 77/2001<br>s. 30(f),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).   | * | * | * | * | * |
| Sch. 5<br>item 109<br>inserted by<br>No. 9/2004<br>s. 23(3),<br>repealed by<br>No. 65/2010<br>s. 393(4)(l).  | * | * | * | * | * |
| Sch. 6<br>amended by<br>No. 20/1993<br>s. 27(1)(a)(b),<br>repealed by<br>No. 20/1993<br>s. 27(2)(c),<br>new Sch. 6<br>inserted by<br>No. 28/1999<br>s. 14,<br>amended by<br>No. 9/2004<br>s. 24,<br>repealed by<br>No. 65/2010<br>s. 393(5). | * | * | * | * | * |

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**Sch. 7**  
**inserted by**  
**No. 20/1993**  
**s. 15,**  
**repealed by**  
**No. 17/1994**  
**s. 20.**

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 27 October 1987*

*Legislative Council: 19 April 1988*

The long title for the Bill for this Act was "A Bill to re-enact with amendments the law relating to the registration and operation of vessels and the pollution of State waters, to implement certain international conventions, to repeal the **Marine Act 1958**, the **Motor Boating Act 1961**, the **Navigable Waters (Oil Pollution) Act 1960** and the **Harbor Boards Act 1958** and to amend the **Port of Melbourne Authority Act 1958**, the **Port of Geelong Authority Act 1958**, the **Port of Portland Authority Act 1958** and certain other Acts and for other purposes."

The **Marine Act 1988** was assented to on 31 May 1988 and came into operation as follows:

All of Act (*except* section 159(4)) on 20 December 1988: Special Gazette (No. 105) 20 December 1988 page 1; section 159(4) on 1 July 1989: Government Gazette 28 June 1989 page 1558.

The title of this Act was changed from the **Marine Act 1988** to the **Marine (Drug, Alcohol and Pollution Control) Act 1988** by section 375(1) of the **Marine Safety Act 2010**, No. 65/2010.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

### **Interpretation**

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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## 2 Table of Amendments

This publication incorporates amendments made to the **Marine (Drug, Alcohol and Pollution Control) Act 1988** by Acts and subordinate instruments.

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### **Transport (Amendment) Act 1989, No. 44/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* Ss 16, 39(3), Sch. 2 items 42.1, 42.11, 42.12 on 6.6.89: s. 2(2); s. 39(2) on 16.12.86: s. 2(3); s. 42(1) on 1.11.89: s. 2(4); s. 42(2) on 1.11.89: s. 2(5); s. 42(3) on 11.11.89: s. 2(6); rest of Act on 1.7.89: s. 2(1)  
*Current State:* All of Act in operation

### **Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:* All of Act in operation

### **Road Safety (Amendment) Act 1990, No. 5/1990**

*Assent Date:* 3.4.90  
*Commencement Date:* S. 18 on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

### **Pollution of Waters by Oil and Noxious Substances (Amendment) Act 1991, No. 46/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* 1.3.92: Government Gazette 19.2.92 p. 378  
*Current State:* All of Act in operation

### **Transport (Amendment) Act 1992, No. 85/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* Ss 1, 2 on 24.11.92: s. 2(1); rest of Act on 1.12.92: Special Gazette (No. 65) 1.12.92 p. 1  
*Current State:* All of Act in operation

### **Marine (Amendment) Act 1993, No. 20/1993**

*Assent Date:* 25.5.93  
*Commencement Date:* All of Act (*except* ss 16, 27(1)) on 25.5.93: s. 2(1); s. 16 on 6.4.93: s. 2(2); s. 27(1) on 31.5.88: s. 2 (3)  
*Current State:* All of Act in operation

### **Road Safety (Amendment) Act 1994, No. 17/1994**

*Assent Date:* 10.5.94  
*Commencement Date:* Ss 1, 2, 8 on 10.5.94: s. 2(1); rest of Act on 1.8.94: s. 2(3)  
*Current State:* All of Act in operation

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**Medical Practice Act 1994, No. 23/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* S. 118(Sch. 1 items 34.1–34.6) on 1.7.94: Government Gazette 23.6.94 p. 1672  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Financial Management (Consequential Amendments) Act 1994, No. 31/1994**

*Assent Date:* 31.5.94  
*Commencement Date:* S. 3(Sch. 1 item 40) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**; s. 4(Sch. 2 items 50.1, 50.2) on 1.1.95: Government Gazette 28.7.94 p. 2055  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Road Safety (Amendment) Act 1995, No. 7/1995**

*Assent Date:* 19.4.95  
*Commencement Date:* 19.4.95  
*Current State:* All of Act in operation

**Ports Acts (Amendment) Act 1995, No. 23/1995** (as amended by No. 27/1996)

*Assent Date:* 16.5.95  
*Commencement Date:* Ss 5, 6 on 16.11.95: Government Gazette 16.11.95 p. 3170  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Road Safety (Miscellaneous Amendments) Act 1995, No. 58/1995**

*Assent Date:* 20.6.95  
*Commencement Date:* S. 28 on 1.8.94: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Port Services Act 1995, No. 82/1995** (as amended by No. 27/1996)

*Assent Date:* 28.11.95  
*Commencement Date:* Ss 153(1), 169 on 14.12.95: Government Gazette 14.12.95 p. 3488—see **Interpretation of Legislation Act 1984**; ss 155–165, 170–180 on 1.1.96: Government Gazette 14.12.95 p. 3488; ss 166–168 on 6.2.96: Special Gazette (No. 6) 6.2.96 p. 1; ss 153(2), 154(1)–(4)(8)(11)–(15) on 1.3.96: Special Gazette (No. 14) 27.2.96 p. 1; s. 196(1)–(4) repealed by No. 27/1996 s. 4(2); s. 154(5)–(7)(9)(10) repealed by No. 27/1996 s. 4(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* Pt 15 (s. 33) on 1.8.94: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Superannuation Acts (Amendment) Act 1996, No. 4/1996**

*Assent Date:* 18.6.96  
*Commencement Date:* S. 134(6) on 18.6.96: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Statute Law Revision (Marine) Act 1996, No. 27/1996**

*Assent Date:* 24.9.96  
*Commencement Date:* S. 3 on 16.11.95: s. 2(2); ss 4(2), 5 on 14.12.95: s. 2(3); s. 4(1) on 1.3.96: s. 2(4); rest of Act on 24.9.96: s. 2(1)  
*Current State:* All of Act in operation

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 item 55) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Port Services and Marine (Amendment) Act 1996, No. 51/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* All of Act (*except* s. 13) on 26.11.96: s. 2(1); s. 13 on 14.12.95: s. 2(2)  
*Current State:* All of Act in operation

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 57) on 1.7.98: Government Gazette 18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine (Amendment) Act 1999, No. 28/1999**

*Assent Date:* 1.6.99  
*Commencement Date:* 1.6.99  
*Current State:* All of Act in operation



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**Road Safety (Amendment) Act 2000, No. 14/2000**

*Assent Date:* 18.4.00  
*Commencement Date:* Ss 27–30 on 1.12.00: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 76) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine (Amendment) Act 2000, No. 93/2000** (as amended by No. 23/2001)

*Assent Date:* 5.12.00  
*Commencement Date:* 3.12.01: Government Gazette 29.11.01 p. 2939  
*Current State:* All of Act in operation

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 46) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001, No. 23/2001**

*Assent Date:* 29.5.01  
*Commencement Date:* Ss 17–22 on 28.6.01: Government Gazette 21.6.01 p. 1339  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 78) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine (Further Amendment) Act 2001, No. 77/2001**

*Assent Date:* 27.11.01  
*Commencement Date:* Ss 18, 22, 23(1)(2), 24–26, 29 on 28.11.01: s. 2(1); ss 3–9, 31 on 7.2.02: s. 2(2); ss 10–15, 19–21, 23(3), 27, 28, 30 on 7.2.02: Government Gazette 31.1.02 p. 140; ss 16, 17 on 1.1.03: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Marine (Hire and Drive Vessels) Act 2001, No. 90/2001**

*Assent Date:* 11.12.01  
*Commencement Date:* Ss 8, 10 on 12.12.01: s. 2(1); ss 3–7, 9 on 1.2.02:  
Government Gazette 31.1.02 p. 140  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 44) on 7.2.02: s. 2(2)(e)  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Road Safety (Responsible Driving) Act 2002, No. 46/2002**

*Assent Date:* 22.10.02  
*Commencement Date:* S. 15 on 23.10.02: s. 2(1); s. 16 on 15.12.02:  
Government Gazette 31.10.02 p. 2906  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Port Services (Port Management Reform) Act 2003, No. 85/2003**

*Assent Date:* 11.11.03  
*Commencement Date:* S. 34(2) on 1.4.04: Government Gazette 1.4.04 p. 714;  
s. 34(1) on 1.7.04: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Road Safety (Amendment) Act 2003, No. 94/2003**

*Assent Date:* 25.11.03  
*Commencement Date:* Ss 34, 36–39 on 26.11.03: s. 2(1); s. 35 on 1.1.05:  
s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Marine (Amendment) Act 2004, No. 9/2004**

*Assent Date:* 11.5.04  
*Commencement Date:* Ss 3–25, Sch. on 1.7.04: Government Gazette 1.7.04  
p. 1843  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Monetary Units Act 2004, No. 10/2004**

*Assent Date:* 11.5.04  
*Commencement Date:* S. 15(Sch. 1 item 18) on 1.7.04: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
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**Transport Legislation (Miscellaneous Amendments) Act 2004, No. 49/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 3 on 17.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 123) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 34) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation (Safety Investigations) Act 2006, No. 10/2006**

*Assent Date:* 4.4.06  
*Commencement Date:* S. 5 on 1.8.06: Government Gazette 27.7.06 p. 1534  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006**

*Assent Date:* 13.6.06  
*Commencement Date:* Ss 69–73 on 1.7.06: Government Gazette 29.6.06 p. 1315  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment Act 2007, No. 69/2007**

*Assent Date:* 11.12.07  
*Commencement Date:* S. 68 on 12.12.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Miscellaneous Amendments Act 2009, No. 17/2009**

*Assent Date:* 12.5.09  
*Commencement Date:* Ss 4, 5 on 1.7.09: s. 2(2); s. 3 on 26.10.09: Government Gazette 22.10.09 p. 2688  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 84) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 36), (Sch. Pt 2 item 34) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* Ss 6–8, 9(2), 47, 48 on 17.12.09: Government Gazette 17.12.09 p. 3339; s. 3 on 1.11.10: Government Gazette 21.10.10 p. 2531; ss 4, 5, 9(1) on 1.9.11: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)**

*Assent Date:* 2.3.10  
*Commencement Date:* Ss 24(5)(Sch. 1 item 6), 201(1)(Sch. 5) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 35) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010**

*Assent Date:* 18.5.10  
*Commencement Date:* S. 84 on 22.5.10: Government Gazette 20.5.10 p. 988; s. 16 on 30.6.10: Government Gazette 10.6.10 p. 1149  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Justice Legislation Amendment Act 2010, No. 30/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* Ss 88–90 on 26.6.10: Government Gazette 24.6.10 p. 1274  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010**

*Assent Date:* 17.8.10  
*Commencement Date:* Ss 44–50 on 1.9.10: Special Gazette (No. 337) 24.8.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine Safety Act 2010, No. 65/2010** (as amended by Nos 78/2011, 43/2012)

*Assent Date:* 28.9.10  
*Commencement Date:* Ss 375–390, 391(1)–(3), (5), 392, 393 on 1.7.12: s. 2(2); s. 391(4) never proclaimed, repealed by No. 78/2011 s. 38(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 34 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Subordinate Legislation Amendment Act 2010, No. 78/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 24(Sch. 1 item 18) on 1.1.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Port of Hastings Development Authority) Act 2011, No. 38/2011**

*Assent Date:* 23.8.11  
*Commencement Date:* Ss 36–38 on 1.1.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011**

*Assent Date:* 22.11.11  
*Commencement Date:* S. 107(Sch. item 9) on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011, No. 78/2011**

*Assent Date:* 13.12.11  
*Commencement Date:* Ss 44–49 on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 4  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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

*Assent Date:* 7.11.12  
*Commencement Date:* Ss 3–24 on 1.12.12: Special Gazette (No. 373) 7.11.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine (Domestic Commercial Vessel National Law Application) Act 2013, No. 36/2013**

*Assent Date:* 18.6.13  
*Commencement Date:* Ss 84–88 on 1.7.13: Special Gazette (No. 226) 25.6.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Road Safety and Sentencing Acts Amendment Act 2013, No. 56/2013**

*Assent Date:* 24.9.13  
*Commencement Date:* S. 29 on 30.9.13: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Statute Law Revision Act 2013, No. 70/2013**

*Assent Date:* 19.11.13  
*Commencement Date:* S. 4(Sch. 2 item 29) on 1.12.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Emergency Management Act 2013, No. 73/2013**

*Assent Date:* 3.12.13  
*Commencement Date:* S. 96 on 1.7.14: Special Gazette (No. 148) 13.5.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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**Victoria Police Amendment (Consequential and Other Matters) Act 2014,  
No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 106) on 1.7.14: Special Gazette  
(No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Fines Reform Act 2014, No. 47/2014** (as amended by No. 29/2016)

*Assent Date:* 1.7.14  
*Commencement Date:* Ss 282, 283 on 31.12.17: Special Gazette (No. 443)  
19.12.17 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Road Legislation Amendment Act 2016, No. 5/2016**

*Assent Date:* 16.2.16  
*Commencement Date:* Ss 6–9 on 15.4.16: Special Gazette (No. 92) 12.4.16  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction)  
Act 2016, No. 10/2016**

*Assent Date:* 22.3.16  
*Commencement Date:* S. 167 on 7.6.16: Special Gazette (No. 177) 7.6.16  
p. 1; s. 179(Sch. 1 item 5) on 1.11.16: Special Gazette  
(No. 325) 25.10.16 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Ports and Marine Legislation Amendment Act 2017, No. 55/2017**

*Assent Date:* 8.11.17  
*Commencement Date:* Ss 39–42 on 31.12.17: Special Gazette (No. 433)  
12.12.17 p. 1; ss 34–38 on 31.1.18: Special Gazette  
(No. 433) 12.12.17 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

**Transport Legislation Amendment (Road Safety, Rail and Other Matters)  
Act 2017, No. 68/2017**

*Assent Date:* 19.12.17  
*Commencement Date:* S. 123 on 20.12.17: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Marine (Drug, Alcohol and Pollution  
Control) Act 1988**

Marine (Drug, Alcohol and Pollution Control) Act 1988  
No. 52 of 1988  
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**Oaths and Affirmations Act 2018, No. 6/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* S. 68(Sch. 2 item 85) on 1.3.19: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Emergency Management Legislation Amendment Act 2018, No. 36/2018**

*Assent Date:* 21.8.18  
*Commencement Date:* S. 38 on 30.9.20: Special Gazette (No. 494) 29.9.20 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Environment Protection Amendment Act 2018, No. 39/2018** (as amended by No. 11/2020)

*Assent Date:* 28.8.18  
*Commencement Date:* S. 42 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Marine and Fisheries Legislation Amendment Act 2019, No. 35/2019**

*Assent Date:* 22.10.19  
*Commencement Date:* S. 10 on 18.12.19: Special Gazette (No. 537) 17.12.19 p. 2; s. 9 on 1.2.20: Special Gazette (No. 537) 17.12.19 p. 2  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

**Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022, No. 19/2022**

*Assent Date:* 24.5.22  
*Commencement Date:* S. 93 on 1.7.22: Government Gazette 23.6.22 p. 2737  
*Current State:* This information relates only to the provision/s amending the **Marine (Drug, Alcohol and Pollution Control) Act 1988**

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### **3 Explanatory details**

<sup>1</sup> Ss 40–44:

S. 40 amended by No. 46/1991 s. 42, repealed by No. 82/1995 s. 160.

S. 41 amended by No. 46/1991 s. 43, repealed by No. 82/1995 s. 160.

S. 42 repealed by No. 82/1995 s. 160.

S. 43 amended by No. 46/1991 s. 44, repealed by No. 82/1995 s. 160.

S. 44 repealed by No. 82/1995 s. 160.