

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Heritage)

Lakes Amendment Bill 2017

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2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Heritage)

Lakes Amendment Bill 2017

A Bill for

An Act to amend the *Lakes Act 1976*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Lakes Amendment Act 2017*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Lakes Act 1976*.

Note This Act also amends the *Magistrates Court (Lakes Infringement Notices) Regulation 2004* (see sch 1).

4 Legislation repealed

The following legislation is repealed:

- *Declaration of an Area as a Lake* (NI1999-203)
- *Lakes (Kingston Harbour) Declaration 2012 (No 1)* (NI2012-424).

5 Application Section 4A, new notes

insert

Note 1 This Act applies in relation to lakes and lake areas in the Territory and the lake area of Lake Burley Griffin to the extent that it is territory land (see dict, def **lake** and **lake area**). The *Lakes Ordinance 1976* (Cwlth) applies to the remaining area of Lake Burley Griffin that is national land (see [Legislation Act](#), dict, def **national land**).

Note 2 This Act applies to a domestic commercial vessel operating on a lake and operates concurrently with the Marine Safety (Domestic Commercial Vessel) National Law to the extent described in the [Marine Safety \(Domestic Commercial Vessel\) National Law Act 2012](#) (Cwlth), s 6.

6 Section 4B

substitute

4B Application of Act to inspectors

An offence in part 4 (Use of a lake) does not apply to an inspector exercising a function of the inspector under this Act.

Note 1 An inspector includes the delegate for lakes and a police officer (see s 50ZD).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

Note 3 The defendant has an evidential burden in relation to the matters mentioned in this section (see [Criminal Code](#), s 58).

4C Application of Act in emergencies

(1) This Act (other than part 5A (Drug and alcohol offences)) does not apply to—

(a) the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of—

(i) protecting life or property; or

(ii) controlling, extinguishing or preventing the spread of a fire; and

(b) action by an authorised officer to prevent, minimise or remedy serious or material environmental harm under the *Environment Protection Act 1997*, division 11.3 (Emergency powers).

Note The defendant has an evidential burden in relation to the matters mentioned in s (1) (see *Criminal Code*, s 58).

(2) In this section:

authorised officer means—

(a) an authorised officer under the *Environment Protection Act 1997*, section 14; and

(b) a person acting under the direction of an authorised officer.

Note An authorised officer includes the Environment Protection Authority (see *Environment Protection Act 1997*, s 14 (2)).

relevant person means—

(a) a member of the ambulance service; or

(b) a member of the fire and rescue service; or

(c) a member of the rural fire service; or

(d) a member of the SES; or

(e) any other person under the control of—

(i) the chief officer (ambulance service); or

- 1 (ii) the chief officer (fire and rescue service); or
- 2 (iii) the chief officer (rural fire service); or
- 3 (iv) the chief officer (SES); or
- 4 (f) a police officer.

5 **4D Relationship to environmental and health laws**

6 (1) This Act must be construed and administered in a way that is
7 consistent with an environmental law or a health law unless the
8 contrary intention appears from this Act or that law.

9 (2) This Act is taken to be consistent with an environmental law or a
10 health law to the extent that it is capable of operating concurrently
11 with that law.

12 (3) In this section:

13 *environmental law* means a territory law that has the protection of
14 the environment as one of its objects or purposes.

15 *health law* means a territory law that has the protection of public
16 health as one of its objects or purposes.

17 **7 Declaration of area as lake** 18 **Section 5**

19 *relocate to part 2*

20 **8 Sections 7 to 10**

21 *omit*

9 Compensation for damage
New section 14 (4)

insert

(4) In this section:

owner, of land, includes anyone with an interest in the land.

10 New section 14A

in part 4, insert

14A Meaning of operate—pt 4

In this part (other than in section 20A and section 20B):

operate, in relation to a person who is an owner of a boat, includes causing or allowing someone else to operate the boat.

11 New sections 20A and 20B

insert

20A Speed limits

(1) The Minister may, by a sign placed in a lake area, state the speed limit for operating a boat on the lake in the lake area.

(2) A person commits an offence if—

(a) the person operates a boat on a lake; and

(b) the boat is operated at a speed greater than the speed limit that applies for operating a boat on the lake.

Maximum penalty: 20 penalty units.

(3) An offence against this section is a strict liability offence.

20B Restrictions on kinds of boats

- (1) The Minister may, by a sign placed in a lake area, state—
 - (a) the kinds of boats that may be operated on the lake in the lake area; and
 - (b) the purposes for which a kind of boat may be operated on the lake in the lake area.
- (2) A person commits an offence if—
 - (a) the person operates a boat on a lake; and
 - (b) the boat—
 - (i) is not a kind of boat that may be operated on the lake; or
 - (ii) is not operated for a purpose for which that kind of boat may be operated on the lake.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

12 Use of power boats—interstate licence holders Section 25A (1) and (2) and example

substitute

- (1) This section applies to a person who holds a licence or permit (however described) under the law of a State or the Commonwealth that authorises the person to operate a power boat.

Example

A licence or permit includes a certificate of competency under the Marine Safety (Domestic Commercial Vessel) National Law.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(2) The person is authorised to operate a power boat on a lake if the person complies with—

(a) any conditions or restrictions (however described) to which the person's licence or permit is subject; and

(b) any conditions determined by the Minister for this section.

Example—par (a)

If a licence authorises a person to operate a power boat of up to a stated engine capacity, the person is authorised to operate a power boat of not more than that engine capacity on a lake.

Note A land management plan under the [Planning and Development Act 2007](#) may restrict or prohibit certain activities on a lake.

13 New section 25B

insert

25B Power boats operated under 10 knots

(1) A person may operate a power boat on a lake if—

(a) the power boat is not a personal watercraft; and

(b) the power boat is operated at a speed of less than 10 knots; and

(c) the person complies with any condition determined by the Minister.

Note A land management plan under the [Planning and Development Act 2007](#) may restrict or prohibit the use of a power boat on a lake.

(2) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

(3) In this section:

personal watercraft means a power boat that—

(a) has a fully enclosed hull; and

(b) does not retain water that is taken on if it capsizes; and

(c) is designed to be operated by a person lying, standing, sitting astride, or kneeling on the boat but not seated within the boat.

Examples

- a jet ski
- a jet powered surfboard

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

14 Use of power boats—other people

Section 26 (1)

omit

use of a power boat in or on

substitute

operation of a power boat on

15 New section 26 (1A) and (1B)

insert

(1A) Before authorising the operation of a power boat on Kingston Harbour or Molonglo Reach under subsection (1), the Minister must give a copy of the draft authorisation to the Commonwealth Minister for comment.

(1B) In deciding whether to authorise the operation of a power boat on Kingston Harbour or Molonglo Reach under subsection (1), the Minister must take into account the Commonwealth Minister's comments (if any) received within 15 days from the day the Commonwealth Minister was given a copy of the draft authorisation.

16 New section 26 (5)

insert

- (5) An authorisation under the *Lakes Ordinance 1976* (Cwlth), section 26 is taken to be an authorisation under this section to operate a power boat on Kingston Harbour and Molonglo Reach on the conditions (if any) imposed on the authorisation.

17 Section 27

substitute

27 Restrictions—power boats

- (1) A person commits an offence if—
- (a) the person operates a power boat on a lake; and
 - (b) the person is not allowed to operate the power boat on the lake under section 25A, section 25B or section 26.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is a passenger in a power boat on a lake; and
 - (b) another person, who is not allowed to operate the power boat on the lake under section 25A, section 25B or section 26, operates the power boat; and
 - (c) the person knows the other person is not allowed to operate the power boat.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

18 Section 27, new note*insert*

Note An authorisation under the *Lakes Ordinance 1976* (Cwlth), s 26 is taken to be an authorisation under s 26 of this Act to operate a power boat on Kingston Harbour and Molonglo Reach (see s 26 (5)).

19 Section 33*substitute***33 Agreements for use of lake areas**

(1) The Minister may enter into an agreement with a person to undertake a commercial activity in a lake area.

(2) Before entering into an agreement under subsection (1) in relation to the lake area of Lake Burley Griffin, the lake area of Kingston Harbour, or the lake area of Molonglo Reach the Minister must give a copy of the draft agreement to the Commonwealth Minister for comment.

Note This Act applies to the lake area of Lake Burley Griffin to the extent that it is territory land (see s 4A).

(3) In deciding whether to enter into the agreement under subsection (1), the Minister must take into account the Commonwealth Minister's comments (if any) received by the Minister within 15 days from the day the Commonwealth Minister was given a copy of the draft agreement.

20 New section 33 (4)

insert

- (4) An agreement to undertake a commercial activity in a lake area under the *Lakes Ordinance 1976* (Cwlth), section 33 is taken to be an agreement under this section to undertake a commercial activity on the lake area of—

- (a) Lake Burley Griffin; and

Note This Act applies to the lake area of Lake Burley Griffin to the extent that it is territory land (see s 4A).

- (b) Kingston Harbour; and

- (c) Molonglo Reach.

**21 Commercial activities in lake area
Section 34 (2), new note**

insert

Note An agreement to undertake a commercial activity in a lake area under the *Lakes Ordinance 1976* (Cwlth), s 33 is taken to be an agreement under this Act to undertake a commercial activity in the lake area of Lake Burley Griffin, the lake area of Kingston Harbour, and the lake area of Molonglo Reach (see s 33 (4)).

22 Part 5 heading

substitute

Part 5 Safety

23 Divisions 5.1 and 5.2*substitute***Division 5.1 Safe operation of boats****36 Operating unsafe boats**

A person commits an offence if—

- (a) the person operates a boat on a lake; and
- (b) the boat is unsafe.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note **Unsafe**—see the dictionary.

37 Reckless or negligent operation of boats

(1) A person commits an offence if—

- (a) the person operates a boat on a lake; and
- (b) the operation gives rise to the danger of—
 - (i) harm or death to someone else; or
 - (ii) damage to property; and
- (c) the person is reckless or negligent about the operation giving rise to the danger.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) In this section:

harm—see the [Criminal Code](#), dictionary.

38 Climbing onto boats

(1) A person commits an offence if—

- (a) the person climbs onto, or attaches themselves to, a boat on a lake; and
- (b) the person in charge of the boat has not allowed the person to climb onto, or attach themselves, to the boat.

Maximum penalty: 50 penalty units.

(2) In this section:

person in charge, of a boat, means the owner or master of the boat.

Division 5.2 Lifejackets

39 Meaning of *appropriate lifejacket*—div 5.2

In this division:

appropriate lifejacket—

(a) means a lifejacket that meets any of the following standards:

- (i) a performance standard 50S, 50, 100, 150 or 275 of AS 4758 (Lifejackets) as in force from time to time;

Note The standard may be purchased at www.standards.org.au.

- (ii) any standard or specifications approved, from time to time, by RMS for lifejackets to be carried on recreational vessels; but

Note RMS approves lifejackets under the [Marine Safety Regulation 2016](#) (NSW).

(b) does not include a lifejacket that—

- (i) relies solely on oral inflation for buoyancy; or
- (ii) is not the correct size for the wearer; or

- (iii) was acquired, or serviced, more than 12 months (or more, if indicated by the manufacturer's instructions) before the date it is being worn by a person or carried on a boat.

40 Children under 12 years

(1) A person commits an offence if—

- (a) the person operates a recreational boat on a lake; and
- (b) the boat is under 4.8m in length; and
- (c) a child under 12 years old is—
 - (i) on the boat; and
 - (ii) not wearing an appropriate lifejacket.

Maximum penalty: 30 penalty units.

(2) A person commits an offence if—

- (a) the person operates a recreational boat on a lake; and
- (b) the boat is under 8m in length and under way;
- (c) a child under 12 years old is—
 - (i) in an open area on the boat; and
 - (ii) not wearing an appropriate lifejacket.

Maximum penalty: 30 penalty units.

(3) An offence against this section is a strict liability offence.

(4) It is a defence to a prosecution for an offence against this section, if the defendant proves that the defendant took all reasonable steps to ensure that the child was wearing an appropriate lifejacket.

Note The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).

1 **41 Boats under 4.8m**

- 2 (1) A person commits an offence if—
- 3 (a) the person is on a boat on a lake at night; and
- 4 (b) the boat is under 4.8m in length; and
- 5 (c) the person is not wearing an appropriate lifejacket.
- 6 Maximum penalty: 30 penalty units.
- 7 (2) A person commits an offence if—
- 8 (a) the person operates a boat on a lake at night; and
- 9 (b) the boat is under 4.8m in length; and
- 10 (c) another person on the boat is not wearing an appropriate
- 11 lifejacket.
- 12 Maximum penalty: 30 penalty units.
- 13 (3) A person commits an offence if—
- 14 (a) the person is on a boat on a lake; and
- 15 (b) the boat is under 4.8m in length; and
- 16 (c) the person is not wearing an appropriate lifejacket; and
- 17 (d) another person who is 12 years or older is not on the boat.
- 18 Maximum penalty: 30 penalty units.
- 19 (4) An offence against this section is a strict liability offence.

20 **42 Directions by master to wear lifejackets**

- 21 (1) A person commits an offence if—
- 22 (a) the person is on a recreational boat on a lake; and
- 23 (b) the master of the boat directs the person to wear an appropriate
- 24 lifejacket on the boat; and

1 (c) the person fails to comply with the direction.

2 Maximum penalty: 30 penalty units.

3 (2) An offence against subsection (1) is a strict liability offence.

4 **43 Failure to wear lifejackets—defence**

5 It is a defence to a prosecution for an offence against section 41 or
6 section 42 if the defendant proves that—

7 (a) the defendant was not operating the boat; and

8 (b) there was no available or appropriate lifejacket on the boat
9 when the defendant was required to wear a lifejacket.

10 *Note* The defendant has a legal burden in relation to the matters mentioned in
11 s 43 (see [Criminal Code](#), s 59).

12 **44 Owners to ensure lifejackets available**

13 (1) A person operating a recreational boat on a lake, or the owner of a
14 recreational boat operating on a lake, must ensure that—

15 (a) the boat carries the required number of lifejackets prescribed
16 by regulation for the type of boat; and

17 (b) the lifejackets are appropriate lifejackets for the intended
18 wearers; and

19 (c) the lifejackets—

20 (i) are in good condition; and

21 (ii) are maintained in accordance with the manufacturer's
22 instructions (if any) provided for the lifejackets; and

23 (iii) are replaced when the manufacturer's expiry date (if any)
24 for the lifejackets is reached; and

- 1 (iv) are stored on the boat in a place that—
- 2 (A) enables the life jackets to be accessed quickly and
- 3 easily; and
- 4 (B) is marked with a clearly visible sign that has the
- 5 word “lifejackets” on it in red letters on a white
- 6 background or white letters on a red background.
- 7 (2) A person commits an offence if the person—
- 8 (a) operates a recreational boat on a lake, or is the owner of a
- 9 recreational boat that is operating on a lake; and
- 10 (b) the person fails to comply with the requirements in
- 11 subsection (1).
- 12 Maximum penalty: 30 penalty units.
- 13 (3) An offence against subsection (2) is a strict liability offence.
- 14 (4) In this section:
- 15 ***recreational boat*** does not include the following:
- 16 (a) a canoe;
- 17 (b) a kayak;
- 18 (c) a kiteboard;
- 19 (d) a paddleboard;
- 20 (e) a sailboard;
- 21 (f) a surfboard.

1 **45 Owners and operators to provide information about life**
2 **jackets**

3 (1) An inspector may direct a person who is the owner or operator of a
4 recreational boat that is operating on a lake to provide the inspector
5 with information relating to the maintenance, condition or storage of
6 the lifejackets for the recreational boat.

7 (2) A person commits an offence if—

8 (a) the person is given a direction under subsection (1); and

9 (b) the person fails to provide the information stated in the
10 direction within 24 hours after the direction was given.

11 Maximum penalty: 30 penalty units.

12 (3) An offence against subsection (2) is a strict liability offence.

13 (4) Subsection (2) does not apply if the defendant has a reasonable
14 excuse for failing to provide the information.

15 *Note* The defendant has an evidential burden in relation to the matters
16 mentioned in s (4) (see [Criminal Code](#), s 58).

17 (5) In this section:

18 *recreational boat* does not include the following:

19 (a) a canoe;

20 (b) a kayak;

21 (c) a kiteboard;

22 (d) a paddleboard;

23 (e) a sailboard;

24 (f) a surfboard.

Division 5.2A Other safety equipment

46 Application—div 5.2A

This division does not apply in relation to a recreational boat if the boat—

- (a) is ordinarily operated in a State; and
- (b) complies with the requirements for safety equipment that apply to the boat in the State; and
- (c) has been in the Territory for less than 90 consecutive days.

47 Definitions—div 5.2A

In this division:

recreational boat does not include the following:

- (a) a canoe;
- (b) a kayak;
- (c) a kiteboard;
- (d) a paddleboard;
- (e) a sailboard;
- (f) a surfboard.

required safety equipment, for a boat, means the safety equipment prescribed by regulation.

required standards, for safety equipment, means the standards prescribed by regulation.

47A Owners and operators to ensure safety equipment available

- (1) A person operating a recreational boat on a lake, or the owner of a recreational boat operating on a lake, must ensure that—
- (a) the boat carries the required safety equipment for the boat; and
 - (b) the safety equipment is—
 - (i) compliant with any required standards for the safety equipment; and
 - (ii) in good condition; and
 - (iii) maintained in accordance with the manufacturer's instructions (if any) provided for the equipment; and
 - (iv) replaced when the manufacturer's expiry date (if any) for the equipment is reached; and
 - (v) stored on the boat in a place that enables the equipment to be accessed quickly and easily.
- (2) A person commits an offence if the person—
- (a) operates a recreational boat on a lake, or is the owner of a recreational boat that is operating on a lake; and
 - (b) fails to comply with the requirements in subsection (1).
- Maximum penalty: 30 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.

47B Owners and operators to provide information about safety equipment

- (1) An inspector may direct a person who is the owner or operator of a recreational boat that is operating on a lake to provide the inspector with information relating to the maintenance, condition or storage of safety equipment for the recreational boat.

(2) A person commits an offence if the person—

(a) is given a direction under subsection (1); and

(b) fails to provide the information stated in the direction within 24 hours after the direction was given.

Maximum penalty: 30 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

(4) Subsection (2) does not apply if the defendant has a reasonable excuse for failing to provide the information.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

Division 5.2B Safety directions

47C Closing lake areas or parts of lake

(1) This section applies if the Minister has signed a declaration under section 21 (1) but the declaration has not been notified.

Note The Minister may declare entry to a lake area is prohibited, or a lake area is a prohibited area (see s 21).

(2) An inspector may direct a person who is in a lake area to leave the area.

(3) A person commits an offence if—

(a) the person is given a direction by an inspector under subsection (2); and

(b) at the time the direction is given, the inspector—

(i) produces a copy of the signed declaration; and

(ii) produces the inspector's identity card to the person; and

(iii) warns the person that failing to comply with the direction is an offence; and

(c) the person fails to comply with the direction.

Maximum penalty: 30 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) If an inspector requires the use of a vehicle or boat under a direction mentioned in subsection (2), the inspector is not liable to pay a fee for the use of the vehicle or boat.

47D Safe use of lake areas

(1) An inspector may direct a person using a lake area, or associated works, to do or not to do something, if the inspector believes on reasonable grounds that the direction is necessary to—

(a) ensure the safety of a person; or

(b) ensure compliance with this Act; or

(c) prevent damage to property in the lake area or associated works.

(2) A person commits an offence if—

(a) the person is given a direction by an inspector under subsection (1); and

(b) at the time the direction is given, the inspector—

(i) produces the inspector's identity card to the person; and

(ii) warns the person that failing to comply with the direction is an offence; and

(c) the person fails to comply with the direction.

Maximum penalty: 30 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

(4) Subsection (2) applies to a person even if complying with the direction is an offence against another provision in this Act.

- 1 (5) It is a defence in a prosecution for an offence against this Act if the
2 defendant proves that the defendant was complying with a direction
3 given under subsection (1) at the time the offence was committed.

4 *Note* The defendant has a legal burden in relation to the matters mentioned in
5 s (5) (see [Criminal Code](#), s 59).

- 6 (6) If an inspector requires the use of a vehicle or boat under a direction
7 mentioned in subsection (1), the inspector is not liable to pay a fee
8 for the use of the vehicle or boat.

9 **47E Passengers on domestic commercial vessels**

- 10 (1) A designated person for a domestic commercial vessel on a lake
11 may direct a person not to board, or not to remain on board, the
12 vessel if the designated person is of the opinion that the direction is
13 necessary to ensure the number of people on the vessel does not
14 exceed the maximum number of people the vessel is authorised to
15 carry.

- 16 (2) A designated person for a domestic commercial vessel on a lake
17 may direct a person not to enter, or not to remain in, a part of the
18 vessel if the designated person is of the opinion the direction is
19 necessary to ensure the number of people on the part of the vessel
20 does not exceed the maximum number of people the part of the
21 vessel is authorised to carry.

- 22 (3) A designated person for a domestic commercial vessel on a lake
23 may direct a person on the vessel to move to, or from, a part of the
24 vessel, or stop an activity in which the person is engaged on the
25 vessel, if the designated person is of the opinion that the direction is
26 necessary to ensure the proper management, operation or navigation
27 of the vessel.

- 28 (4) A designated person for a domestic commercial vessel on a lake
29 must not give a direction under this section to a relevant officer
30 exercising the officer's functions.

(5) A person commits an offence if the person—

- (a) is given a direction under this section; and
- (b) fails to comply with the direction.

Maximum penalty: 30 penalty units.

(6) An offence against subsection (5) is a strict liability offence.

(7) In this section:

designated person, for a domestic commercial vessel—

- (a) means a person on board the vessel who is responsible for the navigation, operation, or management of the vessel; and
- (b) for subsections (1) and (2)—includes a person who is responsible for the conduct of operations at the berth of the vessel.

relevant officer means—

- (a) an inspector; or
- (b) a safety investigator; or
- (c) an officer of the Commonwealth or the Territory; or
- (d) an officer of a statutory authority created under a law of the Commonwealth or the Territory.

Division 5.2C Lighting, marking and removing obstructions

47F Lighting and marking obstructions

(1) An inspector may direct the owner of an obstruction to navigation to—

- (a) mark or light the obstruction; and
- (b) maintain the marking or lighting in good condition; and

- 1 (c) notify the inspector under subsection (5) of any defect in
2 relation to the marking or lighting.
- 3 (2) A direction under subsection (1)—
- 4 (a) must be in writing; and
- 5 (b) must state a time by which the marking or lighting is to be
6 completed; and
- 7 (c) may state how the lighting or marking is to be carried out; and
- 8 (d) may state a period of time for which the marking or lighting
9 must be maintained, including for an indefinite period.
- 10 *Note* In particular, a direction given by an inspector under subsection (1) (c)
11 must be in writing.
- 12 (3) A person commits an offence if the person—
- 13 (a) is given a direction under subsection (1); and
- 14 (b) fails to comply with the direction.
- 15 Maximum penalty: 30 penalty units.
- 16 (4) An offence against subsection (3) is a strict liability offence.
- 17 (5) A person who has been given a direction under subsection (1) (c)
18 must notify an inspector as soon as the person becomes aware of
19 any defect in relation to the marking or lighting of the obstruction.
- 20 (6) If the owner of an obstruction to navigation fails to comply with a
21 direction under subsection (1) in the time stated in the direction, an
22 inspector may take action to cause the obstruction to be marked or
23 lit.

- 1 (7) If an inspector takes action under subsection (6) in relation to an
2 obstruction to navigation, the Territory may recover the reasonable
3 costs and expenses of the action from the owner of, or the person
4 responsible for, the obstruction.

5 *Note* An amount owing under a law may be recovered as a debt in a court of
6 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

7 **47G Notices to remove obstructions**

- 8 (1) An inspector may direct the owner of, or person responsible for, an
9 obstruction to navigation to remove the obstruction.
- 10 (2) A direction under subsection (1) must be in writing and state a time
11 by which the obstruction must be removed.
- 12 (3) A person commits an offence if the person—
13 (a) is given a direction under subsection (1); and
14 (b) fails to comply with the direction.
- 15 Maximum penalty: 30 penalty units.
- 16 (4) An offence against subsection (3) is a strict liability offence.

17 **47H Removing obstructions**

- 18 (1) An inspector may remove an obstruction to navigation in a way the
19 inspector considers appropriate.
- 20 (2) The removal of an obstruction under subsection (1) may include—
21 (a) its destruction, if it is reasonable in the circumstances; or
22 (b) authorising its removal by another entity.
- 23 (3) The inspector may remove an obstruction under subsection (1)
24 whether or not the inspector has given a direction under
25 section 47G.

- 1 (4) If an inspector removes an obstruction under subsection (1), the
2 Territory may recover the reasonable costs and expenses of the
3 action from the owner of, or the person responsible for, the
4 obstruction.

5 *Note* An amount owing under a law may be recovered as a debt in a court of
6 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

7 **47I Disposing of obstructions**

- 8 (1) This section applies if an obstruction to navigation has been
9 removed (other than by its destruction) under section 47H.
- 10 (2) An inspector may dispose of the thing that has been removed if—
- 11 (a) the inspector has taken reasonable steps to return the thing to
12 its owner; and
- 13 (b) 1 or more of the following applies:
- 14 (i) the inspector has been unable to locate the owner, despite
15 making reasonable efforts;
- 16 (ii) the owner has refused to take possession of the thing;
- 17 (iii) the inspector has contacted the person about the return of
18 the thing, and the person has not taken possession of the
19 thing within 30 days from the date of the contact.
- 20 (3) The inspector may dispose of the thing in a way the inspector
21 considers appropriate.

22 **24 Division 5.3 heading**

23 *omit*

24 **25 Sections 48 and 49**

25 *omit*

26 Section 50*omit***27 New part 5A***insert***Part 5A Drug and alcohol offences****50A Definitions—pt 5A**

In this part:

high level means a concentration of 0.15g or more of alcohol in 210L of breath or 100mL of blood.***low level*** means a concentration of 0.05g or more, but less than 0.08g, of alcohol in 210L of breath or 100mL of blood.***medium level*** means a concentration of 0.08g or more, but less than 0.15g, of alcohol in 210L of breath or 100mL of blood.***relevant period*** means the period that begins when a person stops operating a boat and ends at the latest time when—(a) a breath analysis of the person may be carried out under the *Road Transport (Alcohol and Drugs) Act 1977* as it applies under section 50N in relation to the person; or(b) a sample of the person's blood may be taken under the *Road Transport (Alcohol and Drugs) Act 1977* as it applies under section 50N in relation to the person.*Note* The *Road Transport (Alcohol and Drugs) Act 1977*, pt 2 provides for breath analysis and the taking of samples from a person.***special level*** means a concentration of more than 0g, but less than 0.05g, of alcohol in 210L of breath or 100mL of blood.

1 **50B People under 18 years old**

- 2 (1) A person commits an offence if—
- 3 (a) the person is under 18 years old; and
- 4 (b) the person has been operating a boat on a lake; and
- 5 (c) the person has alcohol in the person's blood or breath within
- 6 the relevant period of operating the boat; and
- 7 (d) the concentration of the alcohol in the person's blood or breath
- 8 is at a special level.

9 Maximum penalty: 10 penalty units.

- 10 (2) An offence against this section is a strict liability offence.

11 **50C Special level of alcohol**

- 12 (1) A person commits an offence if—
- 13 (a) the person has been operating a boat for a commercial purpose
- 14 on a lake; and
- 15 (b) the person has alcohol in the person's blood or breath within
- 16 the relevant period of operating the boat; and
- 17 (c) the concentration of the alcohol in the person's blood or breath
- 18 is at a special level.

19 Maximum penalty: 10 penalty units.

- 20 (2) An offence against this section is a strict liability offence.

21 **50D Low level of alcohol**

- 22 (1) A person commits an offence if—
- 23 (a) the person has been operating a boat on a lake; and
- 24 (b) the person has alcohol in the person's blood or breath within
- 25 the relevant period of operating the boat; and

- 1 (c) the concentration of the alcohol in the person's blood or breath
2 is at a low level.

3 Maximum penalty: 10 penalty units.

- 4 (2) An offence against this section is a strict liability offence.

5 **50E Medium level of alcohol**

- 6 (1) A person commits an offence if—

- 7 (a) the person has been operating a boat on a lake; and
8 (b) the person has alcohol in the person's blood or breath within
9 the relevant period of operating the boat; and
10 (c) the concentration of the alcohol in the person's blood or breath
11 is at a medium level.

12 Maximum penalty: 10 penalty units, imprisonment for 6 months or
13 both.

- 14 (2) An offence against this section is a strict liability offence.

15 **50F High level of alcohol**

- 16 (1) A person commits an offence if—

- 17 (a) the person has been operating a boat on a lake; and
18 (b) the person has alcohol in the person's blood or breath within
19 the relevant period of operating the boat; and
20 (c) the concentration of the alcohol in the person's blood or breath
21 is at a high level.

22 Maximum penalty: 20 penalty units, imprisonment for 12 months or
23 both.

- 24 (2) An offence against this section is a strict liability offence.

50G Under the influence of alcohol or drugs

(1) A person commits an offence if—

- (a) the person operates a boat on a lake; and
- (b) the person is under the influence of alcohol or a drug to the extent that the person is incapable of having proper control of the boat.

Maximum penalty: 30 penalty units, imprisonment for 12 months or both.

(2) If a person is charged with an offence against subsection (1)—

- (a) the charge may allege that the person was under the influence of alcohol or a drug; and
- (b) the charge in relation to subsection (1) (b) may be proven by showing the person was under the influence of alcohol, or a drug, or both, to the extent mentioned in the subsection.

Note A police officer who has a screening device immediately available is not entitled to arrest a person for an offence against this section unless certain requirements are met (see s 50N and [Road Transport \(Alcohol and Drugs\) Act 1977](#), s 45).

50H Drugs

(1) A person commits an offence if—

- (a) the person has been operating a boat on a lake; and
- (b) the person has a prescribed drug in the person's oral fluid or blood within the relevant period of operating the boat.

Maximum penalty: 25 penalty units, imprisonment for 3 months or both.

(2) An offence against subsection (1) is a strict liability offence.

- 1 (3) In a prosecution for an offence against this section, a person cannot
2 rely on the [Criminal Code](#), section 36 (Mistake of fact—strict
3 liability) in relation to the identity of the prescribed drug if the
4 person claims to have—
- 5 (a) considered, and been under a mistaken belief about, the
6 identity of the prescribed drug; and
- 7 (b) believed that the prescribed drug was a controlled drug.
- 8 (4) In a prosecution for an offence against subsection (1), evidence may
9 be given that a person has a prescribed drug in the person's oral
10 fluid or blood based on—
- 11 (a) for proof of the presence of a prescribed drug in the person's
12 oral fluid—an analysis of a part of a sample of the person's
13 oral fluid that—
- 14 (i) is carried out in accordance with section 13G (Oral
15 fluid—confirmatory analysis) of the [Road Transport
16 \(Alcohol and Drugs\) Act 1977](#) as it applies under section
17 50N in relation to the person; and
- 18 (ii) indicates that a prescribed drug is present in the sample;
19 or
- 20 (b) for proof of the presence of a prescribed drug in the person's
21 blood—an analysis of a part of a sample of the person's blood
22 that—
- 23 (i) is carried out in accordance with section 15A (Analysis
24 of blood samples) of the [Road Transport \(Alcohol and
25 Drugs\) Act 1977](#) as it applies under section 50N in
26 relation to the person; and
- 27 (ii) indicates that a prescribed drug is present in the sample.

(5) In this section:

controlled drug—see the [Criminal Code](#), section 600.

prescribed drug—see the [Road Transport \(Alcohol and Drugs\) Act 1977](#), dictionary.

relevant period means the period that begins when the person stops operating the boat and ends at the latest time when—

(a) a breath or oral fluid analysis of the person may be carried out under the [Road Transport \(Alcohol and Drugs\) Act 1977](#) as it applies under section 50N in relation to the person; or

(b) a sample of the person's blood may be taken under the [Road Transport \(Alcohol and Drugs\) Act 1977](#) as it applies under section 50N in relation to the person.

Note The [Road Transport \(Alcohol and Drugs\) Act 1977](#), pt 2 provides for breath analysis and the taking of samples from a person.

50I Evidence of alcohol levels

(1) This section applies in a prosecution of a person for an offence against any of the following provisions:

- (a) section 50B (People under 18 years old);
- (b) section 50C (Special level of alcohol);
- (c) section 50D (Low level of alcohol);
- (d) section 50E (Medium level of alcohol);
- (e) section 50F (High level of alcohol).

(2) In a prosecution for an offence against a section mentioned in subsection (1), evidence may be given of alcohol in the person's blood or breath based on an analysis of a sample of—

(a) for proof of the concentration of alcohol in the person's breath—the person's breath carried out in accordance with the *Road Transport (Alcohol and Drugs) Act 1977* as it applies under section 50N in relation to the person; or

(b) for proof of the concentration of alcohol in the person's blood—the person's blood carried out at an approved laboratory and certified to be accurate by an analyst in accordance with the *Road Transport (Alcohol and Drugs) Act 1977* as it applies under section 50N in relation to the person.

50J Alternative verdicts—medium level of alcohol

(1) This section applies in a prosecution of a person for an offence against section 50E (Medium level of alcohol) if the trier of fact is satisfied that, within the relevant period, the concentration of the alcohol in the person's blood or breath was at low level but not at a medium level.

(2) The trier of fact may find the person guilty of an offence against section 50D (Low level of alcohol) if the Court gives procedural fairness to the person before the finding of guilt.

50K Alternative verdicts—high level of alcohol

(1) This section applies in a prosecution of a person for an offence against section 50F (High level of alcohol) if the trier of fact is satisfied that, within the relevant period, the concentration of the alcohol in the person's blood or breath was at a low level or medium level but not at a high level.

(2) The trier of fact may find the person guilty of an offence mentioned in subsection (3) if the Court gives procedural fairness to the person before the finding of guilt.

- 1 (3) The offences for which a person may be found guilty are—
2 (a) if the concentration was at a low level—section 50D (Low
3 level of alcohol); or
4 (b) if the concentration was at a medium level—section 50E
5 (Medium level of alcohol).

6 **50L Alternative verdicts—high, medium and low levels of**
7 **alcohol**

- 8 (1) This section applies in a prosecution of a person for an offence
9 against section 50D, section 50E or section 50F if the trier of fact is
10 satisfied that, within the relevant period, the concentration of the
11 alcohol in the person's blood or breath was at a special level but not
12 at a high level, medium level or low level.
13 (2) The trier of fact may find the person guilty of an offence mentioned
14 in subsection (3) if the Court gives procedural fairness to the person
15 before the finding of guilt.
16 (3) The offences for which a person may be found guilty are—
17 (a) if the person is under 18 years old—section 50B (People under
18 18 years old); or
19 (b) if the person was operating the boat for a commercial
20 purpose—section 50C (Special level of alcohol).

21 **50M Defence—special level of alcohol**

- 22 (1) This section applies if—
23 (a) a person is charged with an offence against section 50B or
24 section 50C; and
25 (b) the concentration of alcohol in the person's blood or breath
26 within the relevant period was less than 0.02g in 100mL of the
27 person's blood or 210L of the person's breath.

(2) It is a defence to a prosecution for the offence if the defendant proves that the concentration of alcohol in the defendant's blood or breath was caused by—

(a) the consumption of an alcoholic beverage that formed part of a religious observance; or

(b) the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

Example—substance

food or medicine that contains alcohol

Note 1 The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

50N Application of Road Transport (Alcohol and Drugs) Act 1977

(1) A provision of the [Road Transport \(Alcohol and Drugs\) Act 1977](#) mentioned in subsection (2) applies in relation to a person who operates a boat on a lake as if a reference to—

(a) a road or road related area included a reference to a lake or lake area; and

(b) a driver of a motor vehicle on a road in the Territory included a reference to a person operating a boat on a lake; and

(c) a driver of a motor vehicle included a reference to a person who operates a boat; and

(d) driving included a reference to operating; and

(e) a motor vehicle included a reference to a boat; and

(f) a motor vehicle involved in an accident included a reference to a boat involved in an accident; and

- 1 (g) a prescribed concentration of alcohol included a reference to a
2 low level, high level, medium level or special level of alcohol
3 mentioned in section 50A; and
- 4 (h) an offence against that Act, section 24 included a reference to
5 an offence against this Act, section 50G; and
- 6 (i) an offence against that Act included a reference to an offence
7 against this part; and
- 8 (j) that Act included a reference to this part.
- 9 (2) The following provisions of the *Road Transport (Alcohol and*
10 *Drugs) Act 1977* apply in relation to a person who operates a boat
11 on a lake:
- 12 (a) part 1;
- 13 (b) part 1A (other than sections 4B to 4C, 4E and 4F);
- 14 (c) part 2 (other than sections 9A, 10, 13BA, 13C, 18A and 18B);
- 15 (d) part 3 (other than sections 19 to 20, 24, 24A, and 25 (2));
- 16 (e) part 7;
- 17 (f) part 9 (other than section 50 and section 51);
- 18 (g) schedule 1;
- 19 (h) the dictionary (other than definitions that do not appear in
20 provisions that apply to a person who operates a boat on a
21 lake);
- 22 (i) a provision of a regulation, as in force from time to time, made
23 under the *Road Transport (Alcohol and Drugs) Act 1977* for
24 the purpose of the provisions mentioned in paragraphs (a)
25 to (h).

- (3) If a provision of the *Road Transport (Alcohol and Drugs) Act 1977* applies in relation to a person who operates a boat on a lake, an entity who has a function under that Act may exercise the function in relation to the person.

Example

Entities who have functions under the *Road Transport (Alcohol and Drugs) Act 1977* include an analyst, a police officer, an authorised operator, a doctor or nurse, and an approved laboratory.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (4) Part 5D does not restrict the operation of a provision of the *Road Transport (Alcohol and Drugs) Act 1977* that applies under this section.

Note This section applies powers to collect evidence under the *Road Transport (Alcohol and Drugs) Act 1977* that are in addition to, and not constrained by, any other powers under this Act. This section also applies offences from the *Road Transport (Alcohol and Drugs) Act 1977* to a person who operates a boat on a lake.

28 New parts 5B to 5D

insert

Part 5B Boating accidents

500 Obligation to stop

- (1) The master of a boat commits an offence if—
- (a) the boat is involved in a boating accident involving another boat or the death of, or injury to, a person; and
 - (b) the master fails to stop the boat.
- Maximum penalty: 30 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.

- (3) Subsection (1) does not apply if the defendant has a reasonable excuse for failing to stop the boat.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

50P Obligation to give assistance

The master of a boat commits an offence if—

- (a) the boat is involved in a boating accident involving another boat or the death of, or injury to, a person; and
- (b) the master negligently fails to give assistance to any person injured, or boat damaged, in the boating accident.

Maximum penalty: 50 penalty units.

50Q Obligation to produce licence and give particulars

- (1) The master of a boat commits an offence if—

- (a) the boat is involved in a boating accident; and
- (b) a person involved in the accident requests that the master gives the person any of the following information:
 - (i) information from the master's licence or permit (however described) that authorises the master to use the boat;
 - (ii) the master's name and address;
 - (iii) the name and address of the boat's owner;
 - (iv) the name of the boat and any distinguishing number that is, or is required to be, displayed on the boat by law; and
- (c) the master fails to comply with the request.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

- (3) Subsection (1) does not apply if the defendant has a reasonable excuse for failing to comply with the request.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

50R Obligation to report boating accidents to the Minister

- (1) As soon as practicable after a boating accident, the master of a boat involved in the accident (and the owner of the boat if aware of the accident) must give a report to the Minister containing particulars of the boating accident.

- (2) A report is not required to be given if—

(a) a report of the boating accident has already been given by the owner or master; or

(b) the boating accident involves a recreational boat only and does not result in any of the following:

(i) loss of life or injury to a person;

(ii) property damage of a value greater than \$5 000;

(iii) damage to, or the risk of damage to, the environment.

- (3) A person commits an offence if the person—

(a) is required to give a report to the Minister under subsection (1); and

(b) fails to give the report to the Minister.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

- (5) In this section:

particulars of the boating accident means the following:

(a) the time, place and nature of the boating accident;

- 1 (b) the name and distinguishing number (if any) of each boat
2 involved in the boating accident;
- 3 (c) the name and address of each person who was involved in, or
4 was a material witness to, the boating accident;
- 5 (d) a description of the estimated extent of any injury or damage,
6 or any loss of life, resulting from the boating accident.

7 **50S Obligation to preserve evidence**

8 A person commits an offence if—

- 9 (a) the person is—
- 10 (i) the owner or master of a boat involved in a boating
11 accident; or
- 12 (ii) otherwise involved in a boating accident; and
- 13 (b) the person reasonably believes that evidence relating to the
14 boating accident may be required for an investigation into the
15 boating accident; and
- 16 (c) the person negligently fails to preserve the evidence.

17 Maximum penalty: 50 penalty units.

18 **Examples—evidence relating to boating accident**

- 19 • nautical charts
- 20 • log books

21 *Note* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 [Legislation Act](#), s 126 and s 132).

Part 5C Safety investigations

50T Safety investigations

- (1) The Minister may order an investigation into any of the following matters:
- (a) a boating accident that has been reported under section 50R or that the Minister believes may have happened;
 - (b) a situation that has the potential to cause a boating accident;
 - (c) alleged incompetence or misconduct of a person operating a power boat who is required to hold a licence or permit under section 25A to operate the boat;
 - (d) a boat that has been detained under section 50ZZ in relation to an offence against section 36 (Operating unsafe boats).
- (2) The purposes of a safety investigation are—
- (a) to decide the circumstances of, or in relation to, a boating accident or other matters that affect safety on a lake; and
 - (b) to make recommendations to prevent similar boating accidents or other matters happening again.
- (3) A safety investigation may be carried out whether or not it relates to a matter that—
- (a) is being investigated, or has been investigated, under another Commonwealth or territory law; or
 - (b) is or may be subject to criminal or civil proceedings.
- (4) If the Minister orders a safety investigation into a matter mentioned in subsection (1) (c), the Minister may notify the State or the Commonwealth authority that granted the licence or permit of the investigation.

- 1 **50U Appointment of safety investigators and powers**
- 2 (1) The Minister may appoint 1 or more investigators (a *safety*
- 3 *investigator*) to carry out a safety investigation.
- 4 (2) The Minister may appoint either of the following as a safety
- 5 investigator:
- 6 (a) a police officer;
- 7 (b) a person who possesses qualifications or experience relevant to
- 8 an investigation.
- 9 *Note 1* For the making of appointments (including acting appointments), see
- 10 the [Legislation Act](#), pt 19.3.
- 11 *Note 2* In particular, a person may be appointed for a particular provision of a
- 12 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
- 13 naming a person or nominating the occupant of a position (see
- 14 [Legislation Act](#), s 207).
- 15 (3) A safety investigator is subject to the control and direction of the
- 16 Minister, except in relation to the content of a safety investigation
- 17 report.
- 18 **50V People assisting safety investigators**
- 19 A person may assist a safety investigator under this part if—
- 20 (a) the assistance is necessary and reasonable; and
- 21 (b) the person follows any direction given to the person by the
- 22 safety investigator.

1 **50W Conduct of safety investigations**

- 2 (1) A safety investigator must conduct a safety investigation in a way
3 that the safety investigator considers appropriate having regard to
4 the purposes of the investigation.
- 5 (2) A safety investigation may extend to all relevant events and
6 circumstances preceding a boating accident or other matter to which
7 the investigation relates.
- 8 (3) In conducting a safety investigation, a safety investigator may rely
9 on any evidence relating to the matter under investigation given in
10 any criminal or civil proceedings or in any coronial or other judicial
11 inquiry.
- 12 (4) At any time during the safety investigation, the Minister may decide
13 the investigation is to be discontinued and a safety investigation
14 report is to be prepared and submitted by the safety investigator.

15 **50X People to give information, produce documents or**
16 **answer questions**

- 17 (1) A safety investigator may give a written notice under subsection (2)
18 to a person if the safety investigator reasonably believes that the
19 person has information or a document that is relevant to a safety
20 investigation.
- 21 (2) The notice may require the person—
- 22 (a) to give information to the safety investigator or a stated
23 inspector; or
- 24 (b) to produce a document to the safety investigator or a stated
25 inspector; or
- 26 (c) to appear before the safety investigator or a stated inspector to
27 answer questions.

- 1 (3) A notice mentioned in subsection (2) (a) or (b) must state—
- 2 (a) a period of at least 14 days after the day the notice is given to
- 3 the person, when the person must comply with the notice; and
- 4 (b) the way in which the person must comply with the notice; and
- 5 (c) that it is an offence under subsection (8) to fail to comply with
- 6 the notice.
- 7 (4) A notice mentioned in subsection (2) (c) must state—
- 8 (a) the time and place at which the person must appear; and
- 9 (b) that it is an offence under subsection (8) to fail to comply with
- 10 the notice.
- 11 (5) The safety investigator or inspector may require a person who has
- 12 been given a notice mentioned in subsection (2) (c)—
- 13 (a) to answer any question relevant to a safety investigation; and
- 14 (b) to give any answer on oath or affirmation orally or in writing.
- 15 (6) The safety investigator or inspector may administer the oath or
- 16 affirmation under subsection (5).
- 17 (7) If the place stated in the notice is more than 16km from a person's
- 18 place of residence at the time the person receives the notice, the
- 19 person is entitled to be paid a reasonable allowance for expenses
- 20 incurred by the person for transport, meals and accommodation in
- 21 relation to appearing before the safety investigator or inspector.
- 22 (8) A person commits an offence if—
- 23 (a) the person is given a notice under subsection (2); and
- 24 (b) the person fails to comply with the notice.
- 25 Maximum penalty: 50 penalty units
- 26 (9) An offence against subsection (8) is a strict liability offence.

1 **50Y Safety investigation reports**

- 2 (1) A safety investigator must prepare a report (a *safety investigation*
3 *report*)—
- 4 (a) after completing a safety investigation into a boating accident
5 or other matter; or
- 6 (b) if requested to do so by the Minister under section 50W (4).
- 7 (2) The safety investigation report must include—
- 8 (a) findings of fact of the boating accident or other matter, and if
9 the facts cannot be established with certainty, the safety
10 investigator's opinion as to the most probable facts; and
- 11 (b) for a boating accident—the cause or most probable cause of the
12 boating accident; and
- 13 (c) observations and recommendations that the safety investigator
14 considers should be carried out to prevent a similar boating
15 accident or other matter from happening again.
- 16 (3) The safety investigator must not include an adverse comment in
17 relation to a person in a safety investigation report unless the safety
18 investigator has given the person a reasonable opportunity to
19 respond to the proposed comment.
- 20 (4) A safety investigator may, at any time during a safety investigation,
21 prepare an interim safety investigation report and submit it to the
22 Minister.
- 23 (5) The safety investigator must submit a safety investigation report to
24 the Minister.

25 **50Z Actions by Minister following safety investigations**

- 26 (1) After receiving a safety investigation report, the Minister may take
27 no action or do 1 or more of the following:
- 28 (a) take action to improve safety procedures;

- 1 (b) reprimand the holder of a licence or permit (however
2 described) under the law of a State or the Commonwealth that
3 authorises the person to use a boat;
- 4 (c) inform the State or Commonwealth authority that granted the
5 licence or permit mentioned in paragraph (b) of the report and
6 any action taken by the Minister on the report;
- 7 (d) recommend that criminal or other legal proceedings be taken
8 against a person.
- 9 (2) Before taking action under this section, the Minister may conduct a
10 further investigation of the matter or refer the matter to the same or
11 a different safety investigator for further investigation and a further
12 safety investigation report under this part.
- 13 (3) Any action taken under this section may extend to more than
14 1 permit or licence held by a person.
- 15 (4) The Minister must give written notice to the holder of the licence or
16 permit of any action taken under this section against the holder,
17 together with a copy of the final safety investigation report.

18 **50ZA Public release of safety investigation reports and**
19 **recommendations**

- 20 (1) A safety investigator may, at any time during the course of a safety
21 investigation, make recommendations to the Minister.
- 22 (2) The Minister may cause the recommendations to be made public if
23 the Minister considers that it is in the interests of safety to do so.
- 24 (3) The Minister may publicly release all or part of any report submitted
25 to the Minister by a safety investigator.
- 26 (4) The Minister must not publicly release all or part of a report if the
27 release might prejudice the rights of any person in any criminal
28 proceedings started in relation to the matter.

29 *Note* The *Information Privacy Act 2014* applies to the disclosure of personal
30 information.

1 **50ZB Protection from liability**

2 (1) This section applies if a person, honestly and without recklessness,
3 gives information to the Minister or a safety investigator in relation
4 to a safety investigation.

5 (2) Civil proceedings may not be brought against any of the following
6 in relation to anything in the information mentioned in
7 subsection (1) that is alleged to be defamatory or a breach of
8 confidence:

9 (a) the Territory;

10 (b) the Minister;

11 (c) the safety investigator;

12 (d) an inspector;

13 (e) the person who supplied the information.

14 **Part 5D Enforcement**

15 **Division 5D.1 Definitions—pt 5D**

16 **50ZC Definitions—pt 5D**

17 In this part:

18 *enter*, a place of inspection, includes boarding a boat.

19 *place of inspection* means a place, premises, vehicle, or boat.

1 **Division 5D.2 Inspectors**

2 **50ZD Inspectors**

- 3 (1) The director-general may appoint a public servant as an inspector
4 for this Act.

5 *Note 1* For the making of appointments (including acting appointments), see
6 the [Legislation Act](#), pt 19.3.

7 *Note 2* In particular, a person may be appointed for a particular provision of a
8 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
9 naming a person or nominating the occupant of a position (see
10 [Legislation Act](#), s 207).

- 11 (2) The delegate for lakes and police officers are also inspectors.

12 **50ZE Identity cards**

- 13 (1) The director-general must give an inspector (other than a police
14 officer) an identity card stating the person's name and that the
15 person is an inspector.

- 16 (2) The identity card must show—

- 17 (a) a recent photograph of the person; and
18 (b) the card's date of issue and expiry; and
19 (c) anything else prescribed by regulation.

- 20 (3) A person commits an offence if—

- 21 (a) the person stops being an inspector; and
22 (b) the person does not return the person's identity card to the
23 director-general as soon as practicable, but not later than
24 7 days, after the person stops being an inspector.

25 Maximum penalty: 1 penalty unit.

- 26 (4) An offence against this section is a strict liability offence.

1 (5) Subsection (3) does not apply to a person if the person's identity
2 card has been—

3 (a) lost or stolen; or

4 (b) destroyed by someone else.

5 *Note* The defendant has an evidential burden in relation to the matters
6 mentioned in s (5) (see [Criminal Code](#), s 58).

7 **50ZF Powers not to be exercised before identity card shown**

8 An inspector may exercise a power under this part in relation to a
9 person only if the inspector first shows the person the inspector's
10 identity card.

11 **50ZG People assisting inspectors**

12 A person may assist an inspector under this part if—

13 (a) the assistance is necessary and reasonable; and

14 (b) the person follows any direction given to the person by the
15 inspector.

16 **Division 5D.3 Entry and inspection**

17 **50ZH Entering places of inspection and boats in lake areas**

18 (1) An inspector may enter—

19 (a) a place of inspection at any time with the consent of the
20 occupier; or

21 (b) a place of inspection in accordance with a warrant; or

22 (c) a place of inspection to protect life or property, if the inspector
23 believes on reasonable grounds the circumstances are so
24 serious and urgent that immediate entry to the premises
25 without authority of a warrant is necessary; or

- 1 (d) a boat in a lake area, if the inspector believes on reasonable
2 grounds that an offence against this Act is being, or has been,
3 committed.

4 *Note* To enter a place of inspection includes boarding a boat (see s 50ZC,
5 def *enter*).

- 6 (2) An inspector may, without the occupier's consent or a warrant, enter
7 a place of inspection to ask the occupier for consent to enter the
8 place.

9 **50ZI Producing identity cards**

10 An inspector must not remain at a place of inspection entered under
11 this division if, on request by the occupier, the inspector does not
12 produce the inspector's identity card.

13 **50ZJ Consent to entry**

- 14 (1) When seeking the consent of an occupier to enter a place of
15 inspection under this division, an inspector must—

16 (a) produce their identity card; and

17 (b) tell the occupier—

18 (i) the purpose of the entry; and

19 (ii) that anything found and seized may be used in evidence
20 in court; and

21 (iii) that consent may be refused.

- 22 (2) If the occupier consents, the inspector must ask the occupier to sign
23 a written acknowledgment—

24 (a) that the occupier was told—

25 (i) the purpose of the entry; and

26 (ii) that anything found and seized under this division may be
27 used in evidence in court; and

- 1 (iii) that consent may be refused; and
- 2 (b) that the occupier consented to the entry; and
- 3 (c) the time, and date, when consent was given.
- 4 (3) If the occupier signs an acknowledgment of consent, the inspector
- 5 must immediately give a copy to the occupier.
- 6 (4) Unless the contrary is proven, a court must presume that an occupier
- 7 of the place of inspection did not consent to an entry to the place by
- 8 an inspector under this division if—
- 9 (a) the question whether the occupier consented to the entry arises
- 10 in proceedings in the court; and
- 11 (b) an acknowledgment under this section is not produced in
- 12 evidence for the entry or exercise of power; and
- 13 (c) it is not proved that the occupier consented to the entry.

14 **50ZK Warrants**

- 15 (1) An inspector may apply to a magistrate for a warrant to enter a place
- 16 of inspection.
- 17 (2) The application must be sworn and state the grounds on which the
- 18 warrant is sought.
- 19 (3) The magistrate may refuse to consider the application until the
- 20 inspector gives the magistrate all the information the magistrate
- 21 requires about the application in the way the magistrate requires.
- 22 (4) The magistrate may issue a warrant only if satisfied there are
- 23 reasonable grounds for suspecting—
- 24 (a) there is a particular thing or activity (***relevant evidence***) that
- 25 may provide evidence of an offence against this Act or a
- 26 related law; and
- 27 (b) the relevant evidence is, or may be within the next 14 days, at
- 28 the place of inspection.

- 1 (5) The warrant must state—
- 2 (a) that an inspector may, with necessary assistance and force,
- 3 enter the place of inspection and exercise the inspector's
- 4 powers under this division; and
- 5 (b) the offence for which the warrant is sought; and
- 6 (c) the relevant evidence that may be seized under the warrant; and
- 7 (d) the hours when the place of inspection may be entered; and
- 8 (e) the date, within 14 days after the warrant's issue, the warrant
- 9 ends.

10 **50ZL Warrants—application made other than in person**

- 11 (1) An inspector may apply for a warrant by phone, fax, email, radio or
- 12 other form of communication if the inspector considers it necessary
- 13 because of—
- 14 (a) urgent circumstances; or
- 15 (b) other special circumstances.
- 16 (2) Before applying for the warrant, the inspector must prepare an
- 17 application stating the grounds on which the warrant is sought.
- 18 (3) The inspector may apply for the warrant before the application is
- 19 sworn.
- 20 (4) After issuing the warrant, the magistrate must immediately provide
- 21 a written copy to the inspector if it is reasonably practicable to do
- 22 so.
- 23 (5) If it is not reasonably practicable to provide a written copy to the
- 24 inspector—
- 25 (a) the magistrate must tell the inspector—
- 26 (i) the terms of the warrant; and
- 27 (ii) the date and time the warrant was issued; and

- 1 (b) the inspector must complete a form of warrant (the *warrant*
2 *form*) and write on it—
- 3 (i) the magistrate's name; and
- 4 (ii) the date and time the magistrate issued the warrant; and
- 5 (iii) the warrant's terms.
- 6 (6) The written copy of the warrant, or the warrant form properly
7 completed by the inspector, authorises the entry and the exercise of
8 the inspector's other powers stated in the warrant issued by the
9 magistrate.
- 10 (7) The inspector must, at the first reasonable opportunity, send the
11 magistrate—
- 12 (a) the sworn application; and
- 13 (b) if the inspector completed a warrant form—the completed
14 warrant form.
- 15 (8) On receiving the documents, the magistrate must attach them to the
16 warrant.
- 17 (9) A court must find that a power exercised by an inspector was not
18 authorised by a warrant under this section if—
- 19 (a) the question arises in a proceeding before the court whether the
20 exercise of power was authorised by a warrant; and
- 21 (b) the warrant is not produced in evidence; and
- 22 (c) it is not proved that the exercise of power was authorised by a
23 warrant under this section.

- 1 **50ZM General powers on entry**
- 2 (1) An inspector who enters a place of inspection under this division
- 3 may, for this Act—
- 4 (a) inspect, measure, photograph or film the place of inspection or
- 5 anything at the place of inspection; or
- 6 (b) copy a document at the place of inspection; or
- 7 (c) test or take samples of, or from, anything at the place of
- 8 inspection; or
- 9 (d) take into the place of inspection any people, equipment or
- 10 material the inspector reasonably needs for exercising a power
- 11 under this part; or
- 12 (e) require the occupier, or another person at the place of
- 13 inspection to give the inspector reasonable help to exercise a
- 14 power under this part.
- 15 (2) A person commits an offence if—
- 16 (a) an inspector requires the person to give the inspector
- 17 reasonable help under subsection (1) (e); and
- 18 (b) the person fails to take reasonable steps to comply with the
- 19 requirement.
- 20 Maximum penalty: 50 penalty units.

1 **50ZN Power to seize evidence**

- 2 (1) An inspector who enters a place of inspection with a warrant under
3 this division may seize the evidence for which the warrant was
4 issued.
- 5 (2) An inspector who enters a place of inspection under this division
6 with the occupier's consent may seize a thing at the place of
7 inspection if—
- 8 (a) the inspector is satisfied on reasonable grounds that the thing is
9 connected with an offence against this Act or a related law; and
- 10 (b) seizure of the thing is consistent with the purpose of the entry
11 told to the occupier when seeking the occupier's consent.
- 12 (3) An inspector may seize anything at the place of inspection if the
13 inspector is satisfied on reasonable grounds that—
- 14 (a) the thing is connected with an offence against this Act or a
15 related law; and
- 16 (b) the seizure is necessary to prevent the thing being—
- 17 (i) concealed, lost or destroyed; or
- 18 (ii) used to commit, continue or repeat the offence.
- 19 (4) Also, an inspector who enters a place of inspection under this
20 division (whether with the occupier's consent, under a warrant or
21 otherwise) may seize anything at the place of inspection if satisfied
22 on reasonable grounds that the thing poses a risk to—
- 23 (a) the health or safety of a person; or
- 24 (b) public or private property; or
- 25 (c) the environment.
- 26 (5) The powers of an inspector under subsection (3) and subsection (4)
27 are additional to any powers of the inspector under subsection (1) or
28 subsection (2) or any other territory law.

- 1 (6) Having seized a thing, an inspector may—
- 2 (a) move the thing from the place of inspection where it was
- 3 seized (the *place of seizure*) to another place; or
- 4 (b) leave the thing at the place of seizure but restrict access to it.
- 5 (7) A person commits an offence if the person—
- 6 (a) interferes with a seized thing, or anything containing a seized
- 7 thing, to which access has been restricted under subsection (6);
- 8 and
- 9 (b) does not have an inspector's approval to interfere with the
- 10 thing.
- 11 Maximum penalty: 50 penalty units.
- 12 *Note* Division 5D.6 (Dealing with things seized) applies to a thing seized
- 13 under this section.

14 **Division 5D.4 Boarding of boats**

15 **50ZO Facilitating boarding of boats**

- 16 (1) An inspector may request a person to take reasonable steps to allow
- 17 the inspector to board a boat under section 50ZH (1).
- 18 (2) The inspector may make the request to the person in charge of the
- 19 boat or someone else.
- 20 (3) A person commits an offence if—
- 21 (a) an inspector makes a request to the person under
- 22 subsection (1); and
- 23 (b) the person fails to comply with the request.
- 24 Maximum penalty: 50 penalty units.
- 25 (4) An offence against subsection (3) is a strict liability offence.

1 **50ZP Directing boats after boarding**

2 (1) An inspector who boards a boat under section 50ZH (1) may direct
3 the master of the boat to do any of the following:

- 4 (a) stop or manoeuvre the boat;
5 (b) adopt a stated course or speed;
6 (c) maintain a stated course or speed;
7 (d) take the boat to a stated place.

8 (2) A person commits an offence if—

- 9 (a) an inspector directs the person to take an action under
10 subsection (1); and
11 (b) the person fails to take reasonable steps to take the action.

12 Maximum penalty: 50 penalty units.

13 (3) An offence against subsection (2) is a strict liability offence.

14 **50ZQ Requiring information after entry**

15 (1) An inspector who boards a boat under section 50ZH (1) may require
16 a person on the boat to provide any of the following information,
17 only if the information is to assist the inspector to carry out the
18 inspector's functions under this Act:

- 19 (a) the person's name;
20 (b) the person's residential address;
21 (c) the person's date of birth;
22 (d) evidence of the person's identity.

23 (2) A person commits an offence if—

- 24 (a) an inspector requires the person to provide the information
25 under subsection (1); and

- 1 (b) the person fails to take reasonable steps to provide the
2 information.

3 Maximum penalty: 50 penalty units.

- 4 (3) An offence against subsection (2) is a strict liability offence.

5 **Division 5D.5 Gathering information**

6 **50ZR Masters to answer questions**

- 7 (1) An inspector may require the master of a boat to answer questions
8 about the nature or operation of the boat.

- 9 (2) A person commits an offence if—

- 10 (a) an inspector requires the person to answer a question under
11 subsection (1); and

- 12 (b) the person fails to answer the question.

13 Maximum penalty: 50 penalty units.

- 14 (3) An offence against subsection (2) is a strict liability offence.

15 **50ZS Masters to produce records**

- 16 (1) An inspector may require the master of a boat to produce a
17 document in the master's possession about the operations of the
18 boat.

- 19 (2) A person commits an offence if—

- 20 (a) an inspector requires the person to produce a document under
21 subsection (1); and

- 22 (b) the person fails to produce the document.

23 Maximum penalty: 50 penalty units.

- 24 (3) An offence against subsection (2) is a strict liability offence.

1 **50ZT People to provide information about owners or masters**
2 **of boats**

- 3 (1) An inspector may require a person to provide information about the
4 identity and address of the owner or master of a boat.
- 5 (2) The inspector may require the information to be provided by the
6 person orally or by the production of documents or records in the
7 person's possession.
- 8 (3) A person commits an offence if—
- 9 (a) an inspector requires the person to provide information under
10 subsection (1); and
- 11 (b) the person has the information; and
- 12 (c) the person fails to provide the information.

13 Maximum penalty: 50 penalty units.

14 **50ZU Boat licences**

- 15 (1) An inspector may require a person to produce the person's licence
16 or permit if—
- 17 (a) the person is, or purports to be, the holder of a licence or
18 permit; and
- 19 (b) the person is operating a boat on a lake or doing anything for
20 which the licence or permit is required.
- 21 (2) If the person does not have the licence or permit in the person's
22 possession at the time the requirement is made, the person must
23 produce the licence or permit to an inspector within 24 hours or any
24 longer period approved by the inspector.
- 25 (3) An inspector may seize a licence or permit that is not current or that
26 the inspector reasonably believes is false.

27 *Note* Division 5D.6 (Dealing with things seized) applies to a thing seized
28 under this section.

- 1 (4) A person commits an offence if—
- 2 (a) the person is required to produce a licence or permit under
- 3 subsection (1); and
- 4 (b) the person—
- 5 (i) fails to produce the licence or permit; or
- 6 (ii) if subsection (2) applies—fails to produce the licence or
- 7 permit within the required time.
- 8 Maximum penalty: 50 penalty units.
- 9 (5) An offence against subsection (4) is a strict liability offence.
- 10 (6) In this section:
- 11 *licence or permit* means a licence or permit (however described)
- 12 under a law of a State or the Commonwealth that authorises the
- 13 person to use a boat.

14 **Division 5D.6 Dealing with things seized**

15 **50ZV Receipts for things seized**

- 16 (1) As soon as practicable after an inspector seizes a thing under
- 17 section 50ZN or section 50ZU, the inspector must give a receipt for
- 18 it to the person from whom it was seized.
- 19 (2) If, for any reason, it is not practicable to comply with subsection (1),
- 20 the inspector must leave the receipt at the place of seizure in a
- 21 reasonably secure way and in a conspicuous position.

22 **50ZW Access to things seized**

- 23 A person who would, apart from the seizure, be entitled to a thing
- 24 seized under section 50ZN or section 50ZU may—
- 25 (a) inspect the thing; and

- 1 (b) if the thing is a document—take extracts from, or make copies
2 of, the document.

3 **50ZX Return of things seized**

- 4 (1) A thing seized under section 50ZN or section 50ZU must be
5 returned to its owner, or reasonable compensation must be paid to
6 the owner by the Territory for the loss of the thing, if—
7 (a) a prosecution for an offence relating to the thing is not
8 instituted within 90 days of the seizure; or
9 (b) the court does not find the offence proved in a prosecution for
10 an offence relating to the thing.
11 (2) A thing seized under this division is forfeited to the Territory if a
12 court—
13 (a) finds an offence relating to the thing to be proved; and
14 (b) orders the forfeiture.
15 (3) If subsection (2) (a) applies, but a court does not order forfeiture of
16 the thing seized, the Territory must return the thing to its owner or
17 pay reasonable compensation to the owner in relation to the loss of
18 the thing.

19 **50ZY Disposal of things seized**

- 20 (1) An inspector may dispose of a thing seized under section 50ZN or
21 section 50ZU if—
22 (a) an inspector has taken reasonable steps under section 50ZX to
23 return the thing to the person from whom it was seized; and
24 (b) the inspector has been unable to locate the person, despite
25 making reasonable efforts, or the person has refused to take
26 possession of the thing.
27 (2) The inspector may dispose of the thing in any way that the inspector
28 considers appropriate.

1 **Division 5D.7 Detaining boats**

2 **50ZZ Inspectors may detain boats**

- 3 (1) An inspector may detain a boat in a lake area and bring the boat to a
4 holding area, if the inspector reasonably believes that the boat is or
5 has been involved in an offence against this Act.
- 6 (2) If a boat is detained, sections 50ZW to 50ZY apply as if the boat
7 were a thing seized under section 50ZN or section 50ZU.
- 8 (3) If an inspector detains a boat under subsection (1), the inspector
9 must give written notice, within 14 days, to—
- 10 (a) the owner of the boat; or
- 11 (b) if the owner is not able to be located—the person who had
12 possession or control of the boat immediately before it was
13 detained.
- 14 (4) If it is not practicable for the inspector to give the notice to the
15 person, the inspector may give the notice by fixing the notice to a
16 prominent part of the boat.
- 17 (5) The notice must—
- 18 (a) identify the boat; and
- 19 (b) state the boat has been detained; and
- 20 (c) state the reason the boat has been detained; and
- 21 (d) state the contact details of an inspector who can provide further
22 information; and
- 23 (e) include information about the return of the boat.
- 24 (6) A person commits an offence if—
- 25 (a) a boat is being detained under subsection (1); and
- 26 (b) the person operates the boat, or causes or allows the operation
27 of the boat; and

1 (c) an inspector has not consented to the operation of the boat.

2 Maximum penalty: 50 penalty units.

3 **50ZZA Territory to pay costs of detention**

4 (1) This section applies if there was no reasonable or probable cause for
5 the detention of a boat under section 50ZZ.

6 (2) The Territory is liable to pay the owner of the boat reasonable
7 compensation for any loss or damage incurred by the owner as a
8 result of the detention of the boat.

9 (3) If the owner and the Territory cannot agree on the amount of
10 compensation payable under subsection (2), the owner may take
11 proceedings in a court of competent jurisdiction or the ACAT for
12 the recovery of compensation.

13 **50ZZB Owner to pay costs of detention**

14 (1) This section applies if—

15 (a) a boat was detained under section 50ZZ; and

16 (b) the Territory incurs costs in relation to the detention of the
17 boat; and

18 (c) the detention was reasonable in the circumstances.

19 (2) The owner of the boat is liable to pay the Territory compensation
20 for—

21 (a) the costs of, and incidental to, the detention of the boat; and

22 (b) any loss or damage incurred by the Territory as a result of the
23 detention of the boat.

24 (3) If the owner and the Territory cannot agree on the amount of
25 compensation payable under subsection (2), the Territory may take
26 proceedings in a court of competent jurisdiction or the ACAT for
27 the recovery of compensation.

29 Evidence
Section 52

omit

section 15

substitute

section 15, section 20, section 20A or section 20B

30 New section 53

insert

**53 Privileges against self-incrimination and exposure to civil
 penalty**

(1) This section applies if a person is required under section 45, section 47B, section 50Q, section 50R, section 50X, section 50ZQ or division 5D.5 (Gathering information) (other than section 50ZU) to answer a question, provide information or produce a document or other thing.

(2) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing, or answer the question.

Note The [Legislation Act](#), s 171 deals with client legal privilege.

(3) However, any information, document or other thing obtained, directly or indirectly, because of providing the information, the producing of the document or other thing, or the answering of the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

(a) an offence against section 45, section 47B, section 50Q, section 50R, section 50X, section 50ZQ or division 5D.5 (Gathering information) (other than section 50ZU); or

- (b) any other offence in relation to the falsity of the information, document, other thing, or answer.

31 Regulation-making power
Section 56 (2) and (3)

substitute

- (2) A regulation may make provision in relation to the following:
- (a) requirements for the registration of boats;
 - (b) the equipment to be carried on a boat;
 - (c) the construction, design or supply of hatches and exterior doors of boats that will be, or are likely to be, used for recreational purposes on a lake;
 - (d) the qualifications that a person requires to operate a power boat;
 - (e) prohibiting a person from operating a kind of boat;
 - (f) lighting, marking, removing, and disposing of obstructions to navigation in a lake area;
 - (g) safety, including requirements for the following:
 - (i) safety equipment of boats;
 - (ii) navigation;
 - (iii) operating a boat;
 - (iv) the conduct of a person on a boat;
 - (v) signals and lights and their use on a boat;
 - (vi) avoiding collisions;
 - (vii) the use of a lake or lake area;
 - (viii) preventing a person from interfering with a boat or lights, navigation aids, or equipment.

- (3) The [Legislation Act](#), section 47 (3), (5) and (6) does not apply to the incorporation of an Australian Standard or an Australian/New Zealand Standard applied, adopted or incorporated in a regulation under this section.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the [Legislation Act](#).

- (4) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

32 New sections 57 to 59

insert

57 Exemptions by Minister

- (1) The Minister may, by written notice, exempt a person or boat from part 4.
- (2) An exemption may be given with conditions.
- (3) The Minister must not exempt a person or boat, or impose a condition, unless the Minister is satisfied that the exemption or condition—
- (a) is in the public interest; and
 - (b) will not jeopardise the safety of a boat or a person on board a boat; and
 - (c) will not compromise the conduct of a safety investigation.
- (4) An exemption is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

58 Breaching conditions of exemptions

- (1) A person commits an offence if—
- (a) the person—
 - (i) operates a boat on a lake; or
 - (ii) carries out an action in a lake area; and
 - (b) the person, or boat, is exempt from part 4 subject to a condition; and
 - (c) the person fails to comply with the condition.
- (2) An offence against subsection (1) is a strict liability offence.
- Maximum penalty: 50 penalty units.

59 Compensation—acquisition of property

- (1) If, apart from this section and another section of this Act that deals with compensation—
- (a) the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be unlawful because of the [Self-Government Act](#), section 23 (1);
- the person acquiring the property (the *acquirer*) is liable to pay reasonable compensation to the other person for the acquisition.
- (2) If the acquirer and the other person do not agree on the amount of compensation, the other person may, by proceeding in a court of competent jurisdiction or the ACAT, recover from the acquirer the reasonable compensation that the court or tribunal decides.

33 New schedule 3

insert

Schedule 3 Kingston Harbour

(see dict, def *Kingston Harbour*)

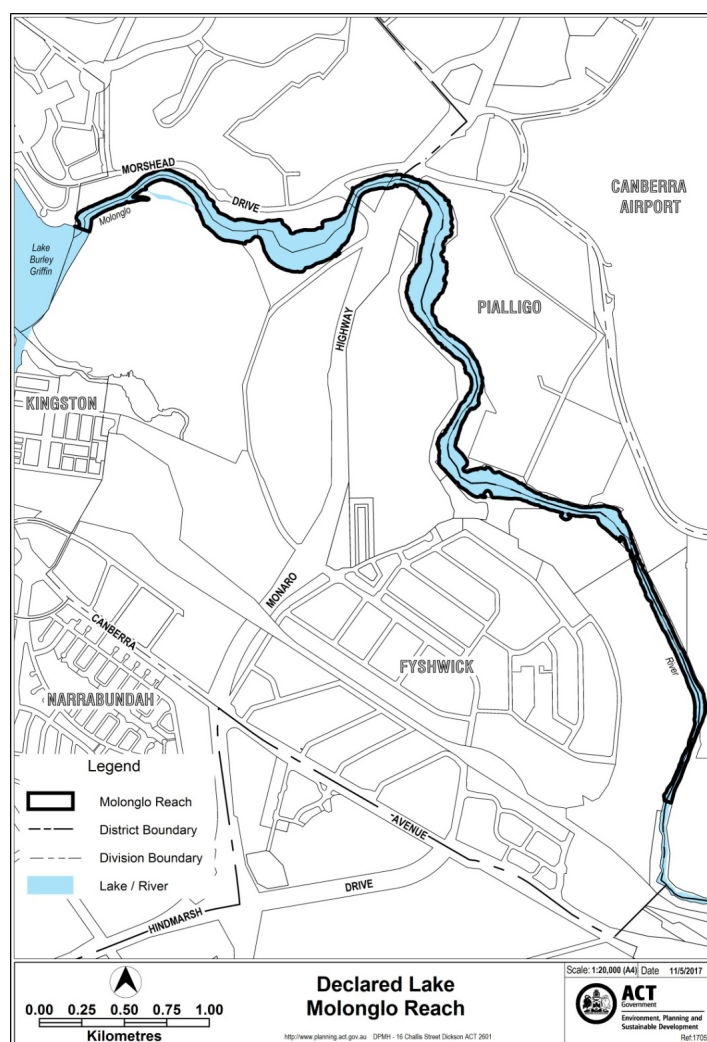


34 New schedule 4

insert

Schedule 4 Molonglo Reach

(see dict, def *Molonglo Reach*)



35 Dictionary, note 2

insert

- Commonwealth
- in relation to
- national land
- notification (see s 63)
- person (see s 169)
- Self-Government Act
- State

36 Dictionary, new definitions

insert

appropriate lifejacket, for division 5.2 (Lifejackets)—see section 39.

boating accident—

(a) means any of the following involving a boat in a lake area:

- (i) the loss of life of, or injury to, a person on the boat;
- (ii) the loss of a person from the boat;
- (iii) the loss of life of, or injury to, a person that is caused by the boat;
- (iv) the loss, or presumed loss, of the boat (including the sinking or abandonment of the boat);
- (v) the capsizing, grounding or flooding of the boat;
- (vi) the collision of the boat with another boat or object;
- (vii) the boat being disabled (in circumstances when it requires assistance);
- (viii) a fire on the boat;

- 1 (ix) damage caused to the boat (including any structural
2 failure);
- 3 (x) damage to the environment caused by the boat or by a
4 substance on, or discharged from, the boat;
- 5 (xi) an incident that causes a risk of the events mentioned in
6 subparagraphs (i) to (x) happening; but
- 7 (b) does not include an event prescribed by regulation.

8 **37 Dictionary, new definition of *Commonwealth Minister***

9 *insert*

10 ***Commonwealth Minister*** means the Commonwealth Minister
11 responsible for administering the *Lakes Ordinance 1976* (Cwlth).

12 **38 Dictionary, new definitions**

13 *insert*

14 ***domestic commercial vessel***—see the Marine Safety (Domestic
15 Commercial Vessel) National Law, section 7.

16 ***enter***, a place of inspection or boat, for part 5D (Enforcement)—see
17 section 50ZC.

18 **39 Dictionary, new definition of *high level***

19 *insert*

20 ***high level***, for part 5A (Drug and alcohol offences)—see
21 section 50A.

22 **40 Dictionary, definition of *inspector***

23 *substitute*

24 ***inspector*** means a person who is an inspector under section 50ZE.

1 **41 Dictionary, new definition of *Kingston Harbour***

2 *insert*

3 ***Kingston Harbour*** means the area outlined in bold on the plan in
4 schedule 3.

5 **42 Dictionary, definition of *lake***

6 *substitute*

7 ***lake*** means—

8 (a) Kingston Harbour; and

9 (b) Lake Burley Griffin; and

10 *Note* This Act applies to the lake area of Lake Burley Griffin to the
11 extent that it is territory land (see s 4A). The *Lakes*
12 *Ordinance 1976* (Cwlth) applies to the remaining area of Lake
13 Burley Griffin that is national land (see [Legislation Act](#), dict, def
14 *national land*).

15 (c) Molonglo Reach; and

16 (d) any other area declared by the Minister to be a lake under
17 section 5.

18 **43 Dictionary, definition of *Lake Burley Griffin***

19 *substitute*

20 ***Lake Burley Griffin***—

21 (a) means the area of the Molonglo River between Scrivener Dam
22 and Molonglo Reach; but

23 (b) does not include Kingston Harbour.

44 Dictionary, new definition of *low level*

insert

low level, for part 5A (Drug and alcohol offences)—see section 50A.

45 Dictionary, new definitions

insert

marine pilot means a person who has the conduct of, but does not belong to, a boat.

Marine Safety (Domestic Commercial Vessel) National Law means the national law as set out in schedule 1 of the [*Marine Safety \(Domestic Commercial Vessel\) National Law Act 2012*](#) (Cwlth).

master means the person having the command or charge of a boat, but does not include a marine pilot.

46 Dictionary, new definition of *medium level*

insert

medium level, for part 5A (Drug and alcohol offences)—see section 50A.

47 Dictionary, new definitions

insert

Molonglo Reach means the area outlined in bold on the plan in schedule 4.

obstruction to navigation—

(a) means any thing in or on a lake that is—

(i) a risk to the safe navigation of boats; or

- 1 (ii) moored, berthed or placed in contravention of this Act or
2 the Marine Safety (Domestic Commercial Vessel)
3 National Law; but
4 (b) does not include anything lawfully constructed in or over a
5 lake.

6 **48 Dictionary, new definition of *operate***

7 *insert*

8 ***operate***, a boat, means—

- 9 (a) to determine or exercise control over the course or direction of
10 the boat or over the means of propulsion of the boat (whether
11 or not the boat is under way); and
12 (b) to attempt to operate a boat; and

13 **Examples**

- 14 • supervise a person under 17 years old to operate a boat
15 • launch a boat
16 • anchor a boat
17 • moor a boat

18 *Note* An example is part of the Act, is not exhaustive and may extend,
19 but does not limit, the meaning of the provision in which it
20 appears (see [Legislation Act](#), s 126 and s 132).

- 21 (c) for part 4 (Use of a lake)—see section 14A.

22 **49 Dictionary, definition of *operator***

23 *omit*

50 Dictionary, definition of *owner*

substitute

owner, of a boat, includes a person who—

- (a) is registered as an owner of the boat in a certificate of registry or in a certificate or unique identifier issued for the boat under a law of a State or of the Commonwealth; and

Note A certificate or unique identifier may be issued for a boat under the Marine Safety (Domestic Commercial Vessel) National Law.

- (b) is a joint owner of the boat; and

- (c) whether on the person's own behalf or on behalf of someone else—

- (i) exercises any of the functions of the owner of the boat; or

- (ii) publicly represents that the person has those functions or accepts the obligation to exercise those functions; and

- (d) owns the boat under paragraphs (a) to (c), whether or not the boat is mortgaged, chartered, leased, or hired; and

- (e) is the charterer of the boat.

51 Dictionary, new definitions

insert

place of inspection, for part 5D (Enforcement)—see section 50ZC.

recreational boat—

- (a) means a boat other than a domestic commercial vessel, or a regulated Australian vessel as defined in the [Navigation Act 2012](#) (Cwlth); and

- (b) for division 5.2A (Other safety equipment)—see section 47.

- 1 **52 Dictionary, new definition of *relevant period***
- 2 *insert*
- 3 *relevant period*, for part 5A (Drug and alcohol offences)—see
- 4 section 50A.
- 5 **53 Dictionary, new definitions**
- 6 *insert*
- 7 *required safety equipment*, for a boat, for division 5.2A (Other
- 8 safety equipment)—see section 47.
- 9 *required standards*, for safety equipment, for division 5.2A (Other
- 10 safety equipment)—see section 47.
- 11 **54 Dictionary, new definition of *RMS***
- 12 *insert*
- 13 *RMS*—see the [Transport Administration Act 1988](#) (NSW),
- 14 section 46.
- 15 **55 Dictionary, new definitions**
- 16 *insert*
- 17 *safety investigation* means an investigation under section 50T.
- 18 *safety investigation report* means a report under section 50Y.
- 19 *safety investigator* means a person appointed under section 50U.
- 20 **56 Dictionary, new definition of *special level***
- 21 *insert*
- 22 *special level*, for part 5A (Drug and alcohol offences)—see
- 23 section 50A.

- 1 **57 Dictionary, definition of *sports club***
- 2 *substitute*
- 3 *sports club* means an entity established for a sporting or athletic
- 4 purpose, and includes each person who is a member of the entity or
- 5 who is participating in a competition that is run by the entity.
- 6 **58 Dictionary, definition of *Sylvia Curley bridge***
- 7 *omit*
- 8 **59 Dictionary, new definition of *unsafe***
- 9 *insert*
- 10 *unsafe*, in relation to a boat, means the boat is a danger to human
- 11 life because of any of the following:
- 12 (a) the condition of the boat;
- 13 (b) the condition of equipment on the boat;
- 14 (c) the manner or place in which cargo or equipment on the boat is
- 15 stowed or secured;
- 16 (d) the nature of the cargo of the boat;
- 17 (e) the overloading of the boat.
- 18 **60 Dictionary, definition of *visible***
- 19 *omit*
- 20 **61 Lakes Act 1976—renumbering**
- 21 *on the last commencement date for this Act, renumber provisions*
- 22 *when Act republished under Legislation Act*

Schedule 1 Magistrates Court (Lakes Infringement Notices) Regulation 2004—Other amendments

(see s 3)

[1.1] Schedule 1, new items 11A and 11B

insert

11A	20A (2)	20	220
11B	20B (2)	20	220

[1.2] Schedule 1, items 15 and 16

substitute

15	27 (1)	50	500
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[1.3] Schedule 1, item 18

substitute

18	40 (1)	30	300
19	40 (2)	30	300
20	41 (1)	30	300
21	41 (2)	30	300
22	41 (3)	30	300
23	42 (2)	30	300
24	44 (2)	30	300
25	45 (2)	30	300
26	47A (2)	30	300
27	47B (2)	30	300
28	47C (3)	30	300

29	47D (2)	30	300
30	47E (5)	30	300
31	47F (3)	30	300
32	47G (3)	30	300
33	50O (1)	30	500
34	50Q (1)	50	300
35	50R (3)	50	300
36	50X (8)	50	500
37	50ZO (3)	50	500
38	50ZP (2)	50	500
39	50ZQ (2)	50	500
40	50ZR (2)	50	500
41	50ZS (2)	50	500
42	50ZT (3)	50	500
43	58 (1)	50	1000

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 31 October 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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