

## *Drink Driving and Marine Licencing in Queensland*

Any mariner worth their salt knows that alcohol and boats are not a good mix. Many marine incidents are attributable to the consumption of alcohol by one or more of the masters involved. Such incidents are even more regrettable because they would likely not have occurred if alcohol was not involved.

Like their land counterparts, marine authorities continue to be frustrated by the occurrence of incidents, damage to property, injuries and fatalities that are have alcohol as a root cause. This frustration has resulted in the strict regulation of the use of alcohol by persons in charge of a vessel, which can result in heavy fines and loss of marine licences.

The loss of a marine licence is an embarrassment and an inconvenience to recreational boaties, but is a catastrophic loss of livelihood to the maritime professional. In this article, we briefly examine the legal processes behind a marine drink driving offence and the potential consequences for boaties and marine professionals.

### **What is Marine Drink Driving?**

In Queensland, the law for operating boats whilst intoxicated is the same for driving cars. Section 79 (1) of the *Transport Operations (Road Use Management) Act 1995* (the Act), makes it an offence for a person who is under the influence of liquor or a drug to drive a motor vehicle, tram, train or vessel. Vessel is defined under the act to include ships, boats, or any kind of vessel designed for use in navigation whatever the means of its propulsion. This definition has been interpreted very broadly by the courts, almost to the extent that **if a person is in control of anything on the water, that person must not be under the influence of liquor.**

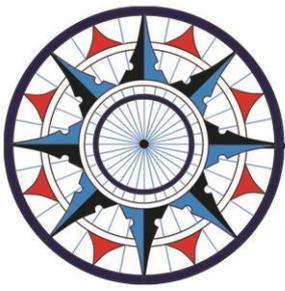
The allowable blood alcohol content is generally the same for cars - .05 Blood Alcohol Concentration or BAC. However, if you are in control of a commercial passenger vessel, the allowable BAC is zero.

### **What are the consequences?**

You must go to court after being caught for any drink driving offence, including marine offences. If found guilty by the Magistrate, a person charged with marine drink driving will likely be fined and be disqualified from driving a vessel for period of time. The severity of the fine and length of disqualification will depend on the circumstances, such as previous convictions and traffic history, and the maximum penalty is dependent on the BAC.

For example, a typical BAC reading of .075 could result in a maximum fine of \$1706 or 3 months' imprisonment, where a high-level BAC of over .15 could result in a fine of \$3,413 or 9 months in jail.





Can

### my recreational marine licence be cancelled or suspended?

Your marine licence cannot be cancelled or suspended by the court as a result of a motor vehicle infringement. However, the court may disqualify you from holding a Queensland issued marine licence if you are convicted of marine drink driving under section 79 (drink driving), or 80 (refusing to provide breath sample) of the *Transport Operations (Road Use Management) Act*. If your Queensland marine licence is cancelled or suspended, all of your Queensland issued marine licences are affected.

If disqualified, you will be provided with an order which you must present to a Transport and Main Roads Department office in order to remove the RMDL or PWCL indicator on your licence.

If you disagree with the disqualification, the order can be appealed, or you may apply for a restricted marine licence.

### What about a commercial marine licence?

Most commercial marine licences in Queensland are issued by the Australian Maritime Safety Authority (AMSA) pursuant to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law). National Law licences are commercial Certificates of Competency such as Near Coastal Coxswain, Master and Marine Engine Driver.

The Courts do not yet have jurisdiction to make orders about drink driving on Commonwealth Marine Licences, so there is no power for a magistrate to give orders to cancel or suspend a National Law marine licence.

Readers should note, however, that a marine drink driving offence is likely to be notified to Maritime Safety Queensland (MSQ). MSQ may write to AMSA to seek the suspension or cancellation of a National Law Certificate of Competency on the basis that a convicted person is no longer a fit and proper person to hold a commercial marine licence. If AMSA chooses to take any action in response to a request by MSQ, there will be an opportunity for the licence holder to present their case pursuant to a fair process laid down in that National Law and Marine Order 505.

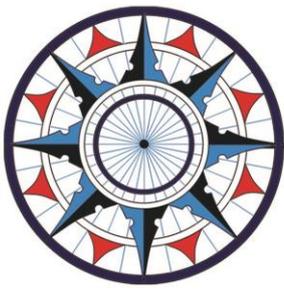
### So.....what are the key messages?

If you return a positive breath test while in control of a boat in Queensland, you will most likely be charged and will be summonsed to attend court. It is likely that you will be fined and your marine licence may be in jeopardy. If you hold a Queensland recreational boat licence, the court may disqualify you from holding that licence for a period of time, or MSQ may ask you to show cause why your licence should not be cancelled or suspended.

An expert legal representative can often engage with the magistrate to reduce the fine and period of disqualification or make representations to MSQ concerning any show cause notice for suspension or cancellation.

If you hold a commercial licence, the magistrate in Queensland has no power to suspend or disqualify, but MSQ will be notified and may ask AMSA to act against your licence. For any action to be taken, the regulator must demonstrate that the circumstances of the drink driving conviction indicate that you are no longer a fit and proper person to hold a commercial marine licence.





# Pacific Maritime

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## LAWYERS & CONSULTANTS

In this instance, the early appointment of a maritime lawyer can dramatically enhance the prospects of convincing AMSA that the commercial licence should not be suspended.



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