

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LAKES AMENDMENT BILL 2017

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

**Presented by
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Minister for the Environment and Heritage**

EXPLANATORY STATEMENT

This explanatory statement relates to the Government amendment to the *Lakes Amendment Bill 2017* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Government amendment. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

This explanatory statement provides information about why a Government amendment is proposed to the Bill with an explanation about the proposed legislative amendments.

The Government has proposed an amendment to the lifejacket provisions contained in the Bill. The Government has continued to liaise with lake users during the course of developing the Bill. Consultation undertaken following tabling of the Bill which allowed consideration by lake users of the detailed provisions. This consultation indicated that there was general agreement from lake users for the ACT to align with NSW regulations governing the operation of recreational boats under 4.8 metres in length for 'alpine waters' where all persons, at any time, must wear a lifejacket.

This is supported by the ACT Water Police who enforce the legislation in relation to safety on ACT lakes. The Bill as presented only required a person under the age of 12 or where a boat less than 4.8m in length was operating at night to wear a lifejacket.

Consultation with stakeholders highlighted that 'alpine waters' rules in the NSW laws apply to surrounding NSW waters including Googong dam, Yass River and Lake Burriemuck. It was also identified that the weather conditions on ACT lakes even during the day, including early morning and evening periods, in Canberra's winter can result in situations where there is reduced visibility due to fog and mist on our lakes.

For this reason, and consistent with the regulations applying to NSW alpine waters, the Government amendment requires any person on a recreational boat under 4.8m in length to wear an appropriate lifejacket. The specific lifejackets required for the different boats will be detailed in the Regulation subsequently developed to support the Bill. The Bill will not take effect until the Regulations take effect which will include further consultation with lake users, managers and regulators.

The Government amendment also provides, consistent with NSW regulations, for off-the-beach sailing boats operated in 'alpine waters' that any person on the boat must wear a lifejacket at any time. Off-the-beach sailing boats such as Laser, hobie cat, skiff or catamaran boats are at high risk, due to their design, to capsizing and can travel at high speed meaning safety concerns for operators are heightened compared to more traditional larger sailing boats greater than 4.8m in length. For this reason any person on any size off-the-beach sailing boat must wear a lifejacket.

The amendments will ensure consistency for users of recreation boats under 4.8m with the rules for lifejackets that apply in surrounding NSW waters (alpine waters).

Provisions in detail

The Bill proposes a number of amendments to the *Lakes Act 1976* (the Act). The Government amendments to the Bill are detailed below.

Clause 1

Clause 23 – Proposed new section 40(1)

Page 15, line 5

Omits existing section 40(1) - Children under 12 years, which created an offence for a person under 12 years of age to not wear a lifejacket on a recreational boat less than 4.8m in length on a lake as this is replaced by new proposed section 41 which includes that any person at any time must wear a lifejacket when on a recreational boat less than 4.8m in length on a lake.

Existing section 40(2) of the Bill which relates to children under 12 years of age on boats of less than 8m remains.

Clause 2

Clause 23 – Proposed new section 41

Page 16, line 1

Substitutes a new section 41 which relates to lifejackets that must be worn by a person on a recreational boat under 4.8m in length to ensure safety on a lake.

Section 41 – Recreational boats under 4.8m and off-the-shore boats

This section sets out lifejacket requirements for a person on or operating a recreational boat less than 4.8 metres in length or an off-the-shore boat on a lake and creates two offences.

A person on a recreational boat less than 4.8 metres in length or an off-the-shore boat on a lake, must wear an appropriate lifejacket. If they do not they are guilty of an offence. This offence applies to operators and passengers.

A person operating a recreational boat less than 4.8 metres in length or an off-the-shore boat on a lake, must ensure every person on the boat is wearing an appropriate lifejacket. If they do not they are guilty of an offence. This offence applies to operators of boats and recognises the special position they are in to ensure passengers are wearing appropriate lifejackets.

A person found guilty of an offence against this section is liable for a maximum penalty of 30 penalty units. An offence against this section is a strict liability offence. Strict liability is appropriate in these circumstances as the offences do not contain a fault element and are regulatory in nature.

In this section, a recreational boat means a boat under 4.8m and does not include a kiteboard, paddleboard, sailboard or surfboard.

In this section, an off-the-shore boat means a sailing boat, but does not include a boat that is ballasted, that has a cabin or fixed keel, that has an engine, or a sailboard. A number of examples of off-the-shore boats are provided.

Clause 3

Clause 23 – Proposed new section 43A

Page 17, line 11

Section 43A – Water skiing and other recreational activities

This section sets out lifejacket requirements for boats towing another person who is participating in a recreational activity on or over the water and creates an offence.

A person who is operating a recreational boat and towing another person commits an offence if the person being towed is not wearing an appropriate lifejacket.

A person found guilty of an offence against this section is liable for a maximum penalty of 30 penalty units. An offence against this section is a strict liability offence. Strict liability is appropriate in these circumstances as the offences do not contain a fault element and are regulatory in nature.

Definitions of the terms ***being towed*** and ***wake boarding or wake surfing*** are provided in the section.

Clause 4

Clause 40

Page 73, line 24

Omits incorrect reference in the Dictionary definition of ***inspector*** to 50ZE which relates to identity card for inspectors and substitutes with correct reference to 50ZD which details appointments of inspectors for the purposes of the Act.

Clause 5

Schedule 1, amendment 1.3

Page 80, line 10

This is a consequential amendment to clauses 1, 2 and 3 above. It substitutes a new part of the table in the section. This clause removes now redundant infringement items for section 40(1) and section 41(3) in the *Magistrates Courts (Lakes Infringement Notices) Regulation 2004* (consequential to clauses 1 and 2 above).

This clause also inserts new infringement items for new section 43A (inserted by clause 3 above). This clause provides infringement items for offences relating to towing a passenger who is not wearing an appropriate lifejacket and for being towed while not wearing an appropriate lifejacket. The infringement amount is set at \$300, consistent with the other infringement amounts in *Magistrates Courts (Lakes Infringement Notices) Regulation 2004* outlined in Schedule 1 of the bill.