



Western Australia

Western Australian Marine Amendment Act 2023

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Western Australian Marine Amendment Act 2023

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Western Australia

Western Australian Marine Amendment Act 2023

No. 31 of 2023

**An Act to amend the *Western Australian Marine Act 1982* and to
make consequential amendments to other Acts.**

[Assented to 11 December 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Western Australian Marine Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 32 —
 - (i) if the *Criminal Law (Mental Impairment) Act 2023* Schedule 1 comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — immediately after the *Criminal Law (Mental Impairment) Act 2023* Schedule 1 comes into operation;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Western Australian Marine Act 1982* amended

3. Act amended

This Part amends the *Western Australian Marine Act 1982*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

alcohol or drug testing requirement, in relation to a person, means a requirement imposed on the person under Part 3B Division 2 or 3;

analyst has the meaning given in the *Road Traffic Act 1974* section 65;

BAC, in relation to a person, means the concentration of alcohol in the person's blood, expressed in grams of alcohol per 100 mL of blood;

Example for this definition:

A BAC of 0.08 g is a concentration of 0.08 g of alcohol per 100 mL of blood.

bodily harm has the meaning given in *The Criminal Code* section 1(1);

Chemistry Centre (WA) means the body established by the *Chemistry Centre (WA) Act 2007* section 4(1);

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

dentist means a person —

- (a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession; and
- (b) whose name is entered on the dentists division of the Register of Dental Practitioners kept under that Law;

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drug has the meaning given in the *Road Traffic Act 1974* section 65;

drugs analyst has the meaning given in the *Road Traffic Act 1974* section 65;

grievous bodily harm has the meaning given in *The Criminal Code* section 1(1);

leave vessel, accompany officer or wait requirement, in relation to a person, means a requirement imposed on the person under section 75G;

marine qualification means —

- (a) a WA marine qualification; or
- (b) a qualification, permit, licence or certificate (however described) issued to a person —
 - (i) in relation to navigating or operating a vessel (as those terms are defined in section 75AA(1) and (2)), or required by crew of a vessel; and
 - (ii) under a law of another Australian jurisdiction or an overseas jurisdiction;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

nurse practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession whose registration under that Law is endorsed as nurse practitioner;

pilot means a person who does not belong to, but has the conduct of, a vessel;

prescribed illicit drug means a drug that is —

- (a) a prescribed illicit drug as defined in the *Road Traffic Act 1974* section 65; or
- (b) a drug prescribed for the purposes of this definition;

WA marine qualification means a qualification, including a licence, issued to a person under this Act that authorises the person to navigate a vessel (as defined in section 75AA(2)).

- (2) In section 3(1) in the definition of **wages** delete “kind.” and insert:

kind;

5. Section 3A amended

- (1) In section 3A(1) delete “masters” and insert:

masters, pilots

- (2) In section 3A(2) delete “is connected with the State if the vessel is —” and insert:

connected with the State includes a vessel that is —

6. Section 6 amended

In section 6(1) in the definition of **official details** delete paragraph (b) and insert:

- (b) of an inspector — means the inspector’s full name and official title;

7. Part 2 Division 2 Subdivision 4 inserted

At the end of Part 2 Division 2 insert:

Subdivision 4 — Obtaining business records

18A. Terms used

In this Subdivision —

business means any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling;

business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

order to produce means an order issued under section 18D.

18B. Application of this Subdivision

- (1) An order to produce must not be issued under this Subdivision to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.
- (2) This Subdivision does not prevent an inspector from applying for a warrant in relation to a business record, whether before or after the issue of an order to produce.

18C. Application for order to produce

- (1) An inspector may apply for an order to produce a business record for the purpose of investigating a suspected contravention of this Act.
- (2) An application for an order to produce must be made in person to a JP.

- (3) An application for an order to produce a business record must —
- (a) state the applicant’s official details; and
 - (b) state the suspected contravention of this Act in relation to which the order is required; and
 - (c) state the grounds on which the applicant suspects that the contravention has occurred; and
 - (d) set out the prescribed information (if any); and
 - (e) state the name of the person to whom the order will apply; and
 - (f) state that the person is not suspected of having committed an offence under this Act to which the business record relates; and
 - (g) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and
 - (h) state the grounds on which the applicant suspects the business record or class of business record is relevant to the investigation; and
 - (i) state whether the original or a copy of the business record or class of business record is required.

18D. Issue of order to produce

- (1) On an application made under section 18C, a JP may issue an order to produce a business record if satisfied, by information on oath and in respect of each of the matters in section 18C(3) that the applicant suspects, that there are reasonable grounds for the applicant to have that suspicion.

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- (2) However, the JP must not issue the order to produce unless the applicant or some other person has given the JP, either orally or by affidavit, any further information that the JP may require concerning the grounds on which the issue of the order to produce is sought.
- (3) An order to produce must contain the following information —
 - (a) the applicant's official details;
 - (b) the name of the person to whom the order applies;
 - (c) a reasonably particular description of the business record or class of business record to be produced by the person;
 - (d) an order that the person produce the record or records;
 - (e) whether the original or a copy of the record or records is required;
 - (f) whether a paper, electronic or other version of the record or records is required;
 - (g) the place where the record or records are to be produced;
 - (h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
 - (i) the name of the JP who issued the order;
 - (j) the date and time when the order was issued.
- (4) An order to produce must be in the prescribed form.
- (5) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

18E. Order to produce applied for remotely

- (1) An inspector may apply, by remote communication, to a JP for an order to produce under section 18C —
 - (a) in an urgent case; or
 - (b) if the inspector believes on reasonable grounds that a JP is not available within a reasonable distance of the inspector.
- (2) The JP must not issue the order to produce unless satisfied as to the matter in subsection (1)(a) or (b) (whichever is relevant).
- (3) The *Criminal Investigation Act 2006* section 13(5) to (8) apply in relation to an application under this section.

18F. Service of order to produce

- (1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.
- (2) An order to produce may be served —
 - (a) by personal service or by post; or
 - (b) with the consent of the person to be served, by email or fax or in another agreed way.

18G. Effect of order to produce

- (1) An order to produce has effect according to its contents.
- (2) A person who is served with an order to produce and who, without reasonable excuse, fails to comply with it commits an offence.

Penalty for this subsection: a fine of \$5 000.

18H. Powers in relation to order to produce

- (1) An inspector to whom a business record is produced under an order to produce may retain it for a reasonable time to determine its evidentiary value.
- (2) An inspector to whom a business record is produced may, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis —
 - (a) seize the document; and
 - (b) whether or not the document is seized, inspect, examine, take measurements of or conduct tests on it; and
 - (c) make and retain a copy of it.
- (3) Section 40(1)(c) does not apply in relation to a thing seized under subsection (2)(a).
- (4) A person who produces a business record in compliance with an order to produce is not liable to any action or remedy by any person at common law for producing that document.

8. Section 38 amended

- (1) Delete section 38(2) and insert:
- (2) The following persons may request the inspector to give a copy of the thing or the information to that person —
 - (a) if the inspector seized the thing or information under section 18H(2)(a) — the person who produced the thing or the information to the inspector;
 - (b) otherwise — the occupier of the premises.

- (2) In section 38(4) after “by the” insert:

person or

9. Section 59 deleted

Section 59 deleted.

10. Section 64 amended

- (1) In section 64 delete “64A and 64B —” and insert:

64A, 64B and 64D —

- (2) In section 64 in the definition of *marine incident* paragraph (a) delete “pleasure vessel or a prescribed”.

11. Section 64A amended

- (1) In section 64A(1):

- (a) delete “pleasure vessel or a prescribed vessel is involved in a marine incident, the master of the vessel must,” and insert:

vessel is involved in a marine incident, the master of the vessel must do each of the following,

- (b) in paragraph (a) delete “assistance; and” and insert:

assistance;

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- (c) in paragraph (b) delete “incident; and” and insert:

incident;

- (2) Delete section 64A(2) and (3) and insert:

- (2) The master of a vessel commits a crime if —
- (a) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, a person; and
 - (b) the master, without reasonable excuse, fails to comply with subsection (1)(a) or (b) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of a person — imprisonment for 20 years;
- (b) if the marine incident occasions grievous bodily harm to a person — imprisonment for 14 years;
- (c) if the marine incident occasions bodily harm to a person — imprisonment for 10 years.

Summary conviction penalty for this subsection in a case in which the marine incident does not occasion the death of, or grievous bodily harm to, a person: imprisonment for 3 years.

- (2A) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — for a period of not less than 2 years;

- (b) if the marine incident occasions bodily harm to a person — for a period of not less than 12 months.
- (3) The master of a vessel commits an offence if the master, without reasonable excuse, fails to comply with subsection (1)(a), (b) or (c).
Penalty for this subsection: a fine of \$5 000.

12. Section 64B amended

- (1) In section 64B(1) delete “pleasure vessel or a prescribed”.
- (2) In section 64B(2):
 - (a) after “includes” insert:

each of
 - (b) delete the Penalty.
- (3) After section 64B(3) insert:
 - (3A) A person commits a crime if —
 - (a) the person is the master or owner of a vessel;
and
 - (b) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, another person; and
 - (c) the person, without reasonable excuse, fails to comply with subsection (2) in relation to the incident.

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Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — imprisonment for 10 years;
- (b) if the marine incident occasions bodily harm to a person — imprisonment for 12 months.

Summary conviction penalty for this subsection in a case in which the marine incident occasions the death of, or grievous bodily harm to, a person: imprisonment for 12 months.

- (3B) A court sentencing a person for an offence against subsection (3A) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 12 months.
- (3C) A person commits an offence if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the person, without reasonable excuse, fails to comply with subsection (2).

Penalty for this subsection: a fine of \$2 000.

13. Section 64D inserted

After section 64C insert:

64D. Marine incidents: power to require responsible person to give information

- (1) In this section —

responsible person, in relation to a vessel, means —

 - (a) the master or owner of the vessel; or

- (b) another person who appears to be in possession or control of the vessel.
- (2) This section applies if a vessel is involved in a marine incident.
- (3) An inspector or police officer may require a responsible person for the vessel to give the inspector or police officer any information that —
 - (a) is in the responsible person’s power to give; and
 - (b) may assist in identifying a person who was the master of the vessel, or operating or attempting to operate the vessel (as defined in section 75AA(1)), when the marine incident occurred.
- (4) A person who, without reasonable excuse, fails to comply with a requirement under subsection (3) commits an offence.

Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm or bodily harm to, a person — imprisonment for 12 months or a fine of \$3 000;
- (b) otherwise — a fine of \$3 000.

14. Part 3A inserted

- (1) After Part III insert:

**Part 3A — Safe navigation of vessels, and
alcohol and drug related offences**

Division 1 — Preliminary

75A. Terms used

In this Part —

0.08+ and illicit drug offence means an offence against section 75DD(1);

0.08+ offence means an offence against section 75DA(1);

circumstances of aggravation has the meaning given in section 75AF;

involved, for a vessel in relation to an incident, has the meaning given in section 75AB;

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1).

75AA. When individual operates or navigates vessel

- (1) An individual *operates* a vessel if the individual —
- (a) determines or exercises control over the course or direction of the vessel, or the means of propulsion of the vessel, whether or not the vessel is underway or being towed by another vessel; or
 - (b) pilots the vessel.

- (2) An individual *navigates* a vessel if the individual —
- (a) operates the vessel; or
 - (b) is in command or charge of the vessel while the individual, or another individual or other individuals, operate or attempt to operate the vessel.

75AB. When vessel is involved in incident

A vessel is *involved* in an incident if —

- (a) the presence of the vessel occasioned the incident; or
- (b) the use of the vessel is an immediate or proximate cause of the death of, or injury to, a person or damage to property occasioned by the incident.

75AC. Person taken to be in command or charge of vessel for purposes of Parts 3A and 3B

- (1) This section applies for the purposes of Parts 3A and 3B and in the absence of proof to the contrary.
- (2) A person is taken to be in command or charge of a vessel at a particular time if, at that time —
 - (a) the person is the only person, or the only person who is 18 years of age or above, on the vessel; or
 - (b) the person appears, without contradiction by any other person on the vessel, to be in command or charge of the vessel; or
 - (c) the other persons on the vessel, or a majority of them, acknowledge that the person is in charge of the vessel; or
 - (d) of all the persons on the vessel, the person has ultimate control over the course or direction of

the vessel, or the means of propulsion of the vessel, whether or not —

- (i) the vessel is underway; or
- (ii) the person is operating the vessel.

Example for this subsection:

For the purposes of paragraph (b), the person says or does something that makes them appear to be in command or charge of the vessel.

- (3) A person who owns a vessel is taken to be in command or charge of the vessel if the person —
 - (a) is on the vessel; and
 - (b) holds a marine qualification that authorises the person to navigate the vessel.
- (4) A person who has command or charge of a vessel continues to have command or charge of the vessel until the person has ensured that —
 - (a) the command or charge of the vessel has been handed to another person; and
 - (b) the other person has accepted the command or charge.

75AD. Person is incapable of having proper control of vessel

For the purposes of this Part, a reference to a person being incapable of having proper control of a vessel includes —

- (a) a reference to the person being incapable of having proper control over —
 - (i) the course or direction of the vessel; or
 - (ii) the means of propulsion of the vessel;
- and

- (b) a reference to the person who is the pilot of the vessel being incapable of having proper conduct of the vessel; and
- (c) a reference to the person who is the master of a vessel being incapable of having proper command or charge of the vessel.

75AE. Person with BAC of 0.15 or above taken to be incapable of proper control

- (1) This section applies in a proceeding for an offence if it is alleged that, at the time of the alleged offence, the person charged was under the influence of alcohol to such an extent as to be incapable of having proper control of a vessel.
- (2) The person is taken to have been under the influence of alcohol to that extent at the time of the alleged offence if the person had a BAC of 0.15 g or above at that time.

75AF. Circumstances of aggravation

- (1) For the purposes of this Part, a person commits an offence, or navigates a vessel, in *circumstances of aggravation* if at the time of the alleged offence or navigation —
 - (a) the person was unlawfully navigating the vessel without the consent of an owner or the master of the vessel; or
 - (b) if a speed limit applied to the vessel or the waters in which it was operating — the person was navigating the vessel at a speed that exceeded the speed limit by 10 knots or more; or
 - (c) the person was navigating the vessel to escape pursuit by an inspector or police officer.

- (2) Subsection (1)(c) applies whether the pursuit was proceeding, or had been suspended or terminated, at the time of the alleged offence.

Division 2 — Safe navigation of vessels and alcohol and drug related offences

Subdivision 1 — Dangerous navigation of vessels occasioning death, grievous bodily harm or bodily harm

75B. Dangerous navigation of vessel occasioning death

- (1) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning the death of another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (2) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 20 years and a fine of any amount.

- (2) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning the death of another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel

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Section no.	Section heading
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation — imprisonment for 20 years and a fine of any amount;
 - (b) otherwise — imprisonment for 10 years and a fine of any amount.
- (3) A court sentencing a person for an offence against subsection (1) or (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 2 years.

75BA. Dangerous navigation of vessel occasioning grievous bodily harm

- (1) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning grievous bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (2) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 14 years and a fine of any amount.

Summary conviction penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning grievous bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

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Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation — imprisonment for 14 years and a fine of any amount;
- (b) otherwise — imprisonment for 7 years or a fine of any amount.

Summary conviction penalty for this subsection:

imprisonment for 3 years or a fine of \$36 000.

- (3) A court sentencing a person for an offence against subsection (1) or (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 2 years.

75BB. Dangerous navigation of vessel occasioning bodily harm

- (1) A person commits a crime if —
 - (a) a vessel navigated by the person is involved in an incident occasioning bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (3) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 10 years and a fine of any amount.

Summary conviction penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) if the person is convicted on indictment — for a period of not less than 2 years;
 - (b) if the person is convicted summarily — for a period of not less than 18 months.
- (3) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1)
or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation —
 - (i) if the person is convicted on indictment — imprisonment for 10 years or a fine of any amount;
 - (ii) if the person is convicted summarily — imprisonment for 3 years or a fine of \$36 000;
 - (b) otherwise —
 - (i) for a first offence, imprisonment for 9 months or a fine of \$9 000;
 - (ii) for a second or subsequent offence, imprisonment for 18 months or a fine of \$18 000.
- (4) A court sentencing a person for an offence against subsection (3) must order that the person is disqualified

from holding or obtaining a WA marine qualification as follows —

- (a) if the offence is committed in circumstances of aggravation — a period of not less than 2 years;
- (b) otherwise — a period of not less than 12 months.

75BC. Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

- (1) A person commits an offence if —
 - (a) a vessel navigated by the person is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and
 - (b) at the time of the incident, the person was navigating the vessel without due care and attention.

Alternative offence for this subsection: section 75BF (Careless navigation of vessel).

Penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 3 months.

Subdivision 2 — Reckless, dangerous and careless navigation of vessels

75BD. Reckless navigation of vessel

- (1) A person commits an offence if the person wilfully navigates a vessel in a manner that is —
 - (a) inherently dangerous; or

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- (b) dangerous to the public or to any person, having regard to all the circumstances of the case.

Penalty for this subsection:

- (a) for a first offence, a fine of \$6 000;
- (b) for a second offence, a fine of \$9 000;
- (c) for a third or subsequent offence, a fine of \$12 000.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

- (2) If an offence against subsection (1) is committed in the circumstance of aggravation referred to in section 75AF(1)(c), the offence is a crime.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offence

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty for this subsection: imprisonment for 2 years.

- (3) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) for an offence committed in a circumstance of aggravation —
 - (i) for a first or second offence, for a period of not less than 2 years; or
 - (ii) for a third or subsequent offence, permanently;
 - (b) otherwise —
 - (i) for a first offence, for a period of not less than 6 months; or
 - (ii) for a second offence, for a period of not less than 12 months; or
 - (iii) for a third or subsequent offence, permanently.
- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75BE. Dangerous navigation of vessel

- (1) A person commits an offence if the person navigates a vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: section 75BF
(Careless navigation of vessel).

Penalty for this subsection:

- (a) for an offence committed in the circumstance of aggravation referred to in section 75AF(1)(c) — imprisonment for 3 years or a fine of \$36 000;

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- (b) otherwise —
 - (i) for a first offence, a fine of \$3 000;
 - (ii) for a second or subsequent offence, a fine of \$6 000.
- (2) A court sentencing a person for an offence against subsection (1) must order that the offender is disqualified from holding or obtaining a WA marine qualification as follows —
 - (a) for an offence committed in the circumstance of aggravation referred to in section 75AF(1)(c) — for a period of not less than 2 years;
 - (b) if paragraph (a) does not apply and the offence is a second or subsequent offence — for a period of not less than 12 months.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were a previous offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75B(1) or (2)	Dangerous navigation of vessel occasioning death
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

75BF. Careless navigation of vessel

A person commits an offence if the person navigates a vessel without due care and attention.

Penalty: a fine of \$1 500.

**Subdivision 3 — Provisions relating to offences in
Subdivisions 1 and 2**

75BG. Application of Subdivision

This Subdivision applies for the purposes of an offence against a provision of Subdivision 1 or 2.

75BH. Circumstances occasioning death, grievous bodily harm or bodily harm

The circumstances in which a vessel is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, a person include circumstances in which the death or harm is occasioned through any of the following —

- (a) the vessel overturning or running aground while the person is in or on the vessel (whether as a passenger or otherwise);
- (b) the person falling from the vessel, or being thrown or ejected from the vessel, while in or on the vessel (whether as a passenger or otherwise);

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- (c) an impact between any object or thing and the vessel while the person is in or on the vessel (whether as a passenger or otherwise);
- (d) an impact between the person and the vessel;
- (e) an impact between the vessel and another vessel, or an object or thing, while the person is on or near the other vessel, object or thing;
- (f) an impact between the person and any object on or attached to the vessel;
- (g) an impact between the person and any object that is in motion having fallen from the vessel;
- (h) an impact between any object or thing and the person while the person is in or on the vessel (whether as a passenger or otherwise);
- (i) the vessel causing an impact between other vessels or between another vessel and any object, thing or person;
- (j) the vessel causing another vessel to overturn or run aground;
- (k) the vessel causing a person (whether as a passenger or otherwise) in or on another vessel to fall from that other vessel.

75BI. Provisions for offences involving incidents occasioning death, grievous bodily harm or bodily harm

- (1) This section applies for the purposes of an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person (the *casualty*).

- (2) It is immaterial that the death, grievous bodily harm or bodily harm —
 - (a) might have been avoided by proper precaution on the part of a person other than the person charged; or
 - (b) might have been prevented if the casualty received proper care or treatment.
- (3) The incident is taken to have caused the death of the casualty if —
 - (a) the incident occasions grievous bodily harm to the casualty; and
 - (b) the casualty receives surgical or medical treatment for the harm; and
 - (c) the death results from the harm or the treatment.
- (4) Subsection (3) applies even though the immediate cause of the casualty's death was the surgical or medical treatment, if the treatment was reasonably proper in the circumstances and provided in good faith.

75BJ. Defence: death or harm not attributable to alcohol or drugs

- (1) This section applies if it is alleged that an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person occurred while the person charged was under the influence of alcohol, a drug, or alcohol and a drug.
- (2) It is a defence to a charge of the offence for the person charged to prove that the death, grievous bodily harm or bodily harm was not attributable to the fact that the person charged was under the influence of alcohol, the drug, or alcohol and the drug.

75BK. Defence: death or harm not attributable to manner of operation or level of care and attention

- (1) This section applies if it is alleged that an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person occurred while the person charged was navigating the vessel.
- (2) It is a defence to a charge of the offence for the person charged to prove that the death, grievous bodily harm or bodily harm was not attributable to —
 - (a) the manner in which the person navigated the vessel; or
 - (b) the person's level of care or attention when navigating the vessel.

75BL. Defence: inspector or police officer navigating vessel in certain circumstances

- (1) This section applies if it is alleged that the person charged with an offence navigated a vessel in a manner that was —
 - (a) inherently dangerous; or
 - (b) dangerous to the public or to any person.
- (2) It is a defence to a charge of the offence for the person charged to prove that, at the time of the alleged offence —
 - (a) the person was on official duty as an inspector or police officer; and
 - (b) the person navigated the vessel substantially in accordance with —
 - (i) the chief executive officer's or Commissioner of Police's policies and

- guidelines relating to navigating vessels;
and
- (ii) a direction given under any of those policies or guidelines;
and
- (c) it was reasonable and in the public interest for the person charged to navigate the vessel in that manner, having regard to all of the circumstances of the case.

Division 3 — Navigation of vessels while under the influence of alcohol or drugs or impaired by drugs

75C. Navigation of vessel while under influence of alcohol or drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while under the influence of alcohol or a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

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Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$3 750;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$2 750 or more than \$3 750;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$2 750 or more than \$3 750;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$3 750;
 - (b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	10 months
Second offence	30 months
Subsequent offence	Permanent

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs

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Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.
- (5) The charging of a person for an offence against this section does not limit the operation of sections 75EE, 75EF, 75EH, 75EN and 75EO.

75CA. Navigation of vessel while under influence of both alcohol and drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while under the influence of alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.
Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$5 650;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;

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- (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;
 - (b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months

	Disqualification
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	15 months
Second offence	42 months
Subsequent offence	Permanent

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

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- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.
- (5) The charging of a person for an offence against this section does not limit the operation of sections 75EE, 75EF, 75EH, 75EN and 75EO.

75CB. Defence: under influence of drug prescribed or administered for therapeutic reasons

- (1) This section applies in relation to an offence against section 75C(1) or 75CA(1) if it is alleged, or it appears on the evidence, that the person charged was under the influence of a particular drug.
- (2) It is a defence to a charge of the offence for the person charged to prove that —
 - (a) the particular drug was prescribed for, or administered to, the person by a medical practitioner, nurse practitioner or dentist for therapeutic reasons; and
 - (b) the person was not aware, and could not reasonably have been expected to be aware, that the particular drug was likely to affect the person in a way that would be inconsistent with the person being capable of having proper control of a vessel.

75CC. Master must not permit person under influence of alcohol or drugs or both to operate vessel

The master of a vessel commits an offence if the master —

- (a) is aware or has reason to suspect that another person is under the influence of alcohol, a drug or alcohol and a drug; and

(b) permits the other person to operate the vessel.

Penalty: a fine of \$3 750.

75CD. Navigation of vessel while impaired by drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person is impaired by a drug.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

Penalty for this subsection:

- (a) for a first offence, a fine of not less than \$1 700 or more than \$3 750;
 - (b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.
- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified

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from holding or obtaining a WA marine qualification as follows —

- (a) for a first offence, for a period of not less than 10 months;
 - (b) for a second offence, for a period of not less than 30 months;
 - (c) for a third or subsequent offence, permanently.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, greivous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75CE. When person may be convicted of navigation of vessel while impaired by drugs offence

A person may be convicted of an offence against section 75CD(1) if the prosecutor proves that —

- (a) the person navigated, or attempted to operate, a vessel; and
- (b) at the time of the navigation or attempted operation of the vessel, 1 or more drugs were present in the person's body; and
- (c) the person's behaviour, condition or appearance was consistent with the behaviour, condition or appearance associated with a person who has consumed or used that drug or combination of drugs; and
- (d) the behaviour or condition associated with a person who has consumed or used that drug or combination of drugs would be inconsistent with the person being capable of having proper control of a vessel.

75CF. Defence: impaired by drug prescribed or administered for therapeutic reasons

- (1) This section applies in relation to an offence against section 75CD(1) if it is alleged, or it appears on the evidence, that the person charged was impaired by 1 or more drugs.
- (2) It is a defence to a charge of the offence for the person charged to prove that —
 - (a) the drug, or each drug, was prescribed for, or administered to, the person charged by a

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medical practitioner, nurse practitioner or dentist for therapeutic reasons; and

- (b) if the person charged received the drug, or 1 of the drugs, in packaged form — the packaging did not include a label advising that the drug was likely to affect a person in a way that would be inconsistent with the person being capable of having proper control of a vessel; and
- (c) the person charged was not aware, and could not reasonably have been expected to be aware, that the drug or combination of drugs were likely to affect the person in a way that would be inconsistent with the person being capable of having proper control of a vessel.

- (3) This section has effect despite section 75CE.

75CG. Rights of person charged with particular offences

- (1) This section applies if —
 - (a) a person is charged with an offence against section 75C(1), 75CA(1) or 75CD(1); and
 - (b) a sample of the person's blood was not taken under an alcohol or drug testing requirement before the person was charged.
- (2) The person has the right to be examined by a medical practitioner nominated by them, if one is available, for the purpose of arranging for a sample of the person's blood to be taken.
- (3) An inspector or police officer must —
 - (a) inform the person charged of this right; and
 - (b) make every reasonable effort to afford the person charged this right.

(2) At the end of Part 3A (as inserted by subsection (1)) insert:

**Division 4 — Navigation of vessels with particular BAC
 or prescribed illicit drug present**

75D. Navigation of vessel while BAC is 0.05 or above

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person’s BAC is 0.05 g or above.
- (2) If a person is convicted of an offence against subsection (1) —
 - (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.05 g but < 0.07 g	Min: Max: Disq:	\$1 250	\$1 250 \$2 000 6 months	\$1 250 \$2 000 8 months
≥ 0.07 g	Min: Max: Disq:	\$1 250	\$1 500 \$2 000 8 months	\$1 500 \$2 000 10 months

Note for this Table:
 ≥ signifies of or more than

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< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the previous offence; and
 - (b) a previous offence against a provision specified in the Table must be taken into account as if it were a previous offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place

Section no.	Section heading
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

75DA. Navigation of vessel while BAC is 0.08 or above

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person's BAC is 0.08 g or above.

Alternative offence for this subsection: 75D(1)
(Navigation of vessel while BAC is 0.05 or above).

- (2) If a person is convicted of an offence against subsection (1) —
- (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.08 g but < 0.09 g	Min: Max: Disq:	\$750 \$2 250 6 months	\$1 600 \$2 250 8 months	\$1 600 \$2 250 10 months
≥ 0.09 g but < 0.11 g	Min: Max: Disq:	\$850 \$2 250 7 months	\$1 700 \$2 250 10 months	\$1 700 \$2 250 13 months
≥ 0.11 g but < 0.13 g	Min: Max: Disq:	\$1 000 \$2 250 8 months	\$1 800 \$3 000 14 months	\$1 800 \$3 000 17 months
≥ 0.13 g	Min: Max: Disq:	\$1 150 \$2 250 9 months	\$2 400 \$3 750 18 months	\$2 400 \$4 500 30 months

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the previous offence; and

- (b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75DB. Navigation of vessel while prescribed illicit drug present

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while a prescribed illicit drug is present in the person's body.

Penalty for this subsection:

- (a) for a first offence, a fine of \$1 250;
 - (b) for a second or subsequent offence, a fine of not less than \$1 250 or more than \$2 000.
- (2) A court sentencing a person for a second or subsequent offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 6 months.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample

Section no.	Section heading
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75DC. Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while —
- (a) the person’s BAC is 0.05 g or above; and
 - (b) a prescribed illicit drug is present in the person’s body.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

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- (2) If a person is convicted of an offence against subsection (1) —
- (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.05 g but < 0.07 g	Min: Max: Disq:	\$1 900 3 months	\$1 900 \$3 000 9 months	\$1 900 \$3 000 12 months
≥ 0.07 g	Min: Max: Disq:	\$1 900 3 months	\$2 250 \$3 000 12 months	\$2 250 \$3 000 15 months

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person's

- BAC when committing the previous offence;
 and
- (b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm

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Section no.	Section heading
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75DD. Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while —
- the person's BAC is 0.08 g or above; and
 - a prescribed illicit drug is present in the person's body.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above

Section no.	Section heading
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

- (2) If a person is convicted of an offence against subsection (1) —
- (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.08 g but < 0.09 g	Min: Max: Disq:	\$1 150 \$3 400 9 months	\$2 400 \$3 400 12 months	\$2 400 \$3 400 15 months
≥ 0.09 g but < 0.11 g	Min: Max: Disq:	\$1 300 \$3 400 11 months	\$2 550 \$3 400 15 months	\$2 550 \$3 400 20 months
≥ 0.11 g but < 0.13 g	Min: Max: Disq:	\$1 500 \$3 400 12 months	\$2 700 \$4 500 21 months	\$2 700 \$4 500 26 months

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BAC		First offence	Second offence	Third or subsequent offence
≥ 0.13 g	Min:	\$1 750	\$3 600	\$3 600
	Max:	\$3 400	\$5 650	\$6 750
	Disq:	14 months	27 months	42 months

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the previous offence; and
 - (b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs

Section no.	Section heading
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75DE. Mistaken belief about prescribed illicit drug is not defence

It is not a defence to a charge of an offence against section 75DB(1), 75DC(1) or 75DD(1) that the person charged took a prescribed illicit drug mistakenly believing it to be another drug if that other drug is also —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies; or

- (b) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3.

15. Part 3B inserted

After Part 3A (as inserted by section 14 of this Act) insert:

Part 3B — Testing for alcohol and drugs

Division 1 — Preliminary

75E. Terms used

- (1) In this Part —

authorised drug tester has the meaning given in section 75EB(1);

authorised operator has the meaning given in section 75EA(1);

breath analysing equipment means —

- (a) breath analysing equipment as defined in the *Road Traffic Act 1974* section 65; or
- (b) a device of a type approved under section 75JA(b);

breath analysis means the analysis of a sample of a person's breath to determine the person's BAC using breath analysing equipment;

drug testing means testing a sample of a person's oral fluid for the presence of a prescribed illicit drug using a drug testing device;

drug testing device means —

- (a) an approved device as defined in the *Road Traffic Act 1974* section 65; or

- (b) a device of a type approved under section 75JA(d);

hospital has the meaning given in the *Health Services Act 2016* section 8(4);

involved, for a vessel in relation to an incident, has the meaning given in section 75AB;

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1);

preliminary breath test means —

- (a) a preliminary test as defined in the *Road Traffic Act 1974* section 65; or
- (b) a test of a sample of a person's breath using a preliminary breath testing device;

preliminary breath testing device means —

- (a) an apparatus of a type referred to in the definition of **preliminary test** in the *Road Traffic Act 1974* section 65; or
- (b) a device of a type approved under section 75JA(a);

preliminary oral fluid test means a test of a sample of a person's oral fluid using a preliminary oral fluid testing device;

preliminary oral fluid testing device means —

- (a) a device of a type referred to in the definition of **preliminary oral fluid test** as that term is defined in the *Road Traffic Act 1974* section 65; or
- (b) a device of a type approved under section 75JA(c);

prescribed sample taker means —

- (a) a medical practitioner; or
- (b) a registered nurse; or
- (c) a prescribed person who is appropriately qualified to take samples for testing in relation to alcohol or drugs;

registered nurse means a person —

- (a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession; and
- (b) whose name is entered on Division 1 of the Register of Nurses kept under that Law;

stop, in relation to a vessel, includes —

- (a) stop the vessel's motor; and
- (b) drop the vessel's anchor; and
- (c) fasten the vessel to a mooring, wharf or jetty.

- (2) For the purposes of this Part, anything done by a person acting under the supervision or direction of an analyst, a drugs analyst, a medical practitioner or a prescribed sample taker is taken to have been done by the analyst, drugs analyst, medical practitioner or prescribed sample taker (as the case requires).

75EA. Authorised operators for operating breath analysing equipment

- (1) An *authorised operator* is —
 - (a) an authorised person as defined in the *Road Traffic Act 1974* section 65; or
 - (b) a police officer certified by the Commissioner of Police under subsection (2); or
 - (c) an inspector certified by the chief executive officer under subsection (3).

- (2) The Commissioner of Police may certify that a police officer is competent to operate breath analysing equipment.
- (3) The chief executive officer may certify that an inspector is competent to operate breath analysing equipment.

75EB. Authorised drug testers for operating drug testing devices

- (1) An *authorised drug tester* is —
 - (a) an authorised drug tester as defined in the *Road Traffic Act 1974* section 65; or
 - (b) a police officer certified by the Commissioner of Police under subsection (2); or
 - (c) an inspector certified by the chief executive officer under subsection (3).
- (2) The Commissioner of Police may certify that a police officer is competent to operate a drug testing device.
- (3) The chief executive officer may certify that an inspector is competent to operate a device.

75EC. Using breath sample to work out BAC

- (1) A concentration of alcohol in a person's breath of a number of grams per 210 L of breath is taken to be a concentration in the person's blood of that number of grams of alcohol per 100 mL of blood.
- (2) Breath analysing equipment is taken to be a device that determines a person's BAC by analysing a sample of the person's breath, whether the device —
 - (a) gives the BAC directly; or
 - (b) allows the BAC to be worked out under subsection (1).

- (3) A device used to conduct a preliminary breath test is taken to be a device that indicates a person's BAC, or indicates whether or not the person has a BAC of or above a particular level, whether the device —
- (a) gives the indication directly; or
 - (b) allows the BAC to be worked out under subsection (1).

75ED. Powers additional to other powers

A power of an inspector or police officer under this Part is additional to, and does not limit, any other power the inspector or police officer may have under this Act or another written law.

Division 2 — Testing for alcohol

Subdivision 1 — Preliminary breath tests

75EE. General power to require breath sample for preliminary breath test

- (1) An inspector or police officer may require a person to provide a sample of breath for a preliminary breath test if the inspector or police officer believes on reasonable grounds that the person is or was —
- (a) navigating, or attempting to operate, a vessel; or
 - (b) the master of a vessel.
- (2) The inspector or police officer must conduct a preliminary breath test of the person.

75EF. Power to require breath sample for preliminary breath test following incident

- (1) This section applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —
 - (a) does not know, or has doubt about, who was navigating the vessel at the time of the incident; and
 - (b) believes on reasonable grounds that the person may have been navigating the vessel at that time.
- (2) The inspector or police officer may require the person to provide a sample of breath for a preliminary breath test.
- (3) The inspector or police officer must conduct a preliminary breath test of the person.

75EG. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75EE or 75EF by providing a sample of the person's breath in accordance with the directions of the inspector or police officer.

Subdivision 2 — Breath analysis or blood samples following preliminary breath test or commission of certain offences

75EH. Power to require breath or blood sample following requirement for preliminary breath test

- (1) This section applies if —
 - (a) an inspector or police officer requires a person to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; and

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- (b) either —
 - (i) the person's preliminary breath test indicates they have a BAC of 0.05 g or above; or
 - (ii) the person fails to comply with the requirement.
- (2) This section also applies if —
 - (a) an inspector or police officer has power to require a person to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; and
 - (b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.
- (3) An inspector or police officer may require a person —
 - (a) to provide a sample of breath for breath analysis; or
 - (b) to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (4) If a requirement to provide a sample of breath for breath analysis is imposed on a person under subsection (3)(a), an inspector or police officer who is an authorised operator must conduct a breath analysis of the person.
- (5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

75EI. Power to require breath or blood sample for analysis following commission of certain offences

- (1) This section applies if an inspector or police officer believes on reasonable grounds that a person has committed an offence against section 75C(1) or 75CA(1).
- (2) This section also applies if an inspector or police officer —
 - (a) believes on reasonable grounds that a vessel was involved in either —
 - (i) the commission of an offence against section 75B(1) or (2), 75BA(1) or (2) or 75BB(1) or (3); or
 - (ii) an incident occasioning injury to a person or damage to property;
 - and
 - (b) does not know, or has doubt about, who was navigating the vessel at the time of the offence or incident; and
 - (c) believes on reasonable grounds that the person may have been navigating the vessel at that time.
- (3) The inspector or police officer may require the person —
 - (a) to provide a sample of breath for breath analysis; or
 - (b) to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (4) If a requirement to provide a sample of breath for breath analysis is imposed on a person under subsection (3)(a), an inspector or police officer who is

an authorised operator must conduct a breath analysis of the person.

- (5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

75EJ. Compliance with requirement

- (1) A person must comply with a requirement imposed on the person under section 75EH or 75EI to provide a sample of breath for breath analysis by providing the sample in accordance with the directions of the authorised officer conducting the breath analysis.
- (2) A person must comply with a requirement imposed on the person under section 75EH or 75EI to allow a prescribed sample taker to take a sample of the person's blood for analysis by —
 - (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
 - (b) complying with the directions of the sample taker.

75EK. Further sample of breath for breath analysis

- (1) This section applies if —
 - (a) a person provides a sample of breath for breath analysis in accordance with a requirement imposed under section 75EH or 75EI; and
 - (b) breath analysis of the sample fails.
- (2) An inspector or police officer may require the person to provide 1 additional breath sample for breath analysis under section 75EH or 75EI.

- (3) If the person provides 2 breath samples for analysis under section 75EH or 75EI and the analysis of each sample fails, the person cannot be required to provide another sample of breath for analysis under those sections.
- (4) An analysis of a sample of breath is taken to have failed only if the breath analysing equipment used for the analysis does not indicate a result in the prescribed manner.

75EL. When inspector or police officer must not impose testing requirement because of physical incapacity

- (1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of providing a sample of breath that is sufficient for breath analysing equipment to operate.
- (2) The inspector or police officer must not require the person to provide a sample of breath for a breath analysis under section 75EH or 75EI.

75EM. Breath analysis indicates BAC of 0.05 or above

- (1) This section applies if a breath analysis indicates a person has a BAC of 0.05 g or above.
- (2) The authorised operator who operated the breath analysing equipment used for the breath analysis must immediately give the person a written statement, or a statement printed by the instrument, that includes all of the following information —
 - (a) the date and time the breath sample was taken;
 - (b) the date and time the sample was analysed;
 - (c) the result of the analysis.

- (3) If the breath analysing equipment indicates a result in the prescribed manner at the conclusion of the analysis, the result indicated by the breath analysing equipment is taken to be the person's BAC at the time the sample of breath was provided.

**Subdivision 3 — Blood samples in other circumstances
including following serious incident**

75EN. Power to require blood sample in other circumstances

- (1) This section applies if an inspector or police officer has power to require a person to provide a sample of breath for breath analysis under section 75EH or 75EI and either —
 - (a) the inspector or police officer is prevented by section 75EK(3) from imposing the requirement; or
 - (b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.
- (2) This section also applies if an inspector or police officer requires a person to provide a sample of breath for breath analysis under section 75EH or 75EI and either —
 - (a) the breath analysis indicates there is no alcohol present in the person's blood; or
 - (b) both of the following apply —
 - (i) the person's behaviour, condition or appearance is consistent with that of a person who is under the influence of alcohol or something else;

- (ii) the breath analysis indicates a BAC that does not reasonably explain the person's behaviour, condition or appearance.
- (3) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (4) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis.
- (5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

75EO. Power to require blood sample following incident occasioning death or serious bodily harm

- (1) This section applies if an inspector or police officer believes on reasonable grounds that —
 - (a) a vessel is involved in an incident occasioning the death of, or grievous bodily harm or serious bodily harm to, a person; and
 - (b) at the time of the incident, a person is or was —
 - (i) navigating, or attempting to operate, the vessel; or
 - (ii) the master of the vessel.
- (2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.

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- (3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis.
- (4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.
- (5) For the purposes of subsection (1)(a), *serious bodily harm* to a person is bodily harm to a person, other than grievous bodily harm, that an inspector or police officer believes on reasonable grounds is likely to require treatment at a hospital, whether or not treatment at a hospital is practicable.

75EP. When inspector or police officer must not require blood sample to be taken

If an incident referred to in section 75EO(1)(a) occurs, an inspector or police officer must not require or cause a sample of a person's blood to be taken under that section in relation to the incident if it appears to the inspector or police officer that the sample cannot be taken within 12 hours after the incident occurred.

75EQ. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75EN or 75EO to allow a prescribed sample taker to take a sample of the person's blood for analysis by —

- (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and

- (b) complying with the directions of the sample taker.

Division 3 — Testing for drugs

Subdivision 1 — Preliminary oral fluid tests

75F. General power to require oral fluid sample for preliminary oral fluid test

- (1) An inspector or police officer may require a person to provide a sample of oral fluid for a preliminary oral fluid test if the inspector or police officer believes on reasonable grounds that the person is or was —
 - (a) navigating, or attempting to operate, a vessel;
or
 - (b) the master of a vessel.
- (2) The inspector or police officer must conduct a preliminary oral fluid test of the person in accordance with the prescribed procedure.

75FA. Powers to require oral fluid samples for preliminary oral fluid tests

- (1) This section applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —
 - (a) does not know, or has doubt about, who was navigating the vessel at the time of the incident;
and
 - (b) believes on reasonable grounds that a person may have been navigating the vessel at that time.
- (2) The inspector or police officer may require the person to provide a sample of oral fluid for a preliminary oral fluid test.

- (3) The inspector or police officer must conduct a preliminary oral fluid test of the person in accordance with the prescribed procedure.

75FB. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75F or 75FA by providing a sample of the person's oral fluid for a preliminary oral fluid test in accordance with the directions of the inspector or police officer.

Subdivision 2 — Drug testing and blood samples

75FC. Power to require oral fluid sample for drug testing following preliminary oral fluid test

- (1) This section applies if an inspector or police officer requires a person to provide a sample of oral fluid for a preliminary oral fluid test under section 75F or 75FA and either —
 - (a) the preliminary oral fluid test indicates a sample of the person's oral fluid contains a prescribed illicit drug; or
 - (b) the person refuses or fails to comply with the requirement.
- (2) The inspector or police officer may require the person to provide a sample of oral fluid for drug testing.
- (3) An inspector or police officer who is an authorised drug tester must conduct drug testing of the person by —
 - (a) collecting a sample of the person's oral fluid in the prescribed manner; and
 - (b) conducting the drug testing in accordance with the prescribed procedure.

75FD. Further sample of oral fluid for drug testing

- (1) This section applies if —
 - (a) a person provides a sample of oral fluid in accordance with a requirement imposed on the person under section 75FC; and
 - (b) the drug testing of the sample using a drug testing device fails.
- (2) An inspector or police officer may require the person to provide 1 additional sample of oral fluid for drug testing under section 75FC.
- (3) If the person has provided 2 samples of oral fluid for drug testing under section 75FC and the drug testing of each sample using a drug testing device fails, the person cannot be required to provide another sample of oral fluid for drug testing under that section.
- (4) For the purposes of this section, the drug testing of a sample of oral fluid is taken to have failed only if the drug testing device used for the drug testing —
 - (a) is not in proper working order; or
 - (b) does not indicate a positive or negative result.

75FE. When inspector or police officer must not impose testing requirement because of physical incapacity

- (1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of providing a sample of oral fluid that is sufficient for a drug testing device to operate.
- (2) The inspector or police officer must not require the person to provide a sample of oral fluid for drug testing under section 75FC.

75FF. Power to require blood sample instead of oral fluid sample

- (1) This section applies if —
 - (a) an inspector or police officer has power to require a person to provide a sample of oral fluid for drug testing under section 75FC; and
 - (b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.
- (2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of a person's blood for analysis.
- (4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed for the presence of alcohol or to determine the person's BAC in addition to being analysed in relation to drugs.

75FG. Compliance with requirement

- (1) A person must comply with a requirement imposed on the person under section 75FC to provide an oral fluid sample for drug testing by providing the sample in accordance with the directions of an authorised drug tester.

- (2) A person must comply with a requirement imposed on the person under section 75FF to allow a blood sample to be taken by a prescribed sample taker by —
 - (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
 - (b) complying with the directions of the sample taker.

Subdivision 3 — Assessment of drug impairment and related provisions

75FH. Assessments of drug impairment

- (1) This section applies if an inspector or police officer believes on reasonable grounds that a person is or was navigating, or attempting to operate, a vessel while impaired by something (other than only alcohol) affecting the person's capacity to navigate the vessel.
- (2) This section also applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —
 - (a) does not know, or has doubt about, who was navigating, or attempting to operate, the vessel at the time of the incident; and
 - (b) believes on reasonable grounds that a person —
 - (i) may have been navigating, or attempting to operate, the vessel at the time of the incident; and
 - (ii) was impaired by something (other than only alcohol) affecting the person's capacity to navigate a vessel.

- (3) The inspector or police officer may require the person to undergo an assessment of drug impairment.
- (4) An inspector or police officer must conduct an assessment of drug impairment of the person in accordance with the prescribed procedure for conducting the assessment.

75FI. When inspector or police officer must not impose testing requirement because of physical incapacity

- (1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of undergoing an assessment of drug impairment.
- (2) The inspector or police officer must not require the person to undergo an assessment of drug impairment under section 75FH.

75FJ. Power to require blood samples for drug analysis

- (1) This section applies if an inspector or police officer —
 - (a) requires a person to undergo an assessment of drug impairment under section 75FH and either —
 - (i) it appears to the inspector or police officer that the assessment indicates the person is impaired by a drug; or
 - (ii) the person fails to comply with the requirement;
 - or
 - (b) is prevented by section 75FI from requiring a person to undergo an assessment of drug impairment because of the person's physical condition.

- (2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of a person's blood for analysis.
- (4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed for the presence of alcohol or to determine the person's BAC in addition to being analysed in relation to drugs.

75FK. Compliance with requirement

- (1) A person must comply with a requirement imposed on the person under section 75FH to undergo an assessment of drug impairment by undergoing the assessment in accordance with the directions of the inspector or police officer.
- (2) A person must comply with a requirement imposed on the person under section 75FJ to allow a prescribed sample taker to take a sample of the person's blood for analysis by —
 - (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
 - (b) complying with the directions of the sample taker.

Division 4 — Enforcement powers relating to testing for alcohol and drugs

75G. Requirement to leave vessel, accompany inspector or police officer to place or wait at place

- (1) An inspector or police officer may require a person to leave a vessel, accompany an inspector or police officer to a specified place or wait at a specified place for any of the following purposes —
 - (a) to impose an alcohol or drug testing requirement on the person;
 - (b) for a sample of the person's breath, oral fluid or blood to be provided or taken in accordance with an alcohol or drug testing requirement;
 - (c) for an assessment of drug impairment to be carried out in relation to a person in accordance with an alcohol or drug testing requirement.
- (2) An inspector or police officer may require a person to do 1 or more things under subsection (1), or impose further requirements on the person under that subsection, as is reasonable in the circumstances to achieve a purpose referred to in subsection (1)(a), (b) or (c).
- (3) A requirement given to a person under subsection (1) ceases to have effect to the extent that an inspector or police officer —
 - (a) gives the person a later inconsistent requirement; or
 - (b) indicates to the person that the requirement no longer has effect.
- (4) A person must comply with a requirement imposed on the person under subsection (1) in accordance with the directions of the inspector or police officer.

75GA. Requirement to stop vessel or navigate to suitable location

- (1) This section applies if an inspector or police officer believes on reasonable grounds that it may be necessary to impose an alcohol or drug testing requirement on a person on a vessel.
- (2) The inspector or police officer may give a person navigating the vessel a direction requiring the person to —
 - (a) stop the vessel at a specified place; or
 - (b) navigate the vessel to a specified place that the inspector or police officer considers is suitable for —
 - (i) the purposes of imposing an alcohol or drug testing requirement on a person; or
 - (ii) another purpose under this Part or Part 3A.

Example for this subsection:

For the purposes of paragraph (b), a suitable place may be a location to fasten a vessel to a mooring, wharf or jetty or a location close to the shore.

- (3) An inspector or police officer may require a person to do 1 or more things under subsection (2), or impose further requirements on the person under that subsection, as is reasonable in the circumstances to achieve a purpose referred to in subsection (2)(a) or (b)(i) or (ii).
- (4) A requirement under subsection (2) may be given to a person orally or by means of a sign or signal (electronic or otherwise), or in any other manner.
- (5) A requirement given under subsection (2) to a person ceases to have effect to the extent that an inspector or police officer —

- (a) gives the person a later inconsistent direction;
or
 - (b) indicates to the person that the direction no longer has effect.
- (6) A person must comply with a requirement imposed on the person under subsection (2) in accordance with the directions of the inspector or police officer.

75GB. Power to board and move vessel

- (1) An inspector or police officer may board a vessel, or move a vessel to a place for safe custody —
- (a) if the inspector or police officer believes on reasonable grounds that the vessel has been used in connection with an offence under Part 3A or this Part; or
 - (b) for the purposes of imposing an alcohol or drug testing requirement on a person on the vessel.
- (2) An inspector or police officer may require a person on the vessel, or the owner, operator, master or pilot of the vessel, to take reasonable steps to facilitate the boarding or moving of the vessel under subsection (1).
- (3) A person must comply with a requirement imposed on the person under subsection (2) in accordance with the directions of the inspector or police officer.

75GC. Power to prevent use of vessel by alleged offender

- (1) In this section —
- key* includes a device or thing that allows a vessel to be operated.

Example for this definition:

A lanyard for a lanyard kill switch on an outboard motor.

- (2) This section applies if an inspector or police officer has reason for suspecting that a person has committed an offence against any of the sections specified in the Table.

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

- (3) The inspector or police officer may require the person to immediately give each key to a vessel in the person's possession —
- (a) to the inspector or police officer; or

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- (b) to another person in the person's company if the inspector or police officer is satisfied that the other person —
 - (i) is authorised to navigate the vessel; and
 - (ii) is responsible and able to navigate the vessel properly.
- (4) An inspector or police officer may impose a requirement under subsection (3) —
 - (a) if satisfied that the requirement is necessary in the circumstances and is in the interests of the person, or of any other person or of the public; and
 - (b) whether or not the person has been or is to be charged with an offence.
- (5) If the keys to a vessel are given to an inspector or police officer under subsection (3)(a), the inspector or police officer may take any appropriate and practicable steps to ensure that the vessel is secure and not causing an obstruction.
- (6) Those steps may include moving the vessel to a more suitable place.
- (7) Before giving the keys to a vessel to a person under subsection (3)(b), an inspector or police officer may require the person to provide a sample of breath for a preliminary breath test for the purposes of the inspector or police officer being satisfied that the person is able to navigate the vessel properly.

75GD. Compliance with requirement

A person commits an offence if the person —

- (a) fails to comply with any requirement imposed on the person under section 75GC(3); or

- (b) obstructs, or attempts to obstruct, an inspector or police officer in the exercise of a power under section 75GC(3), (5) or (7).

Penalty for this subsection: a fine of \$600.

75GE. Return of keys to vessel

- (1) This section applies if the keys to a vessel are given to an inspector or police officer under section 75GC(3)(a).
- (2) If a person asks an inspector or police officer to give the person the keys to the vessel, the inspector or police officer must comply with the request if satisfied that the person —
 - (a) is entitled to lawful possession of the vessel or is in the company of a person who is entitled to lawful possession of the vessel; and
 - (b) is authorised to navigate the vessel; and
 - (c) is responsible and able to navigate the vessel properly.
- (3) Before giving keys to a vessel to a person under subsection (2), an inspector or police officer may require the person to provide a sample of breath for a preliminary breath test for the purposes of the inspector or police officer being satisfied that the person is able to navigate the vessel properly.
- (4) If keys to a vessel are not given to a person who makes a request under subsection (2) within 24 hours after the request is made, the person may apply to the Magistrates Court for an order for the keys to be given to the person named in the application.

75GF. Prohibiting person from navigating vessel for 24 hours if prescribed illicit drug present

- (1) This section applies if —
- (a) drug testing of a sample of a person’s oral fluid indicates a prescribed illicit drug is present; or
 - (b) each of the following applies —
 - (i) a preliminary oral fluid test of a sample of the person’s oral fluid gives a preliminary indication that a prescribed illicit drug is present;
 - (ii) an inspector or police officer is prevented by section 75FE from requiring the person to provide a sample of oral fluid for drug testing;
 - (iii) the inspector or police officer requires the person to allow a prescribed sample taker to take the person’s blood for analysis under section 75FF;
- or
- (c) a preliminary oral fluid test of a sample of the person’s oral fluid gives a preliminary indication that a prescribed illicit drug is present and, because of section 75FD(3), the person cannot be required to provide another sample of oral fluid for drug testing; or
 - (d) the person refuses or fails to provide a sample of oral fluid for a preliminary oral fluid test or drug testing, or to allow a sample of the person’s blood to be taken for analysis, having been required to do so under Division 3.

- (2) An inspector or police officer may give the person a notice (a **prohibition notice**) prohibiting the person from navigating a vessel for 24 hours.
- (3) A prohibition under subsection (2) applies in relation to a vessel if a WA marine qualification is required to navigate the vessel under this Act.
- (4) A prohibition notice given to a person under subsection (2) must be given personally.
- (5) A person given a prohibition notice commits an offence if the person fails to comply with the notice.
Penalty for this subsection:
 - (a) for a first offence, a fine of \$1 250;
 - (b) for a second or subsequent offence, a fine of \$2 000.

75GG. Requirements for prohibition notice

A prohibition notice under section 75GF must —

- (a) specify the grounds on which the notice is given, including when subsection (1) of that section applied to the person; and
- (b) contain a statement to the effect that, because the person has been given the notice, the person must not navigate a vessel for a period commencing on receipt of the notice and ending 24 hours after receipt of the notice; and
- (c) specify the time at which the person is given the prohibition notice and when the 24-hour period ends.

Division 5 — Failure to comply with alcohol or drug testing requirements

Subdivision 1 — General offences relating to failure to comply with alcohol or drug testing requirements

75H. Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel

- (1) A person commits an offence if the person fails to comply with —
- (a) a requirement to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; or
 - (b) a requirement to provide a sample of oral fluid for a preliminary oral fluid test under section 75F or 75FA; or
 - (c) a leave vessel, accompany officer or wait requirement relating to a requirement referred to in paragraph (a) or (b); or
 - (d) a requirement to take reasonable steps to facilitate an inspector or police officer boarding or moving a vessel under section 75GB.

Penalty for this subsection:

- (a) for a first offence, a fine of not less than \$450 or more than \$1 200;
 - (b) for a second or subsequent offence, a fine of not less than \$900 or more than \$2 100.
- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified

from holding or obtaining a WA marine qualification as follows —

- (a) for a first offence, for a period of not less than 3 months;
 - (b) for a second or subsequent offence, for a period of not less than 6 months.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place

Section no.	Section heading
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

75HA. Defence: compliance with later requirement

- (1) It is a defence to a charge of an offence against section 75H(1) for the person charged to prove that the person complied with a later requirement that arose out of —
 - (a) the person's failure to comply with the requirement the subject of the charge; or
 - (b) the circumstances that gave rise to the requirement the subject of the charge.
- (2) For the purposes of subsection (1), a *later requirement* is —
 - (a) in relation to a requirement referred to in section 75H(1)(a) —
 - (i) a requirement to provide a sample of breath for breath analysis under section 75EH or 75EI; or

- (ii) a requirement to allow a blood sample to be taken for analysis under section 75EH or 75EI;
- or
- (b) in relation to a requirement referred to in section 75H(1)(b) —
 - (i) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or
 - (ii) a requirement to allow a blood sample to be taken for analysis under section 75FF.

75HB. Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place

- (1) A person commits an offence if the person fails to comply with —
 - (a) a requirement to provide a sample of breath for breath analysis under section 75EH or 75EI; or
 - (b) a requirement to allow a sample of the person's blood to be taken for analysis under section 75EH, 75EI, 75EN or 75EO; or
 - (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b); or
 - (d) a requirement to stop a vessel at, or navigate a vessel to, a specified place under section 75GA.

Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine

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of not less than \$2 400 or more than \$5 650;

- (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;
- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.

- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months

	Disqualification
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	15 months
Second offence	42 months
Third or subsequent offence	Permanent

- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75HC. Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm

- (1) A person commits a crime if the person commits an offence against section 75HB(1) in the circumstance of aggravation stated in subsection (2).

Alternative offence for this subsection:

section 75HB(1) (Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place).

Penalty for this subsection: imprisonment for 14 years or a fine of any amount.

Summary conviction penalty for this subsection:

imprisonment for 18 months or a fine of \$8 000.

- (2) For the purposes of subsection (1), the *circumstance of aggravation* is that when an inspector or police officer imposes the requirement on the person the subject of the offence against section 75HB(1), the inspector or police officer —
- (a) advises the person that the inspector or police officer believes the vessel the person was, or is believed to have been, navigating was involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and
- (b) explains the consequences of failing to comply with the requirement to the person.
- (3) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified

from holding or obtaining a WA marine qualification as follows —

- (a) in relation to a conviction on indictment — for a period of not less than 2 years;
 - (b) in relation to a summary conviction — for a period of not less than 18 months.
- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75HD. Failure to comply with requirement: oral fluid sample for drug testing or blood sample

- (1) A person commits an offence if the person fails to comply with —
- (a) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or
 - (b) a requirement to allow a sample of the person's blood to be taken for analysis under section 75FF; or
 - (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

Penalty for this subsection:

- (a) for a first offence, a fine of not more than \$1 250;
 - (b) for a second or subsequent offence, a fine of not less than \$1 250 or more than \$2 000.
- (2) A court sentencing a person for a second or subsequent offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 6 months.

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- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment

Section no.	Section heading
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75HE. Failure to comply with requirements relating to assessment of drug impairment

- (1) A person commits an offence if the person fails to comply with —
- (a) a requirement to undergo an assessment of drug impairment under section 75FH; or
 - (b) a requirement to allow a blood sample to be taken for analysis under section 75FJ; or
 - (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

Penalty for this subsection:

- (a) for a first offence, a fine of not less than \$1 750 or more than \$3 750;
- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;
- (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.

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- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification —
- (a) for a first offence, for a period of not less than 10 months;
 - (b) for a second offence, for a period of not less than 30 months;
 - (c) for a third or subsequent offence, permanently.
- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm

Section no.	Section heading
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

Subdivision 2 — Failure to comply with drug testing requirements in circumstances relating to person’s BAC

75HF. Term used: drug testing requirement

In this Subdivision —

drug testing requirement means —

- (a) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or
- (b) a requirement to allow a sample of blood to be taken for analysis under section 75FF or 75FJ; or
- (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

75HG. Failure to comply with drug testing requirement: BAC of 0.05 or above

- (1) A person commits an offence if the person fails to comply with a drug testing requirement in circumstances that, before an inspector or police officer makes the drug testing requirement of the person —
- (a) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and

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- (b) the breath analysis conducted by an authorised operator indicates that the person has a BAC of 0.05 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (2) If a person is convicted of an offence against subsection (1) —
 - (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and

- (b) the court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the minimum period of disqualification specified in the Table.

Table

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.05 g but < 0.07 g	Min: Max: Disq:	 \$1 900 3 months	\$1 900 \$3 000 9 months	\$1 900 \$3 000 12 months
≥ 0.07 g	Min: Max: Disq:	 \$1 900 3 months	\$1 900 \$3 000 12 months	\$1 900 \$3 000 15 months

Note: \geq signifies of or above

$<$ signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs

Section no.	Section heading
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75HH. Failure to comply with drug testing requirement: BAC of 0.08 or above

- (1) A person commits an offence if the person fails to comply with a drug testing requirement in

circumstances that, before an inspector or police officer makes the drug testing requirement of the person —

- (a) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and
- (b) the breath analysis conducted by an authorised operator indicates that the person has a BAC of 0.08 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

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- (2) If a person is convicted of an offence against subsection (1) —
- (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) the court convicting the person must, in any event, order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the minimum period of disqualification specified in the Table.

Table

BAC		First offence	Second offence	Third or subsequent offence
≥ 0.08 g but < 0.09 g	Min: Max: Disq:	\$1 150 \$3 400 9 months	\$2 400 \$3 400 12 months	\$2 400 \$3 400 15 months
≥ 0.09 g but < 0.11 g	Min: Max: Disq:	\$1 300 \$3 400 11 months	\$2 550 \$3 400 15 months	\$2 550 \$3 400 20 months
≥ 0.11 g but < 0.13 g	Min: Max: Disq:	\$1 500 \$3 400 12 months	\$2 700 \$4 500 21 months	\$2 700 \$4 500 26 months
≥ 0.13 g	Min: Max: Disq:	\$1 750 \$3 400 14 months	\$3 600 \$5 650 27 months	\$3 600 \$6 750 42 months

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against this section is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the offence; and
 - (b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm

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Section no.	Section heading
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

75HI. Failure to comply with drug testing requirement: BAC of 0.15 or above

- (1) A person commits an offence if the person fails to comply with a drug testing requirement in circumstances that, before an inspector or police officer makes the drug testing requirement of the person —
- (a) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and
 - (b) the breath analysis conducted by the inspector or police officer indicates that the person has a BAC of 0.15 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place

Section no.	Section heading
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above

Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$5 650;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;

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- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	15 months
Second offence	42 months
Third or subsequent offence	Permanent

- (3) In determining whether an offence against this section is a first, second or subsequent offence —
- (a) a previous offence against subsection (1) is to be taken into account regardless of the person's BAC when committing the offence; and
 - (b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

Subdivision 3 — Defence for failing to comply with alcohol or drug testing requirement

75HJ. Substantial reasons for failing to comply with requirements or later providing certain samples

It is a defence to a charge of an offence of failing to comply with an alcohol or drug testing requirement for the person charged to prove that the substantial reason for the failure to comply was a reason other than to avoid providing information that might be used as evidence.

Division 6 — General provisions relating to alcohol and drug testing

75I. Responsibility to facilitate medical assistance

- (1) This section applies if it appears to an inspector or police officer that a person on whom the inspector or police officer may impose an alcohol or drug testing requirement is unconscious or seriously injured.
- (2) The inspector or police officer must facilitate the provision of medical assistance for the person.

75IA. When inspector or police officer must not impose testing requirement because of passage of time

- (1) This section applies if an inspector or police officer has power under Division 2 or 3 to require a person —
 - (a) to provide a sample of breath for breath analysis; or
 - (b) to provide a sample of oral fluid for drug testing; or
 - (c) to allow a sample of the person's blood to be taken for analysis; or
 - (d) to undergo an assessment of drug impairment.

- (2) The inspector or police officer must not impose the requirement on the person if it appears to the inspector or police officer that the sample cannot be taken, or the assessment of drug impairment cannot be conducted, within 4 hours after the circumstances giving rise to the requirement occurred.
- (3) This section applies subject to section 75EP.

Note for this subsection:

Section 75EP allows a requirement to allow or cause a sample of a person's blood to be taken within 12 hours after an incident occurs in particular circumstances.

75IB. Taking of oral fluid samples for oral fluid analysis

- (1) This section applies if —
 - (a) an authorised drug tester conducts drug testing of a sample of a person's oral fluid provided in compliance with a requirement imposed under section 75FC; and
 - (b) in the opinion of the authorised drug tester, the drug testing indicates that the person's oral fluid contains a prescribed illicit drug.
- (2) The sample must be divided into 2 parts, each of which is taken be a sample of the person's oral fluid for the purposes of this Act.
- (3) The authorised drug tester must ensure that both samples are delivered to an inspector or police officer.
- (4) An inspector, police officer or other person engaged for the purpose must deliver 1 of the samples to the Chemistry Centre (WA) on behalf of the person who provided the sample.

Note for this subsection:

See section 75IF for the obligations of the Chemistry Centre (WA) relating to the sample.

75IC. Authorisation for prescribed sample takers authorised to take blood samples

- (1) A prescribed sample taker is authorised to take a sample of a person's blood for analysis if an inspector or police officer under this Part —
 - (a) has required a person to allow a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis; or
 - (b) causes a prescribed sample taker to take a sample of the person's blood for analysis.
- (2) No action lies against a prescribed sample taker by reason only of the person taking a sample of a person's blood for analysis under this Part.

75ID. Authorisation to take blood samples when person deceased

- (1) In this section —

serious incident means an incident in which a vessel is involved that occasions the death of, or injury, to a person.
- (2) This section applies if —
 - (a) a person who may have been on a vessel when the vessel was involved in a serious incident is dead on arrival at a hospital or dies in a hospital before a sample of the person's blood can be taken; and
 - (b) were the person alive, they —
 - (i) may have been required to allow a prescribed sample taker to take a sample of the person's blood for analysis in accordance with an alcohol or drug testing requirement; or

- (ii) may have been a person for whom a prescribed sample taker may have been caused to take a sample of the person's blood for analysis.
- (3) The medical practitioner who reports the death under the *Coroners Act 1996* section 17(3) may —
 - (a) take a sample of blood from the body of the person; or
 - (b) as soon as practicable after reporting the death, notify the coroner that a sample of blood should be taken from the person's body because of the circumstances of the person's death.
- (4) If the coroner is notified under subsection (3)(b), the coroner may direct and authorise a pathologist to take a sample of blood from the person's body.
- (5) A person is not obliged to take a sample of blood under this section if another sample of blood has previously been taken from the person's body in accordance with an alcohol or drug testing requirement relating to the serious incident.

75IE. Taking blood samples for analysis

- (1) This section applies if a prescribed sample taker takes a sample of a person's blood for analysis in accordance with an alcohol or drug testing requirement imposed on the person.
- (2) The sample must be taken —
 - (a) in accordance with the regulations or otherwise in a proper manner; and
 - (b) either —
 - (i) as a single sample which is then divided into 2 parts; or

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- (ii) as 2 samples taken 1 immediately after the other.
- (3) If 2 samples of the person's blood are taken under subsection (2)(b) —
 - (a) the 2 samples are taken to be a single sample, taken at the time the first of the 2 samples was taken; and
 - (b) each of the 2 samples is taken to be —
 - (i) a part of that single sample that has been divided into 2 parts; and
 - (ii) a sample of the person's blood for the purposes of this Act.
- (4) The prescribed sample taker must ensure that both samples are delivered to an inspector or police officer.
- (5) An inspector, police officer or other person engaged for the purpose must deliver 1 of the samples to the Chemistry Centre (WA) on behalf of the person from whom the samples were taken.

Note for this subsection:

See section 75IF for the obligations of the Chemistry Centre (WA) relating to the sample.

- (6) If a sample of a person's blood is analysed for alcohol by an analyst in accordance with the regulations, the BAC of the sample is the analysis result and is taken to be the person's BAC at the time the sample of blood was taken.

75IF. Oral fluid and blood samples delivered to Chemistry Centre (WA)

- (1) This section applies to a sample of oral fluid or blood delivered to the Chemistry Centre (WA) on behalf of a person under section 75IB(4) or 75IE(5).

- (2) The Chemistry Centre (WA) must retain and appropriately store the sample until the person requests it.
- (3) Within 3 months after the day on which the sample is given to the Chemistry Centre (WA), the person may ask for the sample to be delivered to an analyst (as defined in the *Misuse of Drugs Act 1981* section 3(1)) nominated by the person for analysis.
- (4) The cost of delivering the sample must be paid for by the person.
- (5) The Chemistry Centre (WA) is not required to store the sample for more than 3 months.

75IG. Samples of oral fluid or blood not to be used to obtain DNA profile

- (1) In this section —
sample means a sample of oral fluid or blood taken from or provided by a person (the *subject*) and given to an inspector or police officer under section 75IB or 75IE.
- (2) A person must not use a sample to obtain the subject's DNA profile.
Penalty for this subsection: imprisonment for 12 months.

Division 7 — Administrative matters

75J. Regulations relating to alcohol and drug testing and other matters

- (1) The regulations may make provision in relation to testing for alcohol or drugs, including —

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- (a) the procedures for, or equipment to be used in —
 - (i) conducting a preliminary breath test, breath analysis, preliminary oral fluid test or drug testing; or
 - (ii) taking a sample of oral fluid or a blood sample;or
 - (b) the destruction of a sample, or other forensic material, taken under this Part.
- (2) Regulations may apply or adopt instruments under the *Road Traffic Act 1974* for a purpose under this Act —
- (a) with or without modifications; or
 - (b) as in force at a particular time or from time to time.

75JA. Minister may approve alcohol and drug testing devices

The Minister may approve, by notice published in the *Gazette*, any of the following —

- (a) a type of device that uses a sample of a person's breath to indicate 1 or more of the following —
 - (i) a person's BAC;
 - (ii) whether a person's BAC is of a particular level or above;
 - (iii) whether or not alcohol is present in the person's blood;
- (b) a type of device that analyses a sample of a person's breath to determine the person's BAC;

- (c) a type of device that provides a preliminary indication of the presence of a prescribed illicit drug in a sample of a person's oral fluid;
- (d) a type of device that ascertains whether a prescribed illicit drug is present in a sample of a person's oral fluid.

75JB. Delegation by Commissioner of Police

- (1) The Commissioner of Police may delegate the Commissioner's power under section 75EA(2), 75EB(2) or 124HP(2) to —
 - (a) a specified police officer; or
 - (b) a police officer of a specified class; or
 - (c) a person who is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.
- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) A person to whom a power is delegated under this section cannot delegate that power.
- (4) A person performing a power that has been delegated to the person is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner of Police to exercise a power or perform a function through an officer or agent.

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16. Section 79 amended

After section 79(2) insert:

- (3) The regulations referred to in subsection (1) may make provision for applying, adopting or incorporating, with or without modification, the Prevention of Collisions Convention.

17. Section 99 amended

(1) Delete section 99(1)(k) and insert:

- (k) providing for the licensing of owners, masters, operators and crew of pleasure vessels and prescribed vessels, including —
 - (i) issuing licences; and
 - (ii) authorising the chief executive officer to grant exemptions in relation to licences; and
 - (iii) assessing the competency of people to hold licences;
- (ka) providing for schemes for assessing the competency of people to hold licences in relation to owners, masters, operators and crew of pleasure vessels and prescribed vessels;

(2) After section 99(2) insert:

- (3) The *Interpretation Act 1984* section 43(8)(d) does not limit subsection (1)(k) or (ka).

18. Section 100 amended

In section 100(2)(b) after “64C,” insert:

64D,

19. Section 107 amended

In section 107 delete the definition of *marine qualification*.

20. Section 114 amended

Delete section 114(3)(b) and insert:

- (b) must not exceed —
 - (i) in relation to an offence under Part 3A or Part 3B or section 124GS(2) — \$2 000; or
 - (ii) in relation to any other offence — 20% of the penalty specified for the offence.

21. Section 123 amended

Delete section 123(3) and insert:

- (3) The Minister, the chief executive officer, the Commissioner of Police, and the State are also relieved of any liability that any of them might otherwise have had for another person having done anything as described in subsection (1).

22. Section 124FA inserted

At the end of Part VIII insert:

124FA. Approved forms

- (1) The chief executive officer may approve forms for use under this Act.
- (2) A certificate that is prescribed for a purpose under the *Road Traffic Act 1974* is taken to be the form of a certificate approved under subsection (1) for a corresponding purpose under this Act.
- (3) A form approved under subsection (1) may apply or adopt a form approved or prescribed under the *Road Traffic Act 1974* (other than a prescribed certificate referred to in subsection (2)) for use for a corresponding purpose under this Act.
- (4) A form referred to in subsection (2) or (3) may be used even if the form is not modified in any way, including not modified to refer to a provision of this Act relating to the corresponding purpose for which it is used.
- (5) The chief executive officer must make forms approved under subsection (1) (other than forms to which subsection (3) applies) available on the Department's website.

23. Part 8A inserted

- (1) After Part VIII insert:

**Part 8A — Disqualification from holding or
obtaining WA marine qualification**

Division 1 — Preliminary

124G. Terms used

In this Part —

alleged offence, in relation to a person, has the meaning given in section 124GA(1);

disqualification notice has the meaning given in section 124GA(3);

disqualification order, in relation to a person, means an order made by a court on convicting the person for an offence that disqualifies the person from holding or obtaining a WA marine qualification for the period specified in the order;

disqualified, in relation to a person, means the person is disqualified from holding or obtaining a WA marine qualification by a disqualification order or under a disqualification notice.

- (2) After Part 8A Division 1 (as inserted by subsection (1)) insert:

Division 2 — Disqualification notices

124GA. Disqualification by inspector or police officer

- (1) This section applies if an inspector or police officer suspects on reasonable grounds that a person has

committed an offence specified in the Table (the *alleged offence*).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (2) For the purposes of subsection (1), reasonable grounds in relation to an offence against 75C(1), 75CA(1), 75DA(1) or 75DD(1) include the result of a breath

analysis of a sample of a person's breath or analysis of a person's blood.

- (3) The inspector or police officer may give the person a notice (a *disqualification notice*) stating that the person is disqualified from holding or obtaining a WA marine qualification for a period of 2 months starting when the notice is given to the person.

Note for this subsection:

See section 124GD for the period for which a disqualification notice is in effect.

- (4) A disqualification notice given to a person under subsection (3) must be given personally.
- (5) The inspector or police officer giving the disqualification notice to the person must write on it —
- (a) the time and date the notice is given to the person; and
 - (b) the time and date the period of disqualification ends.

124GB. Requirements for disqualification notice

A disqualification notice given to a person must —

- (a) specify the grounds on which the notice is given; and
- (b) identify the time and date on which the alleged offence was committed; and
- (c) identify where the alleged offence was committed; and
- (d) describe the alleged offence with reasonable clarity; and
- (e) identify the offence, or offences, that the person is suspected of committing; and

- (f) state that the person may be able to apply to a court under section 124GH for an order revoking the disqualification notice in certain circumstances.

124GC. Limitation on giving disqualification notice

An inspector or police officer cannot give a disqualification notice to a person in relation to an alleged offence more than 10 days after the later of the following days —

- (a) the day the alleged offence was committed;
- (b) if a sample of the alleged offender's blood was taken under section 75EH, 75EI, 75EN or 75EO in relation to the commission of the alleged offence — the day on which an inspector or police officer receives information about the result of the analysis of the sample.

124GD. Period of disqualification under disqualification notice

A disqualification notice given to a person has effect for the period —

- (a) starting when the notice is given to the person; and
- (b) ending on the day that is 2 months after the day on which it is given to the person, unless the notice is revoked earlier.

124GE. Amendment of disqualification notice

An inspector or police officer may, by written notice given to a person to whom a disqualification notice has been given, amend the disqualification notice to correct an error in the notice.

124GF. Particulars of disqualification notice given to chief executive officer

If an inspector or police officer gives a person a disqualification notice, or a notice amending a disqualification notice under section 124GE, the inspector or police officer must ensure that particulars of the notice are sent to the chief executive officer as soon as practicable after giving the notice.

124GG. Revocation of disqualification notice by inspector or police officer

- (1) An inspector or police officer must immediately revoke a disqualification notice given to a person in relation to an alleged offence if —
 - (a) the inspector or police officer becomes aware that the breath analysing equipment used to conduct a breath analysis of a sample of the person's breath in connection with the offence was faulty at the time of the analysis; or
 - (b) a charge for the offence has not been laid within 1 month after the day on which the notice was given; or
 - (c) a charge for the offence is discontinued.
- (2) The inspector or police officer who revokes a disqualification notice under subsection (1) must, as soon as practicable after the revocation, ensure that notice of the revocation is given to —
 - (a) the person to whom the disqualification notice was given; and
 - (b) the chief executive officer.

124GH. Court may order revocation of disqualification notice

- (1) A person may apply to the Magistrates Court or, if the person is under 18 years of age, to the Children's Court, for an order revoking a disqualification notice given to the person on the grounds that there are exceptional circumstances that justify the revocation.
- (2) An application made under subsection (1) must —
 - (a) include particulars of the exceptional circumstances that the applicant alleges justify revoking the notice; and
 - (b) be given to the chief executive officer at least 14 days before it is heard and determined.
- (3) If the disqualification notice was issued by an inspector, the chief executive officer is entitled to be heard on the application.
- (4) If the disqualification notice was issued by a police officer, the Commissioner of Police is entitled to be heard on the application.
- (5) The court may make an order directing that the disqualification notice be revoked from a specified day if the court is satisfied that there are exceptional circumstances that justify revoking the notice.
- (6) If the court makes an order directing that a disqualification notice issued by a police officer is revoked, the court must ensure a copy of the order is given to the chief executive officer.

124GI. Disqualification notice automatically revoked on acquittal or dismissal of charge

- (1) A disqualification notice given to a person in relation to an alleged offence is revoked if a court —
 - (a) acquits the person of the offence; or
 - (b) dismisses a charge for the offence.
- (2) If a disqualification notice is revoked under this section, the court must ensure that information about the revocation is sent to the chief executive officer.

124GJ. Period of disqualification under disqualification notice to be taken into account in sentencing

- (1) This section applies if a court convicts a person of an offence to which a disqualification notice relates.
 - (2) When making an order disqualifying the person from holding or obtaining a WA marine qualification, the court must take into account the period of disqualification that applies to the person under the disqualification notice.
- (3) At the end of Part 8A (as inserted by subsection (1)) insert:

Division 3 — Provisions relating to disqualification orders by court

124GK. Application of Division

This Division applies if a court sentencing a person for an offence makes a disqualification order in relation to the person.

124GL. Notifying chief executive officer of disqualification order

The court must ensure that the following information about a disqualification order is given to the chief executive officer —

- (a) details of the order;
- (b) details of the offence to which the disqualification relates;
- (c) any other information prescribed for this section.

124GM. Removal of disqualification

- (1) A disqualified person may apply to a court for an order removing the disqualification.
- (2) However, the person cannot apply before the end of the following period, starting on the day on which the disqualification took effect —
 - (a) if the disqualification is for no more than 6 years — 3 years;
 - (b) if the disqualification is for more than 6 years but no more than 20 years — one-half of the period of the disqualification;
 - (c) if the disqualification is for more than 20 years or is permanent — 10 years.
- (3) The application must be made to —
 - (a) if the disqualification was imposed by the Supreme Court — the Supreme Court; or
 - (b) in any other case — the District Court.

- (4) The court may make an order removing the disqualification from the day specified in the order or refuse the application.
- (5) In deciding the application, the court must have regard to the following matters —
 - (a) the safety of the public generally;
 - (b) the character of the applicant;
 - (c) the circumstances of the case;
 - (d) the nature of the offence or offences giving rise to the disqualification;
 - (e) the conduct of the applicant subsequent to the disqualification.

124GN. Removal of disqualification: additional provisions

- (1) A court to which an application is made under section 124GM may order the applicant to pay all or part of the costs of an application.
- (2) The chief executive officer has a right to be heard in proceedings for the application.
- (3) If the court refuses the application, a further application cannot be heard during the period of 1 year after the day of refusal.
- (4) This section and section 124GM do not limit or otherwise affect any right a person may have to appeal against a disqualification order.

124GO. Notifying chief executive officer of disqualification order

A court ordering that the disqualification of a person be removed must ensure that the following information is given to the chief executive officer —

- (a) details of the order;

- (b) details of the disqualification;
- (c) any other information prescribed for this section.

Division 4 — Effect of disqualifications and other matters

124GP. Effect of disqualification

- (1) A WA marine qualification held by a person is suspended while the person is disqualified.
- (2) A WA marine qualification obtained by a person while the person is disqualified has no effect.
- (3) Subsection (2) applies whether or not the person applied for the WA marine qualification before becoming disqualified.
- (4) This section —
 - (a) does not operate to extend the period for which a WA marine qualification may be valid or effective beyond the time it would otherwise expire; and
 - (b) does not affect the cancellation of a WA marine qualification under regulations referred to in section 124GQ(a).

124GQ. Other effects of disqualification

The regulations may provide —

- (a) for the circumstances in which a WA marine qualification held by a person who is disqualified under a disqualification order may be cancelled; and
- (b) if a person is disqualified from holding or obtaining a marine qualification under the law

of another Australian jurisdiction or an overseas jurisdiction, that —

- (i) a WA marine qualification held by the person is suspended while the disqualification is in effect or may be cancelled; or
- (ii) the person cannot obtain a WA marine qualification.

124GR. Calculating period of disqualification

Any of the following periods do not count towards a period of disqualification for a person —

- (a) a period during which the person is in custody serving a sentence of imprisonment;
- (b) if the person appeals against the conviction or sentence that gave rise to the disqualification — the period starting when the person commences the appeal and ending when the appeal is decided, dismissed or withdrawn.

124GS. Navigating certain vessels when disqualified from holding or obtaining WA marine qualification

- (1) In this section —

navigate, a vessel, has the meaning given in section 75AA(2);

relevant vessel means a vessel for which a WA marine qualification is required to navigate it under this Act.

- (2) A person commits an offence if the person navigates a relevant vessel while the person is disqualified.

Penalty for this subsection:

- (a) for a first offence, imprisonment for 12 months or a fine of not less than \$400 or more than \$2 000;

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- (b) for a second or subsequent offence, imprisonment for 18 months or a fine of not less than \$1 000 or not more than \$4 000.
- (3) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 3 months or more than 9 months.
- (4) A period of disqualification ordered under subsection (3) is cumulative upon —
 - (a) another period for which the person is disqualified; or
 - (b) if a WA marine qualification held by the person is suspended when the order is made — the period of suspension.
- (5) It is a defence to a charge of an offence against subsection (2) for the person charged to prove that the person —
 - (a) held an exemption issued by the chief executive officer under this Act from holding a WA marine qualification; and
 - (b) was navigating the vessel in accordance with the exemption at the time the alleged offence was committed.
- (6) A police officer may arrest a person for an offence against subsection (2) without a warrant.

24. **Part IX Divisions 1 and 2 inserted**

- (1) Before Part IX Division 2 (as inserted by subsection (2)) insert:

Division 1 — Evidentiary provisions for alcohol-related offences and drug-related offences

Subdivision 1 — Preliminary

124H. Terms used

In this Division —

alcohol-related offence has the meaning given in section 124HC(1);

approved expert has the meaning given in the *Road Traffic Act 1974* section 70(7);

authorised drug tester has the meaning given in section 75EB(1);

authorised operator has the meaning given in section 75EA(1);

certificate means a certificate in the form approved under section 124FA(1);

drug-related offence has the meaning given in section 124HI(1);

material time has the meaning given in —

- (a) in relation to an alcohol-related offence — section 124HC(2); or
- (b) in relation to a drug-related offence — section 124HI(2);

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1);

preliminary breath test has the meaning given in section 75E;

preliminary oral fluid test has the meaning given in section 75E;

prescribed sample taker has the meaning given in section 75E;

sampling equipment means the equipment referred to in the *Road Traffic Act 1974* section 70 as the prescribed equipment that must be used for taking blood samples for the purposes of Part 3B.

124HA. Certificate is evidence of stated facts

- (1) This section applies in relation to a certificate —
 - (a) purporting to be signed by a person; and
 - (b) stating any of the matters that, under this Division, the person may certify.
- (2) In a proceeding for an alcohol-related offence or a drug-related offence, the certificate is evidence of the facts stated in the certificate without proof of the person's signature.

124HB. No limit on other evidence in proceedings

- (1) Nothing in this Division is to be construed as limiting the evidence that may be introduced in a proceeding for an offence against this Act or another written law that is relevant to whether or not a person is guilty of the offence.

- (2) Subsection (1) applies in relation to evidence regardless of whether the evidence is in addition to, or independent of, any evidence that is provided for under this Division.

Subdivision 2 — Evidence in proceedings for alcohol-related offences

124HC. Alcohol-related offence and material time

- (1) An *alcohol-related offence* is —
- (a) an offence against a section specified in the Table; or

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

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- (b) an offence against this Act or another written law if either of the following matters is relevant to the proceeding —
 - (i) whether or not a person was under the influence of alcohol at a material time;
 - (ii) the extent to which a person was under the influence of alcohol at a material time.
- (2) The *material time*, in relation to a person about whom evidence is given for an alcohol-related offence, is —
 - (a) for an offence mentioned in subsection (1)(a) — the time at which a person is alleged to have navigated, or attempted to operate, a vessel while the person had a particular BAC;
 - (b) for an offence mentioned in subsection (1)(b) — the material time mentioned in subsection (1)(b)(i) or (ii) in relation to the offence.

124HD. Evidence in proceeding for alcohol-related offence

- (1) Evidence about any of the following matters may be given in a proceeding for an alcohol-related offence —
 - (a) the provision of a sample of breath by a person for breath analysis, if the sample is provided within 4 hours after the material time;
 - (b) the analysis of the sample of the person's breath by breath analysing equipment operated by an authorised operator;
 - (c) the manner in which the breath analysing equipment indicated a result of the breath analysis;

- (d) the result indicated by the breath analysing equipment;
 - (e) the taking of a sample of blood from the person by a prescribed sample taker, if the sample is taken —
 - (i) within 4 hours after the material time; or
 - (ii) if the sample is taken in accordance with a requirement under section 75EO — within 12 hours after the material time;
 - (f) the analysis of the sample of the person's blood for alcohol by an analyst;
 - (g) the result of the analysis of the sample.
- (2) Subsection (1) does not limit the admissibility of other evidence that may be given in the proceeding.

124HE. Evidence of authorised operator of breath analysing equipment

In a proceeding for an alcohol-related offence, evidence given by an authorised operator about any of the following is evidence of that fact —

- (a) the device operated by the authorised operator to conduct an analysis of a breath sample was breath analysing equipment;
- (b) the authorised operator operated the breath analysing equipment —
 - (i) in the prescribed manner; and
 - (ii) in compliance with the regulations relating to the type of breath analysing equipment;
- (c) when operated, the breath analysing equipment indicated a result in the prescribed manner.

124HF. Certificate of authorised operator of breath analysing equipment

For the purposes of section 124HA, the matters that a person who is an authorised operator may certify in a certificate are that, on a specified date or at a specified time —

- (a) a specified person provided a sample of breath for breath analysis; and
- (b) the person was an authorised operator; and
- (c) the sample of breath provided was analysed using a device that was breath analysing equipment that was operated by the person; and
- (d) the person used the breath analysing equipment in the prescribed manner and in accordance with the regulations relating to breath analysis conducted using that type of breath analysing equipment; and
- (e) at the conclusion of the breath analysis, the breath analysing equipment indicated a result in the prescribed manner; and
- (f) the result of the breath analysis was the specified result; and
- (g) in accordance with section 75EM, the person gave the specified person a written statement or statement printed by the breath analysing equipment referred to in that section.

124HG. Certificate of analyst relating to analysis of blood sample for alcohol

For the purposes of section 124HA, the matters that a person who is an analyst may certify in a certificate are that, on a specified date or at a specified time —

- (a) the person was an analyst; and

- (b) the person received a sample of blood —
 - (i) identified in the specified way; and
 - (ii) identified as a sample taken from a specified person;

and

- (c) the person analysed the sample for alcohol in accordance with the regulations, and
- (d) the result from the analysis was the specified BAC.

Example for this section:

For the purposes of paragraph (b)(i), a sample may be identified by a number on the container for the sample.

124HH. Proof of person's BAC for certain offences

- (1) This section applies in a proceeding for an alcohol-related offence referred to in section 124HC(1)(a).
- (2) In the absence of proof to the contrary, the accused is taken to have a particular BAC at the time the accused navigated, or attempted to operate, a vessel if it is proved the person had that BAC —
 - (a) within 4 hours after the time of the navigation or attempted operation; or
 - (b) if the proof of the person's BAC relates to a sample of the person's blood taken in accordance with a requirement imposed under section 75EO — within 12 hours after the time of the navigation or attempted operation.
- (3) Evidence that the accused consumed alcohol during the relevant period is not admissible to rebut the presumption created under subsection (2).

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- (4) For the purposes of subsection (3), the *relevant period* is the period —
- (a) starting at the latest time it is alleged the accused navigated or attempted to operate a vessel; and
 - (b) ending when the person provided the sample of breath, or the sample of the person's blood was taken, which established proof of the person's BAC.

Subdivision 3 — Evidence in proceedings for drug-related offences

124HI. Drug-related offence and material time

- (1) A *drug-related offence* is —
- (a) an offence against any of the sections specified in the Table; or

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

Section no.	Section heading
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

- (b) an offence against this Act or another written law if either of the following matters is relevant to the proceeding —
 - (i) whether or not a person was under the influence of, or impaired by, a drug at a material time;
 - (ii) the extent to which a person was under the influence of, or impaired by, a drug at a material time.
- (2) The **material time**, in relation to a person about whom evidence for a drug-related offence is given, is —
 - (a) for an offence mentioned in subsection (1)(a) — the time at which a person is alleged to have navigated, or attempted to operate, a vessel while —
 - (i) the person was under the influence of a drug; or
 - (ii) the person was impaired by drugs; or
 - (iii) a prescribed illicit drug was present in the person's body;
 - or
 - (b) for an offence mentioned in subsection (1)(b) — the material time mentioned in subsection (1)(b)(i) or (ii) in relation to the offence.

124HJ. Evidence in proceedings for drug-related offences

- (1) Evidence about the following matters may be given in a proceeding for a drug-related offence —
 - (a) the taking of a sample of blood from a person by a prescribed sample taker, if the sample is taken —
 - (i) within 4 hours after the material time; or
 - (ii) if the sample is taken in accordance with a requirement imposed under section 75EO — within 12 hours after the material time;
 - (b) the analysis of the sample of the person's blood for drugs by a drugs analyst;
 - (c) the result obtained from the analysis;
 - (d) the behaviour, condition or appearance of a person at the material time;
 - (e) the behaviour or a condition associated with a person who has consumed or used a particular drug or combination of drugs;
 - (f) the usual effect that the behaviour or a condition associated with a person who has consumed or used a particular drug or combination of drugs has on a person's capacity to have proper control of a vessel;
 - (g) the provision of a sample of oral fluid by the person, if the sample is provided within 4 hours after the material time;
 - (h) the analysis of the sample of the person's oral fluid for drugs by a drugs analyst;
 - (i) the result obtained from the analysis.
- (2) Subsection (1) does not limit the admissibility of other evidence that may be given in the proceeding.

124HK. Certificate of authorised drug tester

For the purposes of section 124HA, the matters that a person who is an authorised drug tester may certify in a certificate are that, on a specified date or at a specified time —

- (a) the person was an authorised drug tester; and
- (b) the person —
 - (i) took a sample of oral fluid from a specified person on a specified date and at a specified time; and
 - (ii) identified the sample in the specified way;
- and
- (c) the sampling equipment the person used to take the sample —
 - (i) is identified in the specified way; and
 - (ii) was given to the person by a specified person; and
 - (iii) was received in the specified condition;
- and
- (d) the person took the sample in accordance with the regulations.

Example for this section:

For the purposes of paragraph (c)(i), a sample may be identified by a number on the container for the sample.

124HL. Certificate of drugs analyst relating to analysis of oral fluid or blood sample for drugs

For the purposes of section 124HA, the matters that a person who is a drugs analyst may certify in a

certificate are that, on a specified date or at a specified time —

- (a) the person was a drugs analyst; and
 - (b) the person received a sample of oral fluid or blood —
 - (i) identified in the specified way; and
 - (ii) identified as a sample taken from a specified person;
- and
- (c) the person analysed the sample for drugs; and
 - (d) the analysis produced the specified result.

Example for this section:

For the purposes of paragraph (b)(i): a sample may be identified by a number on the container for the sample.

124HM. Certificate of approved expert relating to usual effect of particular drugs

For the purposes of section 124HA, the matters that a person who is an approved expert may certify in a certificate are —

- (a) that, on a specified date or at a specified time, the person was an approved expert; and
- (b) a description of the usual behaviour, condition or appearance associated with a person who has consumed or used a specified drug or combination of drugs; and
- (c) a description of the usual effect that the behaviour or a condition associated with a person who has consumed or used a specified drug or combination of drugs has on a person's capacity to have proper control of a vessel.

124HN. Certificate of inspector or police officer

For the purposes of section 124HA, the matters that a person who is an inspector or police officer may certify in a certificate are that, on a specified date or at a specified time —

- (a) a specified person who navigated, or attempted to operate, a vessel behaved in a specified way or had a specified condition or appearance; and
- (b) the person conducted an assessment of drug impairment on a specified person; and
- (c) the person conducted the assessment in accordance with the regulations; and
- (d) during the assessment, the specified person behaved in a specified way or had a specified condition or appearance.

124HO. Proof of presence of drugs

- (1) This section applies in a proceeding for an offence specified in the Table.

Table — Offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

Section no.	Section heading
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

- (2) In the absence of evidence to the contrary, the presence of a drug in a person's body is taken to be proved if it is proved that the drug was present in the person's body —
- (a) within 4 hours after the material time; or
 - (b) if the presence of the drug is proved in relation to a sample of the person's blood taken in accordance with a requirement imposed under section 75EO — within 12 hours after the material time.

Subdivision 4 — Other evidentiary provisions

124HP. Certificate of chief executive officer, Commissioner of Police or CEO of Chemistry Centre (WA)

- (1) The chief executive officer may issue a certificate certifying, on a specified date or during a specified period —
- (a) that a specified person was an inspector; and
 - (b) as to whether or not the person was competent to operate breath analysing equipment or a drug testing device.
- (2) The Commissioner of Police may issue a certificate certifying that, on a specified date or during a specified period —
- (a) a specified police officer was an authorised operator competent to operate breath analysing equipment; or

- (b) a specified police officer was an authorised drug tester competent to operate a drug testing device.
- (3) The chief executive officer of the Chemistry Centre (WA) may issue a certificate certifying that, on a specified date or during a specified period —
 - (a) a specified person was an analyst; or
 - (b) a specified person was a drugs analyst.
- (4) In any proceeding, a certificate referred to in subsection (1), (2) or (3), purporting to be signed by the person mentioned in that subsection, is evidence of the facts stated in the certificate without proof of the person's signature.

124HQ. Certificate of technologist who prepared sampling equipment

- (1) In this section —
 - approved body* means a body referred to in the *Road Traffic Act 1974* section 70 as a body approved by the Minister in relation to technologists who prepare sampling equipment;
 - prescribed items* means items referred to in the *Road Traffic Act 1974* section 70 as the prescribed items that must comprise sampling equipment;
 - technologist* has the meaning given in the *Road Traffic Act 1974* section 70(7).
- (2) For the purposes of section 124HA, the matters that a person who is a technologist of an approved body may certify in a certificate are that —
 - (a) sampling equipment identified in the certificate comprises the prescribed items; and

- (b) the technologist prepared the prescribed items;
and
- (c) the prescribed items are sterile and fit for the purpose of taking a sample of blood for analysis if used for that purpose no later than a specified date.

Example for this subsection:

For the purposes of paragraph (a), sampling equipment may be identified by a serial number.

124HR. Certificate of prescribed sample taker

For the purposes of section 124HA, the matters that a person who is a prescribed sample taker may certify in a certificate are that, on a specified date or at a specified time —

- (a) the person was a prescribed sample taker; and
- (b) the person —
 - (i) took a sample of blood from a specified person on a specified date and at a specified time; and
 - (ii) identified the sample in the specified way;and
- (c) the sampling equipment the person used to take the sample —
 - (i) is identified in the specified way; and
 - (ii) was given to the person by a specified person; and
 - (iii) was received in the specified condition;and
- (d) the person took the sample in accordance with the regulations.

Examples for this subsection:

1. For the purposes of paragraph (b)(ii), a sample may be identified by a number on the container for the sample.
2. For the purposes of paragraph (c)(i), sampling equipment may be identified by a serial number.

124HS. Evidence of delivery of blood or oral fluid samples

- (1) In this section —
prescribed particulars means the prescribed particulars of the delivery of a sample to an analyst or drugs analyst referred to in the *Road Traffic Act 1974* section 70B(1).
- (2) This section applies in a proceeding for —
 - (a) an alcohol-related offence referred to in section 124HC(1)(a); or
 - (b) a drug-related offence referred to in section 124HI(1)(a).
- (3) For the purposes of section 124HA, a person who takes delivery of a sample delivered to an analyst or drugs analyst may certify in a certificate the prescribed particulars of the delivery of the sample.

124HT. Procedural requirements for admissibility of particular certificate evidence

- (1) This section relates to evidence in the form of a certificate of —
 - (a) an analyst under section 124HG; or
 - (b) a drugs analyst under section 124HL; or
 - (c) an approved expert under section 124HM; or
 - (d) a person who takes delivery of a sample delivered to an analyst or a drugs analyst under section 124HS.

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- (2) The certificate is not admissible as evidence in a proceeding unless —
 - (a) a copy of the certificate is served on the accused at least 28 days before the day on which the certificate is adduced in the proceeding; or
 - (b) it is adduced in the proceeding by, or with the consent of, the accused.
- (3) The accused cannot challenge or call into question any matter set out in a certificate admitted under subsection (2) unless —
 - (a) written notice of the accused's intention to challenge or question the matter is served on the prosecutor at least 14 days before the day on which the certificate is produced; or
 - (b) the court, in the interests of justice, gives the accused leave to challenge or question the matter.
- (4) A notice referred to in subsection (3)(a) must specify the matter that is to be challenged or called into question.

124HU. Evidence relating to preliminary oral fluid test, drug testing and preliminary breath test admissible in certain proceedings with consent

- (1) Evidence about a matter referred to subsection (2) is only admissible in a proceeding for an offence if —
 - (a) the proceeding is for an offence specified in the Table; or

Table — Offences

Section no.	Section heading
s. 75H(1)	Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel
s. 75HD(1)	Failure to comply with requirement: oral fluid sample for drug testing or blood sample
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above
s. 75GF(5)	Prohibiting person from navigating vessel for 24 hours if prescribed illicit drug present

- (b) for a proceeding for any other offence against this Act or another written law — the evidence is adduced in the proceeding by, or with the consent of, the person the subject of the evidence.
- (2) For the purposes of subsection (1), the matters are —
- (a) that a person provided a sample of breath for a preliminary breath test and any indication provided by the preliminary breath testing device used for the test; and
 - (b) that a person provided a sample of oral fluid for a preliminary oral fluid test and any indication provided by the preliminary oral fluid testing device used for the test; and

- (c) the result of the drug testing of a sample of a person's oral fluid by a drug testing device.
- (3) Evidence that a person provided a sample of the person's oral fluid for drug testing is only admissible in a proceeding for an offence if —
 - (a) the proceeding is for a drug-related offence; or
 - (b) the proceeding is for an offence specified in the Table to subsection (1)(a); or
 - (c) the evidence is adduced by, or with the consent of, the person the subject of the evidence.
- (2) At the beginning of Part IX insert:

Division 2 — Provisions relating to sentencing for dangerous navigation and alcohol and drug related offences

124I. Term used: young person

In this Division —

young person has the meaning given in the *Young Offenders Act 1994* section 3(1).

124IA. Limitation on period for which previous offences taken into account

- (1) This section applies if a person is convicted of an offence against Part 3A or 3B and the penalty for the offence varies according to whether the person has been previously convicted for another offence.
- (2) If a person's conviction for a previous offence was recorded more than 20 years before the commission of the offence for which the person is being sentenced, the

previous offence must not be taken into account in determining the penalty to be imposed.

124IB. Sentencing for particular offences: option for community based order or youth community based order

- (1) This section applies if a court is sentencing a person who has been convicted of —
- (a) a first offence against a section mentioned in Table 1; or

Table 1 — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (b) any offence against a section mentioned in Table 2.

Table 2 — Offences

Section no.	Section heading
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75H(1)	Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above

- (2) The court may, instead of imposing a fine —
 - (a) order the release of the person; and
 - (b) impose a community based order under the *Sentencing Act 1995* with at least a community service requirement as a primary requirement of the order.
- (3) If the offender is a young person, the court may, instead of imposing a fine, make a youth community based order under the *Young Offenders Act 1994*, imposing at least community work conditions on the offender.
- (4) Subsection (3) applies subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*.

124IC. Sentencing for particular offences if community based order or intensive supervision order imposed

- (1) This section applies if —
- (a) a court is sentencing a person who has been convicted of —
 - (i) an offence against section 75HG(1) (Failure to comply with drug testing requirement: BAC of 0.05 or above); or
 - (ii) a second or subsequent offence against a section specified in the Table;

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

and

- (b) the court orders the release of the offender; and

- (c) the court imposes —
 - (i) a community based order or an intensive supervision order under the *Sentencing Act 1995*; or
 - (ii) if the offender is a young person — a youth community based order or an intensive youth supervision order under the *Young Offenders Act 1994*.
- (2) If the court imposes an order referred to in subsection (1)(c)(i), the court must impose at least a community service requirement as a primary requirement of the community based order or intensive supervision order.
- (3) If the court imposes an order referred to in subsection (1)(c)(ii), the court must impose community work conditions on the offender as part of the youth community based order or intensive youth supervision order.

124ID. Pre-sentence report required for sentencing for navigation while impaired by drugs

A court sentencing a person who has been convicted of an offence against section 75CD(1) (Navigation of vessel while impaired by drugs) must order a pre-sentence report about the offender under the *Sentencing Act 1995* Part 3 Division 3.

124IE. Sentencing for first offence of navigation while impaired by drugs or failure to comply with drug impairment assessment

- (1) This section applies if a court is sentencing a person who has been convicted of a first offence against —
 - (a) section 75CD(1) (Navigation of vessel while impaired by drugs); or

- (b) section 75HE(1) (Failure to comply with requirements relating to assessment of drug impairment).
- (2) Despite the *Sentencing Act 1995* section 39(3) and (4), the court must, instead of or in addition to imposing a fine —
 - (a) order the release of the person; and
 - (b) impose a community based order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order.
- (3) If the offender is a young person, the court must, instead of or in addition to imposing a fine, make a youth community based order under the *Young Offenders Act 1994*, imposing at least attendance conditions on the offender.
- (4) Subsection (3) applies —
 - (a) subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*; and
 - (b) despite section 74 of that Act.

124IF. Sentencing for second or subsequent offence of navigation while impaired by drugs or failure to comply with drug impairment assessment

- (1) This section applies if a court is sentencing a person who has been convicted of a second or subsequent offence against —
 - (a) section 75CD(1) (Navigation of vessel while impaired by drugs); or
 - (b) section 75HE(1) (Failure to comply with requirements relating to assessment of drug impairment).

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- (2) The court must, instead of or in addition to imposing a fine, order the release of the person and impose either of the following under the *Sentencing Act 1995* —
 - (a) a community based order with at least a supervision requirement and a programme requirement as primary requirements of the order; or
 - (b) an intensive supervision order with at least a programme requirement as a primary requirement of the order.
- (3) Subsection (2) applies despite the *Sentencing Act 1995* section 39(3) and (4).
- (4) If the offender is a young person, the court must, instead of or in addition to imposing a fine —
 - (a) make a youth community based order or an intensive youth supervision order under the *Young Offenders Act 1994*; and
 - (b) impose at least attendance conditions and supervision conditions on the offender.
- (5) Subsection (4) applies —
 - (a) subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*; and
 - (b) despite section 74 of that Act.
- (6) Subsections (2) and (4) do not apply if the court imposes a custodial sentence on the offender.

124IG. Mandatory disqualification

- (1) This section applies if this Act requires a court sentencing a person for an offence to disqualify the

offender from holding or obtaining a WA marine qualification for —

- (a) a specified period, or permanently, in relation to the offence; or
 - (b) a period not less than a specified minimum period in relation to the offence; or
 - (c) a period not less than a specified minimum period, and no more than a specified maximum period, in relation to the offence.
- (2) Regardless of any sentence the court imposes on the offender for the offence, the court —
- (a) must disqualify the offender for the specified period, or at least the specified minimum period and more than the specified maximum period; and
 - (b) cannot reduce the period of disqualification other than by the period the offender was disqualified by a disqualification notice given to the offender under section 124GA in relation to the offence.
- (3) Without limiting subsection (2)(b), the specified period of disqualification cannot be reduced in mitigation.
- (4) This section applies despite any other written law.

124IH. Minimum fines

Without limiting the *Sentencing Act 1995*, and despite any other written law, a fine provided for an offence under Part 3A or Part 3B of this Act that is a minimum penalty (however expressed) cannot be reduced in mitigation.

25. Part IX Division 3 heading inserted

Before section 125 insert:

Division 3 — General matters

26. Section 133 amended

In section 133(5) delete the definition of *authorised person* and insert:

authorised person includes —

- (a) an inspector; and
- (b) in relation to a suspected offence under Part 3A or Part 3B or section 124GS(2) — a police officer;

27. Part X Division 3 inserted

At the end of Part X insert:

Division 3 — *Western Australian Marine Amendment Act 2023*

138. Offences against repealed section 59

- (1) In this section —
repeal day means the day on which the *Western Australian Marine Amendment Act 2023* section 9 comes into operation.
- (2) Despite *The Criminal Code* section 11, a person may be prosecuted and punished for an offence committed against section 59 before repeal day.

139. Transitional regulations

- (1) In this section —
- assent day* means the day on which the *Western Australian Marine Amendment Act 2023* receives the Royal Assent;
- publication day*, for transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41;
- specified* means specified or described in transitional regulations;
- transitional matter* —
- (a) means a matter or issue of a transitional nature that arises because of the enactment of the *Western Australian Marine Amendment Act 2023*; and
 - (b) includes a saving or application matter.
- (2) Regulations (*transitional regulations*) may do either or both of the following —
- (a) make any provision that is necessary or convenient for dealing with a transitional matter; or
 - (b) make any provision that is necessary or convenient in consequence of, or for giving effect to, the enactment of the *Western Australian Marine Amendment Act 2023*.
- (3) Transitional regulations may provide that specified provisions of this Act —
- (a) do not apply to, or in relation to, a specified matter or thing; or
 - (b) apply with specified modifications to, or in relation to, a specified matter or thing.

s. 27

- (4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than publication day but not earlier than assent day, the transitional regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
 - (a) affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day; or
 - (b) impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day.

Part 3 — Other Acts amended

28. *Bail Act 1982* amended

- (1) This section amends the *Bail Act 1982*.
- (2) After Schedule 2 item 3 insert:

3A. *Western Australian Marine Act 1982*

- | | |
|------------|--|
| s. 75B(1) | Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug |
| s. 75B(2) | Dangerous navigation of vessel occasioning death |
| s. 75BA(1) | Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug |
| s. 75BA(2) | Dangerous navigation of vessel occasioning grievous bodily harm |
| s. 75BB(1) | Navigation of vessel occasioning bodily harm while under influence of alcohol, a drug or alcohol and a drug |
| s. 75BB(3) | Dangerous navigation of vessel occasioning bodily harm |

29. *Community Protection (Offender Reporting) Act 2004* amended

- (1) This section amends the *Community Protection (Offender Reporting) Act 2004*.

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- (2) In section 85A in the definition of *serious sexual offence* after paragraph (a)(i) insert:

(ii) the *Western Australian Marine Act 1982* section 75B(1), 75B(2), 75BA(1) or 75BA(2); or

30. The Criminal Code amended

- (1) This section amends *The Criminal Code*.
- (2) In section 279(1) in the Alternative offence delete “59.” and insert:

59 or *Western Australian Marine Act 1982* s. 75B(1) or 75B(2).

- (3) In section 280(1) in the Alternative offence delete “59.” and insert:

59 or *Western Australian Marine Act 1982* s. 75B(1) or 75B(2).

- (4) In section 284(1) in the definition of *conveyance* delete “vehicle;” and insert:

vehicle or vessel;

- (5) In section 284(1) in the definition of *drive* delete “aircraft and to navigate a vessel.” and insert:

aircraft.

- (6) Delete section 284(4).

Note: The heading to amended section 284 is to read:

Culpable driving (not of motor vehicle or vessel) causing death or grievous bodily harm

- (7) In section 297(1) in the Alternative offence delete “59.” and insert:

59 or *Western Australian Marine Act 1982* s. 75BA(1) or 75BA(2).

31. *Criminal Investigation Act 2006* amended

- (1) This section amends the *Criminal Investigation Act 2006*.

- (2) Delete section 28(2) and insert:

- (2) Subsection (1) does not apply to or in respect of a person to whom a requirement has been made by a police officer under —

- (a) the *Road Traffic Act 1974* section 66, 66B, 66D or 66E; or
(b) the *Western Australian Marine Act 1982* section 75G.

- (3) After section 135(2)(b) insert:

- (ba) the person, having been required to do so by a police officer acting under the *Western Australian Marine Act 1982* section 75G, is accompanying a police officer to, or is waiting at, a place.

s. 32

32. *Criminal Law (Mental Impairment) Act 2023* amended

- (1) This section amends the *Criminal Law (Mental Impairment) Act 2023*.
- (2) After Schedule 1 Division 1 Subdivision 5 insert:

Subdivision 6 — Offences under *Western Australian Marine Act 1982*

Item	Provision	Description of offence
1.	s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
2.	s. 75B(2)	Dangerous navigation of vessel occasioning death
3.	s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
4.	s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm

33. *Criminal Law (Mentally Impaired Accused) Act 1996* amended

- (1) This section amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- (2) After Schedule 1 item 3 insert:

4. *Western Australian Marine Act 1982*

- | | |
|-----------|---|
| s. 75B(1) | Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug |
|-----------|---|

s. 75B(2)	Dangerous navigation of vessel occasioning death
s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm

34. Evidence Act 1906 amended

- (1) This section amends the *Evidence Act 1906*.
- (2) After The Second Schedule Part 2 insert:

Part 3 — Offences under the *Western Australian Marine Act 1982*

Provision	Description of offence
s. 64A(2)	Failure of master to comply with render assistance duties in relation to marine incident occasioning death, grievous bodily harm or bodily harm
s. 64A(3)	Failure of master to comply with duties in relation to marine incident
s. 64B(3A)	Failure of master or owner to give report in relation to certain marine incidents occasioning death, grievous bodily harm or bodily harm
s. 64B(3C)	Failure of master or owner to give report in relation to certain marine incidents
s. 64D(4)	Failure of responsible person to give information in relation to marine incident

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s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
s. 75B(2)	Dangerous navigation of vessel occasioning death
s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1)	Navigation of vessel occasioning bodily harm while under influence of alcohol, a drug or alcohol and a drug
s. 75BB(3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BD(1)	Reckless navigation of vessel
s. 75BD(2)	Reckless navigation of vessel in circumstance of aggravation
s. 75BE(1)	Dangerous navigation of vessel

35. High Risk Serious Offenders Act 2020 amended

- (1) This section amends the *High Risk Serious Offenders Act 2020*.
- (2) After Schedule 1 Division 1 Subdivision 5 insert:

Subdivision 6 — Offences under *Western Australian Marine Act 1982*

Item	Provision	Description of offence
1.	s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug

Item	Provision	Description of offence
2.	s. 75B(2)	Dangerous navigation of vessel occasioning death
3.	s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
4.	s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm

36. *National Disability Insurance Scheme (Worker Screening) Act 2020* amended

- (1) This section amends the *National Disability Insurance Scheme (Worker Screening) Act 2020*.
- (2) In Schedule 1 under the heading *The Criminal Code* in the rows relating to s. 284(3)(c) and s. 284(3)(d) delete “vehicle)” and insert:

vehicle or vessel)

- (3) At the end of Schedule 1 insert:

Western Australian Marine Act 1982

s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug	The offence is committed with intent to cause death
s. 75B(2)	Dangerous navigation of vessel occasioning death	The offence is committed with intent to cause death

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s. 75BA(1) Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person

s. 75BA(2) Dangerous navigation of vessel occasioning grievous bodily harm The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person

(4) In Schedule 2 under the heading *The Criminal Code* in the rows relating to s. 284(3)(c) and s. 284(3)(d) delete “vehicle)” and insert:

vehicle or vessel)

(5) At the end of Schedule 2 insert:

Western Australian Marine Act 1982

s. 75B(1) Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug The offence causes death but without intent to do so

s. 75B(2) Dangerous navigation of vessel occasioning death The offence causes death but without intent to do so

s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug	The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person
s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm	The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person

37. *Sentencing Act 1995* amended

- (1) This section amends the *Sentencing Act 1995*.
- (2) In section 45(5):
 - (a) after paragraph (a)(i) insert:
 - (ia) disqualify, under the *Western Australian Marine Act 1982*, the offender from holding or obtaining a WA marine qualification as defined in section 3(1) of that Act;
 - (b) after paragraph (b) insert:
 - (ba) the operation of any provision in the *Western Australian Marine Act 1982* relating to the cancellation of, or disqualification from holding or obtaining, a WA marine qualification as defined in section 3(1) of that Act;

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- (3) In section 107(1) and (3) before “marine qualification” (each occurrence) insert:

WA

- (4) After section 107(4) insert:

- (4A) This section does not affect the right or duty of a court to disqualify, under the *Western Australian Marine Act 1982*, a person from holding or obtaining a WA marine qualification.

- (5) In section 107(5) delete the definition of *marine qualification*.

- (6) In section 107(5) insert in alphabetical order:

WA *marine qualification* has the meaning given in the *Western Australian Marine Act 1982* section 3(1);

- (7) After Schedule 1A Part 1 item 7 insert:

8. *Western Australian Marine Act 1982*

- | | |
|--------------------|--|
| s. 75B(1) and (2) | Dangerous navigation of vessel occasioning death |
| s. 75BA(1) and (2) | Dangerous navigation of vessel occasioning grievous bodily harm |
| s. 75BB(1) and (3) | Dangerous navigation of vessel occasioning bodily harm — if the offender is liable to imprisonment for 7 years |

(8) After Schedule 1A Part 2 item 9 insert:

10. *Western Australian Marine Act 1982*

s. 75BB(1) and (3) Dangerous navigation of vessel occasioning bodily harm — if the offender is not liable to imprisonment for 7 years

38. *Working with Children (Screening) Act 2004* amended

(1) This section amends the *Working with Children (Screening) Act 2004*.

(2) In Schedule 2 under the heading *The Criminal Code* in the items for section 284(3)(c) and 284(3)(d) delete “vehicle)” and insert:

vehicle or vessel)

(3) At the end of Schedule 2 insert:

Western Australian Marine Act 1982

s. 75B(1) and (2) Dangerous navigation of vessel occasioning death

s. 75BA(1) and (2) Dangerous navigation of vessel occasioning grievous bodily harm

39. *Young Offenders Act 1994* amended

(1) This section amends the *Young Offenders Act 1994*.

(2) At the end of Schedule 1 insert:

4. *Western Australian Marine Act 1982*

s. 75BD(1)	Reckless navigation of vessel
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel
s. 75C(1)	Navigation or attempted operation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation or attempted operation of vessel while under influence of alcohol and drugs
s. 75CD(1)	Navigation or attempted operation of vessel while impaired by drug
s. 75D(1)	Navigation or attempted operation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation or attempted operation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present in body
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug is present in body
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug is present in body
s. 75H(1)	Failure to comply with requirement relating to preliminary breath test, preliminary oral fluid test or boarding or moving vessel
s. 75HB(1)	Failure to comply with requirement relating to breath analysis, blood

	sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement relating to incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement relating to oral fluid sample for drug testing or blood sample for analysis
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HG(1)	Failure to comply with drug testing requirement when BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement when BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement when BAC of 0.15 or above

(3) At the end of Schedule 2 insert:

4. Western Australian Marine Act 1982

s. 64A(2)	Failure of master to comply with render assistance duties in relation to marine incident occasioning death, grievous bodily harm or bodily harm
s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
s. 75B(2)	Dangerous navigation of vessel occasioning death

s. 39

- | | |
|------------|--|
| s. 75BA(1) | Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug |
| s. 75BA(2) | Dangerous navigation of vessel occasioning grievous bodily harm |
| s. 75BB(1) | Navigation of vessel occasioning bodily harm while under influence of alcohol, a drug or alcohol and a drug |
| s. 75BB(3) | Dangerous navigation of vessel occasioning bodily harm |
| s. 75BC(1) | Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm |

