

# **Marine Licence disqualifications, cancellations and suspensions**

## **Questions frequently asked by Commercial and Fishing Licence Holders**

### **1. What does the new marine licence disqualification, cancellation and suspension legislation entail?**

The amendments to *Transport Operations (Marine Safety) Act 1994* will introduce five new court procedures. The initial trigger for each procedure is a court conviction for specified offences involving the operation of a ship. The procedures are:

1. court ordered disqualification of a person from holding or obtaining a licence (with cancellation of all subsisting licences including commercial, recreational, pilot and engineering);
2. appeal against disqualification (with suspension of the disqualification and revival of licences pending the appeal outcome);
3. application for removal of disqualification (after 2 years of disqualification – for persons that have been disqualified absolutely or for a period of more than 2 years);
4. application for an order for the issue of a restricted licence (available only when a refusal would cause extreme hardship – this licence is akin to a drivers 'restricted licence'); and
5. application for an order varying the court imposed restrictions on a restricted licence.

### **2. When does the new legislation commence?**

The commencement of these provisions has been fixed by proclamation and will commence on the 30<sup>th</sup> April 2007

### **3. Which offences may result in a person being disqualified from holding or obtaining a marine licence for a period of time or absolutely under the new legislation?**

Offences that lead to a conviction, resulting in disqualification and the cancellation and suspension of a marine licence are in relation to:

#### ***Transport Operations (Marine Safety) Act 1994 (TOMSA)***

- Section 41 - General Safety obligation of ship owners and masters about condition of ships

- Section 43 - General obligations on persons involved with operation of ship to operate it safely
- Section 44 - Safety equipment obligation
- Section 57 - Contravention of registration obligations
- Section 61 - Operation of ship as master etc. without required licence
- Section 186 - Unlawful interference with ship
- Section 202J – Offence of operating ship other than under a restricted licence
- Section 211 – Non compliance with the collision regulations.

**Other offences will apply that involved a ship used, being used or apparently about to be used in navigation and the person was the person in control of the ship in relation to the following:**

***Transport Operations (Road Use Management) Act 1995 (TORUM)***

- Section 79 - Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath
- Section 80 - Provisions with respect to breath tests and laboratory tests (fail to supply specimen of breath for a specimen test)

***Criminal Code***

- Section 328A– Dangerous Operation of a Vehicle.

**4. What are the enforcement processes for the offences, under the new legislation to be heard in a court?**

Court imposed disqualification, cancellation or suspension of a marine licence can only occur for matters that a proceeded by way of complaint and summons.

**Marine Licence Disqualification provisions**

**5. When and who will marine licence disqualification provisions apply?**

The disqualification provisions only apply if the person was required under *Transport Operations (Marine Safety) Act 1994* to hold a licence to operate the ship at the time of the conviction - in other words in relation to offences committed by licensed masters.

The disqualification provisions will apply to all marine licences. This includes to:

- Licences to operate recreational ships, these licences are administered by Queensland Transport Customer Service Centres and recorded in TRAILS (Transport Registration and Integrated Licensing System);
- Licences to operate commercial and fishing ships administered by the general manager of Maritime Safety Queensland and recorded in TARDIS (Travel and

Related Document Issuance System); and

- Pilot, engineering or any other marine licences.

## **6. What happens when a person is disqualified from holding or obtaining a marine licence for a stated period or absolutely?**

The court that convicts a person of a specified offence may, at its own initiative or on application by the prosecution, order that the person be disqualified absolutely or for a stated time from holding or obtaining a licence. The disqualification order is in addition to any other penalty the court may impose for the conviction, and may be made ex parte (Refer s142(2) of the *Justices Act 1886*)

## **7. If a person's commercial licence is cancelled, what effect does the disqualification have on other marine licences?**

By operation of law, any and all marine licences held by the person when the order is made are cancelled from the day the order is made; this includes recreational licences, commercial licences, pilot licences, and engineering licences.

## **8. Does the regulatory amendment prescribe any set periods for licence disqualification?**

Section 79 of the TORUM establishes penalties for drink driving offences. These penalties apply to vessel related Driving under the influence.

However, the minimum disqualification periods established under section 86 of TORUM applies only to motor vehicles. There are no set disqualification periods for vessel offences and this will be determined by the Magistrate at the time.

## **9. Does the disqualified person need to surrender their marine licence to the issuing authority?**

Yes – disqualified person must surrender their marine licence(s), by the following means and not at the time of disqualification:

The chief executive must give the person written notice requiring the person to give the chief executive all subsisting licences within 7 days after the day of the notice. The person must return their commercial marine licence(s) to the nearest Maritime Safety Queensland Regional Office within 7 days after the day of the notice.

## **10. Can a person who has had their marine licence disqualified absolutely or for a period of more than two years apply for the removal of disqualification?**

Yes

A person who has been disqualified for 2 years or more (including a person disqualified absolutely) may, at any time after 2 years, apply to the court to have the disqualification removed. The application form, 'Application for Removal of Marine

Licence Disqualification' must be lodged at the Magistrates Court, and a court hearing date will be determined. If this application is refused, a further application may only be considered if made one year after the date of the refusal.

If the application is approved and the marine Licence disqualification removed then the course pre-requisites as outlined above will need to be adhered too and new marine licence fees paid.

## **Appealing disqualification orders**

### **11. What happens when a disqualification order is appealed?**

A disqualified person may appeal against the disqualification order in the same way the person may appeal against the conviction. Appeals against the conviction or the disqualifying order according to the appropriate court procedure [for an appeal against a magistrate's decision, the person would lodge a notice of appeal in the District Court registry within 1 month of the order – *Justices Act 1886 s 222*].

By operation of law, when the appeal is initiated it suspends the disqualification process and reinstates any licences that have been cancelled, pending the decision on the appeal.

### **12. How can you go about appealing against a court disqualification order?**

A disqualified person can appeals against the conviction or the disqualifying order according to the appropriate court procedure, for example for an appeal against a magistrate's decision, the person would lodge a notice of appeal in the District Court registry within 1 month of the order – *Justices Act 1886 s 222*. The registrar gives notice of the appeal to the respondent within 7 days of the filing of the notice of appeal.

### **13. What happens if the conviction is overturned?**

If the conviction is overturned or the disqualification removed from the date of the decision on the appeal, the reinstated licences remain in force for their usual term.

### **14. What happens if the conviction is upheld?**

If the conviction is upheld or the disqualification removed by order from a future date, the part of the period of disqualification that had not expired when the appeal was started takes effect from the date of the appeal decision, and runs either for the balance of the period of disqualification originally ordered, or until any new court ordered date.

Therefore the court in deciding the appeal issues a disqualifying order and any licences are again cancelled in TRAILS/TARDIS and the period of disqualification noted. The disqualified person must return their existing commercial licences to their nearest Maritime Safety Queensland regional office.

## **What happens at the end of the disqualification period?**

### **15. Can a person apply for a new marine licence at the end of the Disqualification period?**

If a person has been disqualified for less than 2 years then the person may apply for a marine licence at anytime after their disqualification period has ended.

If a person has been disqualified for 2 years or more (including a person disqualified absolutely) they may apply to the court to have the disqualification removed (refer to process below).

### **16. How can a person who has had their marine licence disqualified absolutely or for a period of more than two years apply for the removal of disqualification?**

A person who has been disqualified for 2 years or more years (including a person disqualified absolutely) may, at any time after 2 years, apply to the court to have the disqualification removed. The application form, (Application for removal of Marine Licence Disqualification) must be lodged at the Magistrates Court, and a court hearing date will be determined. If this application is refused, a further application may only be considered if made one year after the date of the refusal.

If the application is approved and the marine licence disqualification removed then the marine licence pre-requisites as outlined below will need to be adhered too and new marine licence fees paid.

### **17. What requirements must be met when reapplying for a new marine licence at the end of the disqualification period?**

For the holder of commercial licence who has been disqualified for less than five years, the licence will be automatically reissued on application.

For a person whose commercial licence has been disqualified for a period greater than 5 years, the person will need to be re-examined as if they were a new applicant.

## **Restricted marine licences**

### **18. Can a person make application for a restricted marine licence (akin to Vehicle "restricted licence")?**

Yes, in specific circumstances

If a person is convicted summarily of one of the specified offences in a Magistrates Court (outlined below), the court may, in conjunction with a disqualification order, make an order that the person be issued with a restricted licence (akin to vehicle "restricted licence"). The person is disqualified from holding or obtaining any licence other than the restricted licence, and may only operate a ship for which a licence is required if he or she has applied to the licensing entity for the restricted licence and operates the ship in accordance with the court ordered restrictions on that licence.

A restricted marine licence may be issued when a person has been convicted before

a court by summary proceeding under the Justices Act 1886, of an offence against:

(a) **Transport Operations (Marine Safety) Act 1994** sections:

- 41 Condition of ships,
- 43 Operation of ship safely,
- 44 Safety equipment obligation,
- 57 Contravention of registration obligations,
- 61 Operation of ship without required licence,
- 186 Unlawful interference with ship,
- 202J Offence of operating ship other than under a restricted licence,
- 211 Non compliance with the collision regulations; or

(b) **Transport Operations (Road Use Management) Act 1995** section:

79 (**drink driving**), other than section 79(1) or 2(D) of the *Transport Operations (Road Use Management) Act 1995*, or

(c) **Transport Operations (Road Use Management) Act 1995** section:

80(5A) (fail to supply specimen of breath for a specimen test)

## **19. When is a person not eligible to make application for a restricted marine licence?**

A person is not eligible to make application for a restricted marine licence if:

**(1)** They did not hold a marine licence under TOMSA

- a) when the offence was committed; and
- b) immediately before the disqualification.

**(2)** Within the last 5 years:

- a) The person was disqualified from holding or obtaining a licence;
- b) a marine licence the person held was suspended or cancelled;
- c) the person was previously convicted in Queensland of an offence mentioned in outlined in question 3;
- d) the person was previously convicted elsewhere of any offence that would have been an offence mentioned in question 3 if committed in Queensland.

**(3)** When the offence for which the person was convicted was committed:

- a) When the person was engaged in an activity directly connected with their means of earning your livelihood;
- b) The person was operating a ship when not holding a required licence;
- c) The person held a restricted licence
- d) The person was operating an air cushion vehicle or a class 1 passenger vessel (other than a hire and drive vessel).

## **20. What restrictions may apply to a restricted marine licence?**

Restricted licences may only be of the type and class of licence held by the applicant immediately before the disqualification. The disqualification provisions are only enlivened for offences involving the operation of a ship – i.e. for offences committed

using a master's licence – but the disqualification cancels all licences, including engineer and pilot licences. It is up to the applicant to satisfy the court that he or she qualifies for the issue of whichever restricted licences are needed for his or her earning of a livelihood. The restrictions placed upon an applicant may include but is not limited to, one or more of the following:

- (i) the class of ship that may be operated;
- (ii) the purpose for which a ship may be operated;
- (iii) the times at which, or period during which, a ship may be operated; or
- (iv) the waters in which a ship may be operated.

## **21. When are applicants able to apply for a restricted marine licence?**

At the court hearing, after conviction but before the court makes a disqualifying order, the person must apply to the court in the approved form (F4470 - Restricted Marine Licence Application) for an order directing the issue of a restricted licence. The applicant must satisfy the court that he or she meets the conditions specified (for example; refusal of application would cause extreme hardship to the applicant or the applicant's family by depriving the applicant of the means of earning a livelihood) and that none of the specified disentitling circumstances apply (e.g. certain convictions or a licence suspension or cancellation in the previous 5 years or current conviction for a work related activity).

## **22. Who will grant a restricted marine licence, once the restricted marine licence court order has been made?**

The licensing entity must grant the restricted marine licence subject to court ordered restrictions and other reasonable & relevant conditions (refer *Transport Operations Marine Safety Regulation 2004* s 155). A restricted commercial or fishing licence is in hard copy form, and recorded in TARDIS (commercial licensing system). It is up to the person who has received the restricted licence court order to take a copy of the order to a Maritime Safety Queensland Regional Office to have the restricted conditions placed on their marine licence. The applicant will also need to fill in Form 3103, Marine Licence Application, to change the operating circumstances placed on their marine licence.

The applicant must carry their restricted licence conditions (the court order) with them at all times when operating under the restricted marine licence conditions.

## **23. What is the term of a restricted marine licence?**

The term of a restricted marine licence is until the expiry date on the cancelled licence it is replacing, or, if the cancelled licence was perpetual, then the restricted marine licence will be for one year.

At the expiration of the restricted licence, a person will need to apply for a new marine licence in accordance with the processes outlined above.

## **24. What happens at the end of the restricted marine licence period?**

At the end of the restricted marine licence period, the person will need to make application for a new marine licence (or licences if the person held more than one licence). The testing and examination pre-requisites for new marine licences are outlined in questions 15 – 17.

### **Variations to restricted marine licence conditions**

## **25. Can the restricted marine licence restrictions be varied?**

Yes

If the circumstances connected with a restricted licence holder's means of earning his or her livelihood change, the person may apply to the court for a variation of the court imposed restrictions.

The person must apply to a Magistrate's Court in the approved form for an order to vary restrictions currently in place to the applicant's restricted licence by an order of the court.

## **26. How do I ensure that the varied conditions to the restricted licence have been made?**

If the court makes an order varying the restrictions (a variation order) of the restricted marine licence, the person must go to a Maritime Safety Queensland Regional office to ensure that the varied restrictions of the restricted marine licence have been made in accordance with the variation order.

Varied restricted commercial or fishing licences are shown as an endorsement on the hard copy, and recorded in TARDIS. Note that the original restrictions continue to apply, despite the court order, until the person has presented to the licensing entity with their court order to make the variation, to their restricted marine licence. For commercial licences it is necessary to present to the nearest Maritime Safety Queensland regional office to have the restricted licence conditions varied.

### **New offence**

## **27. What is the new offence that has been imposed under the new marine legislation?**

The new offence under the new legislation is:

- Section 202J of *Transport Operations (Marine Safety) Act 1994* - Offence of operating ship other than under a restricted licence.

This applies to a person when operating a ship other than under a restricted licence.

The legislation states:

'A person who is the holder of a restricted licence must not operate a ship unless—

- (a) the person operates the ship under the restricted licence; or
- (b) a licence is not required by anyone to operate the ship.

The maximum penalty for this offence is 20 penalty units. This offence can only be dealt with by complaint and summons and is not a Marine Infringement Notice Offence.

### **Maritime Safety Queensland show cause procedures**

#### **28. Will the Maritime Safety Queensland show cause procedure still exist as an avenue for penalising marine operators?**

Yes

Maritime Safety Queensland will maintain its administrative show cause procedures as an additional avenue for penalising offenders on the water. Maritime Safety Queensland show cause procedures will be dealt with completely separately from these new court processes.