

2017

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LAKES AMENDMENT BILL 2017

**REVISED
EXPLANATORY STATEMENT**

**Presented by
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EXPLANATORY STATEMENT

This explanatory statement relates 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 Bill. 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 Bill is proposed together with an explanation about the proposed legislative amendments.

The *Lakes Act 1976* (the Act) provides the legislative framework for regulating activities on ACT's lakes.

A review initiated by the National Capital Authority and the ACT Government in 2016 identified that the Act was now outdated and did not provide sufficiently clear or enforceable provisions in relation to navigation and safety, the classification of waterways and drug and alcohol testing of lake users.

The review also identified that the Act did not adequately reconcile the administration, management and regulation of Australian Capital Territory (ACT) waters with Commonwealth waters within the Territory specifically Lake Burley Griffin which is regulated by the National Capital Authority (Commonwealth). The review also identified that the ACT and Commonwealth legislation was not reflective of comparable legislation in other jurisdictions including the regulation of recreational boats.

The purpose of the Lakes Amendment Bill 2017 is to update the ACT legislation to ensure it provides an appropriate and modern regulatory safety regime for users of ACT lakes which include Lake Ginninderra, Lake Tuggeranong, Kingston Harbour and the Molonglo Reach.

The Commonwealth will update the *Lakes Ordinance 1976 (Cth)* which regulates Lake Burley Griffin to reflect the amended *Lakes Act 1976* following passage of this Bill.

The ACT Government agreed to the preparation of legislation to amend the *Lakes Act 1976* to implement reforms as a result of the 2015 ACT Coroner's recommendations regarding a fatality on the Molonglo Reach water ski area and the subsequent 2016 review.

Overview of the Bill

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

1. New provisions to set out the application of the Lakes Act in emergencies where officers performing duties under the ACT emergency laws are exempt from the provisions of the Act.
2. Provisions which set out the relationship to other planning and environment laws which should be considered in administering the Act as they can also restrict uses on ACT lakes. For example the Plan of Management for Lakes and Ponds made under the *Planning and Development Act 2007* details the uses permitted on ACT lakes and ponds.
3. An exception to the current requirement for a permit which allows power boats to be operated on lakes under a speed of 10 knots consistent with laws governing the operation of boats in surrounding NSW waters.
4. New drug and alcohol provisions to modernise offence provisions and ensure consistency with the ACT road transport legislation framework and comparable maritime legislation nationally.
5. Addition of cross-jurisdictional arrangements where approvals issued under the respective Territory and Commonwealth laws for boat users and commercial activities are recognised subject to consultation between the regulating authorities. This will remove duplication for approvals for users and commercial operators on Lake Burley Griffin (administered by the Commonwealth) and the Kingston Harbour and the Molonglo Reach (administered by the Territory) where boats operate throughout these waters.
6. Safety, directions and offence provisions in relation to the operation of boats and obstructions on ACT lakes based on the *Jervis Bay Territory Marine Safety Ordinance 2016* which was modelled on the *NSW Marine Safety Regulation 2016*.
7. Including the addition of new provisions in relation to obligations of a person involved in boating accidents to give assistance, produce identification and report the incident.
8. Amended provisions in relation to entry, inspection and enforcement powers to facilitate the compliance framework of the Act consistent with current regulatory practices in other legislation.
9. Addition of new provisions in relation to safety investigations which provide for the Minister to initiate a safety investigation and appoint a police officer or suitably qualified person to undertake the investigation.

10. Powers for the Minister to exempt a person or boat from provisions of the Act other than in relation to provisions on safety and drugs and alcohol offences, to provide the flexibility to deal with unanticipated circumstances. This power will be exercisable only to the extent that the Minister is satisfied it is in the public interest, will not jeopardise the safety of a boat or person, not compromise the conduct of a safety investigation and is made in consideration of any matters prescribed by regulation.
11. The Bill will remove the Government exemptions from certain activities except as expressly provided for in the case of statutory officers performing their duties or directing activities to be undertaken under the Act. This will provide greater clarity and guidance to the courts in determining government liability under the Act. The provision will also provide an equitable platform, offering a 'level playing field' to government, businesses and the community, which will increase public confidence in the regulatory regime whilst maintaining the integrity of the ACT's social, economic and environmental policies.

The Bill also includes a regulation making power. The regulation power will allow the incorporation of further safety and navigation measures based on the Jervis Bay Territory Marine Safety Ordinance. These measures may include new rules for; recognition of boat registration, operation of boats, boats navigation aid equipment on boats, appropriate use of signals and lights, obstructions to navigation and mandatory safety equipment. This power will allow for provisions for matters such as: requirements for equipment to be carried on a boat; qualifications of operators; prohibitions on operating certain kinds of boats; lighting, marking; removing and disposing of obstructions to navigation and safety and navigation rules. The regulations will also potentially include offence provisions for relatively minor offences. Offence provisions with relatively higher penalties and related to significant matters of public safety are in the bill.

There are a number of minor technical and consequential amendments in the Bill to support the major amendments listed above and definitions within the Lakes Act.

Offence and compliance provisions in the Bill generally

The main purpose of the Bill is to provide a comprehensive regime to ensure lake safety in the ACT. The Bill updates the Lakes Act with the object of protecting the safety and amenity of users of ACT waters by ensuring vessels are operated safely and by enabling accidents to be investigated.

Many of the provisions are based on the *Jervis Bay Territory Marine Safety Ordinance 2016* which has been adapted from the *Marine Safety Act 1998 (NSW)*. This ensures a measure of consistency of provisions across jurisdictions and provides a similar level of protection of vessel owners, operators and other people in ACT waters to that already enjoyed by people in NSW and Jervis Bay. In order to achieve this policy objective, the Bill contains offences and imposes penalties including terms of imprisonment.

Certain offences created by the Bill are of a sufficiently serious nature that they warrant a maximum penalty of a term of imprisonment to reflect the seriousness of the conduct to be deterred. This penalty is engaged only for the most serious offences giving rise to a danger of harm or death to a person and or damage to property or the environment.

Evidential burden of proof

An evidential burden of proof requires a person to provide evidence of an asserted fact in order to prove that fact to a court. Sections 45, 47B, 50O and 50Q of the Bill (clauses 23 and 28) place an evidential burden on an individual to demonstrate that they had a reasonable excuse for failing to meet a duty or obligation.

An evidential burden has been placed on defendants in these provisions as the conduct proscribed by each of the offences may pose a grave danger to public safety. In addition, in each case, a defendant will be the only person in the circumstances with the relevant knowledge able to provide evidence of any reason for refusing or failing to comply with the relevant duty or obligation and it would be significantly more difficult and costly for the prosecution to disprove than the defendant to establish the matter.

Sections 4B and 4C of the Bill (clause 6) also place an evidential burden on the defendant by requiring the defendant to present or point to evidence that suggests a reasonable possibility that the matter exists or does not exist. So, for example, section 4B requires the inspector to point to evidence that he was exercising a function of an inspector. Similarly, section 4C requires a person to point to evidence that the person was a relevant person and exercising a function of protecting life or property or controlling a fire. This approach has been taken because again a defendant will be the person with the relevant knowledge and it would be significantly more difficult and costly for the prosecution to disprove than the defendant to establish the matter. Once evidence is raised that the matter exists or does not exist, it is then for the prosecution to disprove those matters beyond reasonable doubt.

Legal burden of proof – sections 43 and 50M

Section 43 provides a defence to the offences in section 41 and section 42 (clause 23) of failing to wear a lifejacket which applies if the defendant proves the defendant was not operating the boat and there was no available lifejacket. In addition, section 50M provides a defence to the offences created by section 50B or 50C (clause 27) relating to a person under 18 operating a boat or a commercial operator operating a boat whilst having a concentration of alcohol at the special level. Section 50M provides for a defence, which applies if the defendant proves that the relevant breath or blood alcohol was caused by the consumption of an alcoholic beverage that formed part of a religious observance or the consumption or use of a substance that was not consumed or used for its alcohol content. These defences require the defendant to discharge the legal burden of proof for an element of the offence.

It is appropriate in these particular circumstances that the defendant bears the legal burden in relation to these defences because of the potentially significant risks to public safety of failing to wear a life jacket and the risks posed by a person under 18 years of age or a commercial operator who is affected by alcohol while in charge of a boat.

In addition, each specific matter capable of being raised as a defence by the defendant is peculiarly within the knowledge of the defendant. It would also be significantly more difficult and costly for the prosecution to disprove than the defendant to establish the matter.

Strict liability offences

The Bill contains strict liability offences. Strict liability offences can be seen as engaging the right to the right to fair trial (section 21 of the HRA) or limiting the presumption of innocence (section 22(1) of the HRA), as strict liability offences do not require the establishment of a “mental element” for the physical act constituting the offence.

Other than sections 50E to 50H, the maximum penalty imposed for strict liability offences in the Bill is 50 penalty units. Some are lower, for example, section 20A and 20B, section 40(2) section 42, sections 50B, 50C and 50D, section 50O(1) and section 50ZE.

The creation of a number of the offences as a strict liability offence is consistent with the use of strict liability for similar offences in the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drugs Act). Those offences include:

- Section 50B person under 18 years old operating a boat with concentration of alcohol at special level
- Section 50C Person operating boat for commercial purpose with concentration of alcohol at special level
- Section 50D Person operating boat with low level concentration of alcohol
- Section 50E Person operating boat with medium level concentration of alcohol (maximum 6 months imprisonment)
- Section 50F Person operating boat with high level concentration of alcohol (maximum 12 months imprisonment)
- Section 50G Person operating boat under the influence of alcohol or a drug to extent incapable of having proper control (maximum 12 months Imprisonment)
- Section 50H Person operating boat with a prescribed drug (maximum 3 months imprisonment)

Sections 50E to 50H have the option of a penalty of imprisonment. Sections 50E to 50H are concerned with operating a boat whilst under the influence of alcohol or drugs. The maximum period of imprisonment is 12 months. A penalty of imprisonment for a strict liability offence could be seen as unduly trespassing on personal rights and liberties.

The penalties for Sections 50E to 50H have been set for consistency with equivalent offences in the Alcohol and Drugs Act. The offences in the Bill being consistent with the Alcohol and Drugs Act promotes consistent ACT safety messaging relating to separating drinking and driving or operating a boat.

The only difference is that the Bill has not used the tiered approach taken in the Alcohol and Drugs Act of setting different penalties for first and second offenders. It is considered that doing this is appropriate because of the difference between road transport and boating activity on ACT lakes. Boating activities tend to be more for recreational purposes and concentrated on weekends and involve fewer people than motor vehicle transport which is a daily activity for most members of the community and involves a greater volume of people using the roads more frequently.

A penalty of imprisonment for driving whilst under the influence of alcohol or drugs is now widely known and accepted by the community as an appropriate deterrent to ensure the protection of the community. The Bill applies these same standards to boat users on ACT lakes for the same purpose – to ensure the safety of all lake users.

Section 40 of the Bill creates two strict liability offences for a person to operate a boat with a child under 12 years old on the boat who is not wearing a life jacket. The maximum penalty is 30 penalty units and the Bill provides for a defence if the defendant proves that the defendant took all reasonable steps to ensure the child was wearing an appropriate lifejacket. Strict liability offences are justified and proportionate to ensure the safety of children in the circumstances where a fall into the water from a boat by a child could easily lead to drowning if the child is not wearing a life jacket.

Section 50B of the Bill creates a strict liability offence of a person under 18 years old operating a boat on a lake with a concentration of alcohol in the person's blood or breath at a special level. It is possible to obtain a boat licence at the age of 16 years so even though the legal drinking age is 18, a provision is needed for when someone under 18 operates a boat whilst under the influence of alcohol. It is considered that the provision is justified and reasonable because of the safety concerns of a young person operating a boat whilst intoxicated, not only for the young person but also for other users of the lake. The maximum penalty for the offence is 10 penalty units which at the lower end of the scale.

Applying strict liability to provisions within the Bill can be considered a reasonable limit set by law that will assist in achieving the policy objectives. An individual's rights and freedoms have, in some cases, been fettered on the basis that it is in the wider public interest that operating vessels safely on lakes be properly regulated. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

It should be noted that laws to address driver impairment have long been recognised by the courts as laws where the ordinary presumptions about mens rea give way to presumptions in favour of interpretations of strict liability, even where the offence concerned involves driving under the influence causing serious bodily injury or death. These laws are intended to promote road safety and come squarely within the scope of the statement by Dixon J in *Proudman v Dayman* [1941] HCA 28. In that case, the court noted that ordinarily a new criminal offence would be interpreted as requiring a mental element, then stated:

“But other considerations arise where in matters of police, of health, of safety, or the like the legislature adopts penal measures in order to cast on the individual the responsibility of so conducting his affairs that the general welfare will not be prejudiced. In such cases there is less ground, either in reason or in actual probability, for presuming an intention that the general rule [regarding mens rea] should apply...”

Whilst these comments relate to driving a motor vehicle it is considered that they are also relevant to operating a boat.

In considering whether the offence of operating a boat with a prescribed drug and the framework for sampling a person’s oral fluid or blood (new section 50H) is justified in a ‘free and democratic’ society, it is relevant to observe that all other Australian States and the Northern Territory have introduced random drug testing for motorists, with Victoria being the first to do so. While the details of the legislative schemes vary from state to state, they all provide for oral fluid screening and analysis.

A number of the strict liability offences in the Bill reflect the offence being regulatory in nature and of a type which is suitable for construction as a strict liability offence, being an offence of a type such that those affected by the offence could be expected to be aware of it. They are appropriate where an inspector is in a position to readily assess the truth of a matter and determine that an offence has been committed. They can be dealt with by infringement notice which is a cheaper and less time consuming alternative to a court prosecution.

Such regulatory offences include:

- Section 20A and 20B, speed limits and restriction on kinds of boats
- Section 27(1), operating a boat when not allowed
- Section 42(1) fail to comply with direction of master to wear life jacket
- Section 45(2), fail to provide information about life jackets when directed (reasonable excuse defence applicable)
- Section 47B(2), fail to provide information about safety equipment when directed (reasonable excuse defence applicable)
- Section 47C(3), fail to leave lake area following inspector direction
- Section 47D(2), fail to comply with direction for safe use of lake
- Section 47E(5), fail to comply with direction by designated person on a commercial vessel
- Section 47F(3) fail to comply with direction to light or mark obstruction
- Section 47G(3), fail to remove obstruction when directed
- Section 50O, master fails to stop after accident (reasonable excuse defence applicable)
- Section 50Q, obligation to produce licence and give particulars (reasonable excuse defence applicable)
- Section 50R, fail to give Minister report about accident
- Section 50X, fail to comply with notice to provide information
- Section 50ZE(3), inspector does not return identity card (not applicable if card lost or stolen or destroyed by someone else)

- Section 50ZO(3), fail to comply with request to take reasonable steps to allow inspector to board
- Section 50ZP(2), fail to take action as directed
- Section 50ZQ(2), fail to take reasonable steps to provide information to inspector
- Section 50ZS(2), master fails to produce a document
- Section 50ZT(3) fail to produce information about master of boat
- Section 50ZU(4), fail to produce boat licence when requested by inspector
- Section 58(1), breach conditions of exemption

Strict liability is justified where a person agrees to conditions attached to a licence and then fails to comply with them. Conditions are written on the licence so that the licensee is fully aware of their obligations. If the conditions are not met an offence is easy to prove.

A strict liability offence for failing to comply with a direction or answer questions is also easily justified. Again the person involved is well aware of what is required.

The use of strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme. For example, if a person is operating a boat without a licence quick action is required.

The use of strict liability was carefully considered in developing the offences. The rationale for their inclusion is to protect the safety and amenity of users of ACT waters by ensuring boats are operated safely and by enabling accidents to be investigated and to provide a similar level of protection of boat owners, operators and other people in ACT waters to that already enjoyed by people in NSW and Jervis Bay.

In all the circumstances, it is considered that the strict liability offences in the Bill are appropriate and do not unduly trespass on personal rights and liberties. Compliance with the provisions of the Bill is important to ensure marine safety and the integrity of licensing requirements.

Human rights implications

To the extent that any provision of this Bill limits an individual's human rights, any limitation is reasonable and justified.

Section 28 of the Human Rights Act 2004 (the HRA) provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the

limitation seeks to achieve.

It could be argued the Bill engages the following human rights:

- Right to life (section 9 of the HRA)
- Right to fair trial and rights in criminal proceedings (section 21 and section 22 of the HRA)
- Right to privacy and reputation (section 12 of the HRA)
- Right to liberty and security of person (section 18 of the HRA)
- Right to freedom of movement (section 13 of the HRA)
- Protection of family and children (section 11 of the HRA)
- Right to protection against self-incrimination.

The right to life (s9)

The Bill affects the right to life (section 9 of the HRA) in a positive manner. It does this by improving safety on the lakes in the ACT. It prohibits drinking alcohol whilst operating a boat – an activity that has a known risk of serious injury or possibly death for the operator as well as other members of the community (see for instance new sections 50B – F). The Bill provides for speed limits and restrictions on the types of boats that can be operated in a lake area (new section 20A and 20B). Improved inspectors powers also improve water safety. For instance, Division 5.2B of the Bill has provisions relating to safety directions by inspectors.

The right to fair trial and rights in criminal proceedings (section 21 and section 22 of the HRA), the right to liberty and security of person (section 18 of the HRA) and the right to freedom of movement (section 13 of the HRA)

The inclusion of strict liability offences including with a penalty of a term of imprisonment could be seen as engaging these human rights.

It is considered that the possible restriction on the right to freedom of movement, the right to liberty and the right to fair trial and to be presumed innocent is reasonable and justified in the circumstances. There is precedent in other legislation such as the Alcohol and Drugs Act which has been widely accepted that imprisonment can be an available penalty for strict liability offences when the operation of a vehicle whilst under the influence of alcohol or drugs is involved.

Although the provisions may limit a person's right to liberty and freedom of movement, they do so in circumstances where the person may cause danger to others if they operate a boat while under the influence of alcohol or drugs. This is a matter of high importance to the community, given the known risks of operating a vehicle including a boat whilst intoxicated. Doing so has the potential to lead to serious injury or possibly death.

It is generally accepted that strict liability offences are appropriate where the nature of the offence is regulatory in nature and the truth of a matter is easily assessed. Such strict liability offences are a cost efficient deterrent for breaches of regulatory provisions. They can be dealt with by infringement notice which is a cheaper and less time consuming alternative to a court prosecution.

The regulatory type strict liability offences in the Bill have a maximum penalty of 50 penalty units in accordance with the Justice and Community Services Guide to Framing Offences.

Any limitation in relation to section 22 of the HRA (rights in criminal matters) is not extensive. Under the Criminal Code, all strict liability offences have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offence cases. The general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act. New sections 50O and 50Q of the Bill specifically provide a defence of reasonable excuse.

The right to freedom of movement (s13) – safety directions powers

The safety directions powers in sections 47C, 47D and 47E of the Bill are important powers to ensure that authorised inspectors can ensure the safety of persons in lake areas.

While these powers may impact on the right to freedom of movement in some circumstances, it is considered that the public safety outcomes justify the limitation on freedom of movement. The particular sections limit the use of the directions powers to specified circumstances to ensure that directions are issued for defined safety purposes, and are not arbitrarily issued.

With respect to section 28(2)(a) of the HRA, the safety directions powers impact on the right to freedom of movement under section 13 of the HRA. This right provides everyone with the right to move freely within the ACT, including not being subject to unreasonable restrictions on the freedom of movement.

Under section 28(2)(b), the right to freedom of movement is subject to reasonable limitations, whereby authorised inspectors can issue safety directions to a person to leave an area, or do or not do something that relates to safety. The purpose of the safety directions powers is important as they allow an authorised inspector to achieve public safety goals by requiring people to comply with a direction.

With respect to section 28(2)(c), the nature and extent of the limitation is set out in each section containing a safety direction power. The power to issue a safety direction is subject to limitations that include specified circumstances and a reasonable belief that the direction is necessary to ensure public safety, ensure compliance with the Act, or prevent damage to property. The power to issue a safety direction is appropriately limited, ensuring that these powers cannot be exercised arbitrarily.

With respect to section 28(2)(d), there is a strong relationship between the limitation on the right to freedom of movement and the purpose of the safety directions powers. The directions powers are limited to ensuring public safety outcomes and ensuring that lake users are compliant with other sections of the Act, are not endangering themselves or other lake users, and are not damaging property in lakes areas. The limitation and the purpose are linked and are designed to ensure public

safety outcomes.

With respect to section 28(2)(e), the proposed construction of the safety directions powers provisions represents a reasonable and appropriate outcome. The ability to issue is not too broad and is appropriately limited to specified circumstances and must achieve a public safety outcome. Also, the ability to issue a direction is not so limited as to be ineffective. There are no less restrictive means to support the achievement of public safety outcomes. The directions powers are necessary additions to the Act to ensure compliance with the provisions and intent of the Act.

The right to privacy (s12)

Section 12 of the Human Rights Act provides that everyone has the right:

- a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- b) Not to have his or her reputation unlawfully attacked

Part 5D of the Bill, which sets out the functions and powers of an inspector to monitor and enforce compliance with the law, could be seen to engage the right to privacy. These include the power to enter a place of inspection (which includes a place, premises, vehicle or boat (section 50ZH)) where the occupier provides consent, the entry is authorised by a warrant or to protect life or property in serious and urgent circumstances. Also, to support enforcement measures, such as inspections of boats on lakes, an inspector can enter a boat on a lake area if the inspector believes on reasonable grounds that an offence is being or has been committed. In the absence of the occupier's consent or a warrant, an inspector may enter a place of inspection to ask its occupier for consent to enter the premises (section 50ZH(2)).

The requirement to obtain consent or an authorised warrant to enter a place of inspection provides safeguards to ensure the exercise of these powers does not unreasonably limit or restrict the right to privacy.

The right to privacy is also protected by the fact that an inspector can only enter a place of inspection to protect life or property if the inspector believes on reasonable grounds the circumstances are so serious and urgent that immediate entry to the premises without authority of a warrant is necessary.

Section 50ZF provides that an inspector can only exercise a power after showing his identity card and section 50ZI also provides that an inspector may not remain at a place of inspection if on request of the occupier the inspector does not produce the inspector's identity card.

Section 50ZJ sets parameters for seeking the consent of an occupier. The inspector must tell the occupier the purpose of the entry; that anything found and seized may be used in evidence, and that consent may be refused.

Section 50ZN provides powers of seizure including where a place has been entered without a warrant. There are however, safeguards in the Bill to ensure that the power

to seize without a warrant does not unreasonably limit or restrict the right to privacy. Section 50ZN provides that the power can only be exercised where the inspector reasonably believes the thing is evidence of an offence against the Lakes Act or a related law and the seizure is consistent with the purpose of the entry told to the occupier when the seeking the occupier's consent. An inspector may only seize things if satisfied on reasonable grounds that seizure is necessary to prevent the thing being concealed, lost or destroyed or used to commit an offence, or the thing poses a risk to the health and safety of a person, public or private property, or the environment.

The limits placed on the right to privacy and reputation are reasonable and necessary to facilitate investigation and enforcement of the Lakes Act. Boats are inherently mobile and this means that investigation and enforcement activities may need to be undertaken when an opportunity arises in an emergency or to prevent loss of life. Boats may be operating in areas where there is limited or no mobile telephone access. Obtaining a warrant in these circumstances may be impractical and may limit an inspector's capacity to carry out their investigative functions effectively. For this reason, the enforcement powers are appropriate and proportionate.

The drug and alcohol testing provisions in the Bill also engage the right to privacy. Section 50N incorporates provisions of the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drugs Act) to provide for a framework for the enforcement of drug and alcohol related offences. This enables inspectors to utilise similar procedures as are currently used in relation road users.

The provisions from the Alcohol and Drugs Act offer some privacy protections: sections 13 and 13F require that reasonably practicable steps be taken so that it is not readily apparent to the public that breath or oral fluid analysis are being carried out. Section 14 also limits the circumstances in which alcohol and drug tests can be carried out, particularly where conducting the test may be detrimental to the health of the subject.

The public safety benefits offered by deterring persons from operating a vehicle whilst under the influence of alcohol or drugs have been established in Australia over several decades. Although the provisions involve limitations on individuals' rights to privacy, these limitations are consistent with existing marine safety legislation in Jervis Bay and NSW waters and are reasonable, necessary and proportionate given their potential benefits for public safety.

Right to privacy and reputation (s12) – boating accidents and safety investigations

Section 50Q places an obligation on a master involved in a boating accident to give information to another person involved in the accident about the master's licence or permit, name and address details. A new definition for boating accident is proposed to be added to the Dictionary by clause 36 of the Bill and includes incidents that are considered to be boating accidents. Under new section 50T of the Bill, a safety investigation may be undertaken into a boating accident.

With respect to s 28(2)(a) of the HRA, the requirement to produce the master's

licence or permit and to give personal particulars, such as the master's name and address, may impact on the right to privacy and reputation protected under s 12 of the HRA. Under s 12 of the HRA, every person has the right not to have his or her privacy interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked.

With respect to s 28(2)(b), the right to privacy for masters of vessels involved in boating accidents is limited to require the master to produce certain personal information. This limitation on the right to privacy serves an informative purpose as it identifies the master involved in an accident and recognises the special position that a master holds in operating a boat, potentially with a number of passengers on board.

With respect to s 28(2)(c), the requirement to produce personal information is limited to the master of a vessel, and only where the master has been involved in a boating accident. Another person involved in the accident also must request that the master provide this information. Under s 50Q(3) of the Bill, the master is also provided with a defence of reasonable excuse for failing to comply with the request, recognising that there may be circumstances where the master may not be able to comply with the request or produce the required information.

With respect to s 28(2)(d), the obligation on a master to produce personal information if involved in a boating accident recognises the special position that a licensed master holds in operating a boat, potentially with a number of passengers on board. This situation is analogous to road traffic incidents where the requirement to produce information to another party involved in an accident is well recognised as being an appropriate response to an accident given the requirement to report the accident to police and to relevant insurance bodies. Further, the potential for a safety investigation (see Part 5C of the Bill) to result from a boating accident means that it is important that the master/s involved in the boating accident are correctly identified at the time of the accident to enable further investigations to take place.

With respect to s 28(2)(e), any limitation on the right to privacy and reputation by the obligation in section 50Q is justified in order to achieve public safety outcomes through holding masters to a higher standard of care and responsibility and to support a potential future safety investigation. There are no less restrictive means to achieve the goal of having the master to produce relevant personal information.

Section 50X of the Bill contains a similar power, where a safety investigator can require a person to give information, produce a document or answer questions relevant to a safety investigation.

With respect to s 28(2)(a) of the HRA, the ability for a safety investigator to issue a notice to a person with a requirement to give information, produce documents or answer questions may impact on the right to privacy and reputation protected under s 12 of the HRA. Under s 12 of the HRA, every person has the right not to have his or her privacy interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked.

With respect to s 28(2)(b), the right to privacy is limited to allow for safety

investigators to compel a person to produce evidence that is relevant to a safety investigation. Safety investigations are an important mechanism under the Act to review boating accidents and to make recommendations about the operation and effectiveness of the Act. The ability to require information relevant to a safety investigation is an important supporting power to the ability to conduct fully-informed and worthwhile safety investigations that lead to recommendations that further promote public safety on lakes.

With respect to s 28(2)(c), the limitation on the right to privacy through the ability to require information is limited. Under section 50X, the circumstances in which a notice can be issued are limited to where the safety investigator reasonably believes that the person holds relevant information for a safety investigation. A notice must give a reasonable period of time to produce the requested information and provide details on how the person is to comply with the notice. The provision also provides for reasonable expenses to be paid where the person must travel to appear before a safety investigator.

With respect to s 28(2)(d), the ability to require information to be produced is an important power that supports safety investigations, ultimately leading to improved public safety outcomes on the lakes. It is important to note that the requirements of sections 50Q and 50X are also supported by section 53 of the Bill which contains important protections against self-incrimination.

With respect to s 28(2)(e), there is no less restrictive means to achieving the production of information from a person relevant to a safety investigation. The provision strikes an appropriate balance between the right of an individual to privacy and reputation, and the need to support safety investigations, which lead to improved public safety. The power is not unfettered and is subject to reasonable limitations on the time in which information must be produced and reasonable costs being paid for some travel expenses.

Protection of the family and children (s11)

Section 40 of the Bill affects the human right to protection of children (s11 HRA) in a positive manner. The Dictionary to the Legislation Act defines “child” in respect to age as an individual who is under 18 years old. Section 40 of the bill affects section 11 of the HRA through creating two strict liability offences for a person to operate a boat with a child under 12 years old on the boat who is not wearing a life jacket.

The maximum penalty is 30 penalty units and the Bill provides for a defence if the defendant proves that the defendant took all reasonable steps to ensure the child was wearing an appropriate lifejacket. Strict liability offences are justified and proportionate to ensure the safety of children in the circumstances where a fall into the water from a boat by a child could easily lead to drowning if the child is not wearing a life jacket.

Section 50B of the Bill creates a strict liability offence of a person under 18 years old operating a boat on a lake with a concentration of alcohol in the person’s blood or breath at a special level. It is possible to obtain a boat licence at the age of 16 years so even though the legal drinking age is 18, a provision is needed for when someone under 18 operates a boat whilst under the influence of alcohol. While potentially

limiting a child's right to protection, the provision is justified and reasonable because of the safety concerns of a young person operating a boat whilst intoxicated, not only for the young person but also for other users of the lake. The maximum penalty for the offence is 10 penalty units which at the lower end of the scale.

Right to protection against self-incrimination

The Bill engages this right in sections 45, 47B, 50Q, 50R, 50X, 50ZQ or division 5D.5 (other than section 50ZU) in which the common law privileges against self-incrimination is waived. Section 53(2) provides that a person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide information, produce the document or other thing or answer the question.

The waiver of privilege, however, is qualified in that the any information, document or other thing obtained, directly or indirectly, because of providing the information, is not admissible against a person in a civil or criminal proceeding except for an offence against sections 45, 47B, 50Q, 50R, 50X, 50ZQ or division 5D.5 (other than section 50ZU) or any other offence in relation to the falsity of the information, document, other thing or answer.

Privilege against self-incrimination is contained in the ICCPR which at Article 14.3 (g) states that everyone shall be entitled to the following minimum guarantees: "(g) not to be compelled to testify against himself or to confess guilt".

There are however, public interest concerns which justify limiting the right in these circumstances. The investigation of marine accidents often has public safety implications – if the design of a boat is flawed or a boat operator's action had unintended negative consequences, there is a public interest in obtaining a full account of a matter which could outweigh the individual's right to not incriminate themselves. Marine accidents can lead to the injury and death of many people particularly where four boats are involved.

The abrogation of this privilege is consistent with the imperative of ensuring public safety on an ACT lake.

Conclusion

It is considered that those provisions of the Bill that engage human rights are permissible as a reasonable limitation under section 28 of the HRA because the limitation on rights pursues a legitimate objective to protect public safety, property and the environment and is proportional. Offences under the Bill relate to the safe use of boats on the Territory's lakes with the goal of positively supporting the human right to life, achieved through improving public safety for lake users. New drug and alcohol testing provisions are consistent with provisions in the ACT road transport legislation.

Scrutiny of Bills Committee Principles

The following addresses the Scrutiny of Bills Committee principles.

(a) unduly trespass on personal rights and liberties;

The right to life, right to fair trial and right to be presumed innocent in criminal proceedings (section 9, section 21 and section 22 of the HRA)

As noted above, there are a number of offences including strict liability offences created by the Bill.

These may be seen as engaging a number of rights under the *Human Rights Act 2004* (HRA) and unduly trespassing on personal rights and liberties.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means conduct alone is sufficient to make the defendant culpable.

The strict liability offences in the Bill arise in the context where the sanction of criminal penalties is justified by outcomes such as public safety and ensuring that regulatory schemes are observed. The strict liability offences in the Bill arise in a context where defendants can reasonably be expected to know the requirements of the law.

Other than sections 50E to 50H, the maximum penalty imposed for strict liability offences in the Bill is 50 penalty units. This maximum penalty is in accordance with the Justice and Community Services Guide to Framing Offences.

Sections 50E to 50H have the option of a penalty of imprisonment. Sections 50E to 50H are concerned with operating a boat whilst under the influence of alcohol or drugs. The maximum period of imprisonment is 12 months. A penalty of imprisonment for a strict liability offence could be seen as unduly trespassing on personal rights and liberties.

The penalties for Sections 50E to 50H have been set for consistency with equivalent offences in the Alcohol and Drugs Act. The only difference is that the Bill has not used the tiered approach taken in that Act of setting different penalties for first and second offenders. It is considered that doing this is appropriate because of the difference between road transport and boating activity on ACT lakes. Boating activities tend to be more for recreational purposes and concentrated on weekends and involve fewer people than motor vehicle transport which is a daily activity for most members of the community and involves a greater volume of people using the roads more frequently.

A penalty of imprisonment for driving whilst under the influence of alcohol or drugs is now widely known and accepted by the community as an appropriate deterrent to ensure the protection of the community. The Bill applies these same standards to boat users on Act lakes for the same purpose – to ensure the safety of all lake users.

In all the circumstances, it is considered that the strict liability offences in the Bill are appropriate and do not unduly trespass on personal rights and liberties. Compliance with the provisions of the bill is important to ensure marine safety and the integrity of licensing requirements.

Applying strict liability to provisions within the Bill can be considered a reasonable limit set by law that will assist in achieving the policy objectives. An individual's rights and freedoms have, in some cases, been fettered on the basis that it is in the wider public interest that operating boats safely on lakes be properly regulated. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

The inclusion of strict liability clauses for lesser offences in the Regulation will support the application of an infringement notice scheme. Infringement notice schemes minimise the cost of litigation for the Territory while offering registrants a choice concerning whether to accept a lesser penalty without admitting the offence or to remain liable to prosecution.

Under the Criminal Code, all strict liability offences have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offence cases. The general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

The Government considers that the offences including the strict liability offences contained in this Bill are relevant to the policy objectives of minimising the risk of harm to the community, which is demonstrably justifiable and reasonable.

It is considered that there are not any less restrictive means to achieve the purpose of the reforms.

The right to privacy (section 12 of HRA)

The right to privacy is engaged by part 5D of the Bill which includes powers for inspectors to enter a place, premises, vehicle or boat and seize things. Part 5D sets out the functions and powers of an inspector to monitor and enforce compliance with the law. Those functions and powers could be seen as unduly trespassing on personal rights and liberties, particularly the right to privacy.

It is considered that the Bill contains provisions to ensure the exercise of powers does not unreasonably limit or restrict the right to privacy or unduly trespass on personal rights and liberties.

The Bill requires an inspector to obtain the occupier's consent or have an authorised warrant to enter a place of inspection. An inspector can only enter a place without either of these things to protect life or property if the inspector believes on reasonable grounds the circumstances are so serious and urgent that immediate entry to the premises is necessary.

An inspector can enter a boat if the inspector believes on reasonable grounds that an offence against the Act is being or has been committed.

An inspector must have an identity card and can only exercise a power after showing the card. An inspector may not remain at a place of inspection if on request of the occupier the inspector does not produce the inspector's identity card. The Bill sets parameters for seeking the consent of an occupier – the inspector must tell the occupier the purpose of the entry, that anything found and seized may be used in evidence and that consent may be refused.

The Bill provides safeguards to ensure that the power to seize without a warrant does not unreasonably limit or restrict the right to privacy. Section 50ZN provides that the power can only be exercised where the inspector reasonably believes the thing is evidence of an offence against the Lakes Act or a related law and the seizure is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent. An inspector may only seize things if satisfied on reasonable grounds that seizure is necessary to prevent the thing being concealed, lost or destroyed or used to commit an offence, or the thing poses a risk to the health and safety of a person, public or private property, or the environment.

It is considered the limits placed on inspectors powers by the bill mean those functions and powers cannot be seen as unduly trespassing on personal rights and liberties, particularly the right to privacy. The powers provided by the Bill are reasonable and necessary to facilitate proper investigation and enforcement of the Lakes Act with the objective of ensuring public safety.

The limits placed on the right to privacy and reputation are reasonable and necessary to facilitate investigation and enforcement of the Lakes Act. Boats are inherently mobile and this means that investigation and enforcement activities may need to be undertaken when an opportunity arises in an emergency or to prevent loss of life. Boats may be operating in areas where there is limited or no mobile telephone access. Obtaining a warrant in these circumstances may be impractical and may limit an inspector's capacity to carry out their investigative functions effectively. For this reason, the enforcement powers are appropriate and proportionate.

The drug and alcohol testing provisions in the Bill also engage the right to privacy. The public safety benefits offered by deterring persons from operating a vehicle whilst under the influence of alcohol or drugs have been established in Australia over several decades. Although the provisions involve limitations on individuals' rights to privacy, these limitations are consistent with existing marine safety legislation in Jervis Bay and NSW waters and are reasonable, necessary and proportionate given their potential benefits for public safety.

Right to protection against self incrimination

The Bill engages this right in sections 45, 47B, 50Q, 50R, 50X, 50ZQ or division 5D.5 (other than section 50ZU) in which the common law privileges against self-incrimination is waived. Section 53 (2) provides that a person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide information, produce the document or other thing or answer the question.

The waiver of privilege is however, is qualified in that the any information, document or other thing obtained, directly or indirectly, because of providing the information, is not admissible against a person in a civil or criminal proceeding except for an offence against sections 45, 47B, 50Q, 50R, 50X, 50ZQ or division 5D.5 (other than section 50ZU) or any other offence in relation to the falsity of the information, document, other thing or answer.

Privilege against self-incrimination is contained in the ICCPR which at Article 14.3 (g) states that everyone shall be entitled to the following minimum guarantees: “(g) not to be compelled to testify against himself or to confess guilt”.

There are however, public interest concerns which justify limiting the right in these circumstances. The investigation of marine accidents often has public safety implications – if the design of a boat is flawed or a boat operator’s action had unintended negative consequences, there is a public interest in obtaining a full account of a matter which could outweigh the individual’s right to not incriminate themselves. Marine accidents can lead to the injury and death of many people particularly when tour boats are involved

It is considered that there are not any less restrictive means to achieve the purpose of the reforms.

(b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

The Bill does not make rights liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Administrative powers in the Bill are in Part 5C (clause 28) and section 57 (clause 32).

Part 5C of the bill gives the Minister the power to order a safety investigation. The Bill sets out those matters that the Minister can investigate and the purposes of the investigation. The actions the Minister can take following safety investigations is also set out in section 50Z, 50ZA. It is considered the Bill sufficiently defines the administrative powers.

Section 57 permits the Minister by written notice to exempt a person from the Lakes Act. An exemption may be given with conditions. It is considered that this power is sufficiently defined by providing that an exemption can only be made in relation to Part 4 of the Lakes Act and that the Minister must not exempt a person etc. unless the Minister is satisfied the exemption or condition is in the public interest, will not jeopardise the safety of a boat or a person on board a boat and would not compromise a safety investigation. A notice is a notifiable instrument.

(c) make rights, liberties and/or obligations unduly dependent upon non reviewable decisions;

Administrative powers in the Bill are in Part 5C (clause 28) and section 57 (clause 32).

It is considered appropriate that the Minister's power to order a safety investigation (clause 30) need not be a reviewable decision. It is important that the Minister be able to investigate safety issues and a decision to order an investigation is not one that directly affects an individual's rights, liberties or obligations.

It is considered appropriate that a Minister's decision regarding an exemption need not be reviewable because the exemption is more an atypical exceptional policy public interest matter for unanticipated circumstances than a standard routine application for authorisation like a licence or approval.

(d) inappropriately delegate legislative powers;

The Bill does not provide for the delegation of legislative powers.

(e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

The Bill does not insufficiently subject the exercise of legislative power to parliamentary scrutiny. Clause 31 (subsections 56(2) and (3)) of the Bill does provide for the power to produce regulations which are subject to parliamentary scrutiny. This is appropriate and consistent with the approach commonly taken in other legislation.

Outline of Provisions

Clause 1 – Name of Act

This clause names the Act as the *Lakes Amendment Act 2017*.

Clause 2 – Commencement

This clause provides for the Act to commence on a day fixed by the Minister by written notice.

Commencement by written notice is appropriate in these circumstances to allow the Commonwealth to consider similar updates to the *Lakes Ordinance 1976 (Cth)* and the development of any regulations to support the provisions in the Bill.

The Act will automatically commence after 12 months, should the Minister not issue a commencement notice prior to that time.

Clause 3 – Legislation amended

This clause provides that the Act amends the *Lakes Act 1976*. The Bill also amends the *Magistrates Court (Lakes Infringement Notices) Regulation 2004*.

Clause 4 – Legislation repealed

This clause provides that the Act repeals the current lake area declarations for the Kingston Harbour and Molonglo Reach. Clauses 33 and 34 provide for the revised lake area declarations for the Kingston Harbour and Molonglo Reach.

Clause 5 – Application – Section 4A, new notes

This clause inserts two notes into section 4A of the Act. Note 1 states that the Act applies in relation to lakes and a lake area in the Territory and the lake area of Lake Burley Griffin to the extent that it is Territory land. Note 2 states that the Act applies to a domestic commercial vessel operating on a lake and operates concurrently with the national marine safety laws.

Clause 6 – Section 4B

This clause substitutes the existing exemption provisions for the Territory with new provisions in relation to; the application of Act to inspectors, emergencies and other environmental and health laws.

Section 4B – Application of Act to inspectors

This section removes the specific exemptions for the Territory and provides a general exemption that an offence in Part 4 does not apply to an inspector exercising a function of the inspector under the Act.

Section 4C – Application of Act in emergencies

This section inserts a new provision which exempts certain persons from the provisions of this Act when performing functions under the *Emergencies Act 2004* when protecting life or property or when fighting a fire. This section also exempts authorised officers under the *Environment Protection Act 1997* when undertaking their functions under that Act to protect the environment in an emergency event.

Section 4D – Relationship to environmental and health laws

This section deals with how the Act is to work with other environmental and public health laws. As far as possible, the Act is to be interpreted and administered consistent with these laws; unless a contrary intention appears in this Act or that other law.

Clause 7 – Declaration of area as lake – Section 5

This clause relocates the existing section 5 to Part 2 of the Act which deals with administration of the Act.

Clause 8 – Sections 7 to 10

This clause omits existing sections 7 to 10 regarding the appointment of inspectors and inspector's powers. These provisions are now dealt with in new Part 5A of the Act, which contains provisions dealing with enforcement of the Act.

Clause 9 – Compensation for damage – New section 14(4)

This clause inserts for new section 14(4) that for section 14, *owner* of land includes anyone with an interest in the land to ensure those with an interest including a financial interest are compensated.

Clause 10 – New section 14A

This clause inserts in the existing Part 4 the meaning of *operate* in relation to a boat.

Section 14A – Meaning of *operate* – pt 4

This section inserts in Part 4 the meaning of *operate* in relation to a person who is an owner of a boat and provides that the term *operate* includes causing or allowing someone else to operate the boat.

Clause 11 – New sections 20A and 20B

This clause inserts new sections 20A and 20B in relation to boat speed limits and restrictions on kinds of boats.

Section 20A – Speed limits

This section inserts a provision giving the Minister the power to place a sign in a lake area stating the maximum speed a boat may operate at in that area. The provision also states that it is an offence against this section for a person to operate a boat on a lake, and the boat is operated at a speed greater than the speed limit that applies. A person found guilty of an offence against this section is liable for a penalty of a maximum 20 penalty units. An offence against this section is a strict liability offence. This is appropriately deemed to be a strict liability offence as it does not contain a fault element and is regulatory in nature.

20B – Restrictions on kinds of boats

This section inserts a provision giving the Minister the power to place a sign in a lake area stating the kinds of boats that can operate and the purpose for which that kind of boat can operate in that area. A person found guilty of an offence against this section is liable for a penalty of a maximum 20 penalty units. An offence against this section is a strict liability offence. This is appropriately deemed to be a strict liability offence as it does not contain a fault element and is regulatory in nature.

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

This clause substitutes existing subsections 25A(1) and (2) relating to recognition of interstate licence holders with new subsection that detail that section 25A (1) 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 and provides an example that a license or permit includes a certificate of competency under the Marine Safety (Domestic Commercial Vessel) National Law.

Section 25A(2) provides that a person must comply with any conditions imposed on the person through the license or permit in relation to the operation of a boat or any conditions determined by the Minister and includes an example of a condition or restriction a person's license or permit may be subject to in relation to a person authorised to operate a power boat on a lake.

This clause inserts a new note which states that a land management plan under the *Planning and Development Act 2007* may restrict or prohibit certain activities on a lake. This is an informative note to make it clear that it is not only this section that may provide conditions on how power boats can be used on a lake.

Clause 13 – New section 25B

This clause inserts a new section 25B which states that a person may operate a power boat on a lake if the boat is not a personal watercraft, it is operated at a speed of less than 10 knots and the person complies with any conditions determined by the Minister.

This section acts as an exception to the general restriction against using a power boat on a lake in section 27 of the Act. The exception applies to power boats that are not personal watercraft and where they are operated at a speed of less than 10 knots. In these circumstances, the person will not require an authorisation under section 26 of the Act.

Section 25B(1) also contains a note stating that a land management plan under the *Planning and Development Act 2007* may restrict or prohibit the use of a power boat on a lake to draw the reader's attention to other relevant laws that may apply over a lake.

Section 25B(2) provides that a determination of conditions by the Minister under section 25B(1)(c) is a notifiable instrument.

This section also provides a definition in section 25B(3) for this section of the term *personal watercraft* and provides a number of examples.

Clause 14 – Use of power boats—other people – Section 26(1)

This clause omits the term *use of a power boat in or on* and substitutes the terms with *operation of a power boat on* in relation to the operation of a power boat. As with clause 10 above, this is to ensure consistent usage of the term *operate*, rather than *use*, throughout the Act.

Clause 15 – New sections 26 (1A) to (1B)

This clause inserts new provisions into section 26 of the Act. Section 26 currently allows the Minister to issue approvals (permits) to operate a boat on an ACT lake.

New sections 26(1A)-(1B) and (5) establish a system of mutual recognition of permits issued by the ACT Minister and the Commonwealth Minister (under the *Lakes Ordinance 1976*), so that a single permit issued by either Minister can operate to authorise activities on Lake Burley Griffin (National land) and Kingston Harbour and Molonglo Reach (Territory land).

New section 26(1A) states that before authorising the operation of a boat on Kingston Harbour or Molonglo Reach under subsection (1), the Minister must give a copy of the draft authorisation to the Commonwealth Minister (or delegate) for comment.

New section 26(1B) provides that the Minister in deciding whether to authorise the operation of a power boat on Kingston Harbour or Molonglo Reach under subsection (1), 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.

This clause supports clause 18 which inserts a new section 26(5) that states an approval issued by the National Capital Authority under section 26 of the Lakes Ordinance for operation of a power boat on Lake Burley Griffin is taken to be an approval to operate a power boat in the Kingston Harbour and Molonglo Reach, both of which are connected to Lake Burley Griffin.

Clause 16 – New section 26(5)

This clause inserts a new provision detailing that an approval and any associated conditions issued under the Lakes Ordinance to operate a power boat on Lake Burley Griffin is taken to be an approval to operate the power boat on the Kingston Harbour and the Molonglo Reach.

When the Lakes Ordinance is similarly amended to reflect the updated Lakes Act, similar sections will be required to be inserted in the Lakes Ordinance to support the operation of section 26 and ensure the mutual recognition of authorisations issued under both the Lakes Act and the Lakes Ordinance.

Clause 17 – Section 27

This clause substitutes the existing section 27 offence provisions for the operation of power boats on a lake to reflect the new provisions in relation to the operation of a power boat in the Bill.

The substituted section 27 contains updated terminology for *operating* a boat rather than *using* a boat, and adds a reference to new section 25B into the list of provisions that may authorise the operation of a power boat on a lake. The offences in the new section 27 are consistent with the previous offences.

It is an offence against this section for a person to fail to comply with an approval to operate a power boat on a lake or the specified speed. A person found guilty of an offence against this section is liable for a maximum penalty of 50 penalty units.

It is also an offence against this section if the person is a passenger in a power boat on a lake and another person operates the power boat and the other person is not allowed to operate the power boat in accordance section 25A, new section 25B or section 26. A person found guilty of an offence against this section is liable for a maximum penalty of 10 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.

Clause 18 – Section 27, new note

This clause inserts a new note into section 27 of the Act which states that an authorisation under section 26 of the *Lakes Ordinance 1976 (Cwlth)* is taken to be an authorisation under section 26 of the Lakes Act to operate a power boat on Kingston Harbour and Molonglo Reach.

Clause 19 – Section 33

This clause substitutes the existing section 33 which sets out the power for the Minister to enter into agreements to undertake commercial activities in a lake area. As with clause 17 above, these provisions set up a system of mutual recognition of commercial agreements issued under the Lakes Act and the Lakes Ordinance.

New sections 33(2)-(3) and (4) establish a system of mutual recognition of commercial agreements entered into by the ACT Minister and the Commonwealth Minister (under the *Lakes Ordinance 1976*), so that a single agreement entered into by either Minister can operate to authorise activities on Lake Burley Griffin (National land) and Kingston Harbour and Molonglo Reach (Territory land).

New section 33(2) states that before entering into an agreement in relation to the lake area of Lake Burley Griffin, the lake area of Kingston Harbour or the lake area of Molonglo Reach, under subsection (1), the Minister must give a copy of the draft agreement to the Commonwealth Minister (or delegate) for comment.

New section 33(3) provides that the Minister in deciding whether to enter into the agreement under subsection (1), 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 agreement.

This does not apply to agreements for any other lakes area declared under the Lakes Act.

This clause supports clause 22 which inserts a new section 33(4) that states an agreement under section 26 of the Lakes Ordinance to undertake a commercial activity is taken to be an agreement for the lake area of Lake Burley Griffin, the lake area of Kingston Harbour and the lake area of Molonglo Reach, which are all connected by water.

Clause 20 – New section 33(4)

This clause inserts a new provision detailing that an agreement to undertake a commercial activity in a lake area under the Lakes Ordinance is taken to be an agreement under this section to undertake a commercial activity on the lake area of Lake Burley Griffin, the lake area of Kingston Harbour and the lake area of Molonglo Reach.

When the Lakes Ordinance is similarly amended to reflect the updated Lakes Act, similar sections will be required to be inserted in the Lakes Ordinance to support the operation of section 33 and ensure the mutual recognition of authorisations issued under both the Lakes Act and the Lakes Ordinance.

Clause 21 – Commercial activities in a lake area – Section 34 (2), new note

This clause inserts a new note into section 34, which contains offence provision for commercial activity agreements issued under section 33, to clarify that the offences apply to agreements to undertake commercial activities under both the Lakes Act and the Lakes Ordinance due to the mutual recognition of agreements issued by the respective authorities as set out in the provisions above.

Clause 22 – Part 5 heading

This clause substitutes the existing heading for Part 5 - Rules for preventing collisions on lakes, with the new heading, Part 5 - Safety.

Clause 23 – Divisions 5.1 and 5.2

This clause substitutes the existing heading for existing Division 5.1, Lighting rules with, Safe operation of boats and for existing Division 5.2, Rules of the water, with, Safety directions. These amendments reflect contemporary maritime law terms.

Division 5.1 – Safe operation of boats

New division 5.1 relates to the safe operation of boats.

Section 36 – Operating unsafe boats

This section creates an offence provision for the operation of an unsafe boat. A person found guilty of an offence against this section is liable for a maximum penalty of 50 penalty units, imprisonment for 6 months or both. The term *unsafe* is defined in the dictionary to the Act.

Section 37 – Reckless or negligent operation of boats

This section creates an offence provision for the reckless or negligent operation of a boat that gives rise to the danger of harm or death to someone else, or damage to property. A person found guilty of an offence against this section is liable for a maximum penalty of 50 penalty units, imprisonment for 6 months or both. For this section, the term *harm* is defined by reference to the definition in the dictionary to the Criminal Code.

Section 38 – Climbing onto boats

This section creates an offence for a person who climbs onto or attaches themselves to a boat on a lake without the permission of the person in charge of the boat. In this section a, *person in charge*, means the owner or master of the boat. A person found guilty of an offence against this section is liable for a maximum penalty of 50 penalty units.

New Division 5.2 – Lifejackets

New division 5.2 relates to lifejackets that must be carried on a boat or worn by a person on a boat to ensure safety on a lake.

Section 39 – Meaning of *appropriate lifejacket* – div 5.2

This section inserts a definition in the Division for *appropriate lifejacket* which means a lifejacket that meets any of the following standards: a performance standard 50S, 50, 100, 150 or 275 of AS 4758 (Lifejackets), any standard or specifications approved by RMS under the *Marine Safety Regulation 2016 (NSW)* for lifejackets to be carried on recreational vessels.

It however does not include a lifejacket that: relies solely on oral inflation for buoyancy; or is not the correct size for the wearer; or 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.

Section 40 – Children under 12 years

This section sets out lifejacket requirements for children who are less than twelve years of age, and creates two offences.

A child who is less than 12 years old and on a recreational boat less than 4.8 metres in length on a lake, must wear an appropriate lifejacket. If they do not, the operator of that boat is guilty of an offence.

A child who is less than 12 years old, who is in on a recreational boat less than 8 metres in length, which is underway on a lake, must wear an appropriate lifejacket. If they do not, the operator of that vessel is guilty of an offence.

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.

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

Section 41 – Boats under 4.8 metres

This section sets out lifejacket requirements for vessels under 4.8 metres in length and creates two offences.

A person who is on board a boat less than 4.8 metres in length on a lake must wear an appropriate lifejacket if they are on board the boat at night, or if they are not accompanied by another person who is 12 years of age or older. Failing to wear an appropriate lifejacket in such circumstances constitutes an offence. The operator of a boat on, which the above offence is committed, is also guilty of an offence. 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.

Section 42 – Directions by master to wear lifejackets

This section creates an offence of not wearing a lifejacket when directed to do so by a master. A person who does not wear an appropriate lifejacket while on board a recreational vessel on a lake is guilty of an offence, if the master of the vessel has directed the person to wear the 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.

Section 43 – Failure to wear lifejackets – defence

This section sets out defences for prosecution for an offence against section 41 and 42. It is a defence to a prosecution for an offence against section 41 or section 42 if the person proves that the person was not operating the boat, and there was no available or appropriate lifejacket on the boat when the person was required to wear a lifejacket.

Section 44 – Owners to ensure lifejackets available

This section sets out the responsibilities of owners and operators of a recreational boat on a lake in relation to lifejackets and creates an offence.

If a person owns or operates a recreational boat on a lake, they must ensure that the boat carries the number and type of lifejackets prescribed by regulation for the type of boat, and that the lifejackets comply with the relevant standards, are in good condition, properly maintained, and are easily accessible. Lifejackets must be stored where they are clearly visible and accessible, and marked by a sign. Failing to comply with these requirements is an offence. 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.

Section 45 - Owners and operators to provide information about life jackets

This section inserts a provision that empower an inspector to give directions to 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 the lifejackets for the recreational boat within 24 hours of the direction being given to the person. It is an offence to fail to comply with a direction under this section. 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.

It is a defence in a prosecution for an offence against this section if the person has a reasonable excuse for failing to provide the information.

For the section a recreational boat does not include: a canoe, kayak, paddleboard, surfboard, sailboard or kiteboard.

New Division 5.2A – Other safety equipment

New division 5.2A relates to other safety equipment that must be carried on a boat to ensure safety on a lake.

Section 46 – Application – div 5.2A

This section inserts provisions that detail that this division does not apply in relation to a recreational boat which is ordinarily operated in a State and complies with the requirements for safety equipment that apply to the boat in the State and has been in the Territory for less than 90 consecutive days.

Section 47 – Definitions-Div 5.2A

This section inserts a number of new definitions for the Division including: *recreational boat* does not include: a canoe, kayak, kiteboard, paddleboard, sailboard or surfboard; *required safety equipment*, for a boat, means the safety equipment prescribed by regulation; and *required standards*, for safety equipment, means the standards prescribed by regulation.

Section 47A – Owners and operators to ensure safety equipment available

This section sets out the responsibilities of owners and operators of recreational boats on a lake in relation to safety equipment, and creates an offence.

If a person owns or operates a recreational boat on a lake, they must ensure that the boat carries the required safety equipment for the boat prescribed by regulation, and that the equipment complies with the relevant standards prescribed by regulation, is in good condition, properly maintained, and is easily accessible. Failing to comply with these requirements is an offence. 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.

Section 47B – Owners and operators to provide information about safety equipment

This section insert a provision that empower an inspector to give directions to 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 boat within 24 hours of the direction being given to the person. It is an offence to fail to comply with a direction under this section. 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.

It is a defence in a prosecution for an offence against this section if the person has a reasonable excuse for failing to provide the information.

New Division 5.2B – Safety directions

New division 5.3B relates to directions that can be issued by an inspector to a person to ensure safety on a lake.

Section 47C – Closing lake areas or parts of lakes

This section inserts provisions that empower an inspector to give directions to a person who is an area of a lake that has been declared closed but the declaration is yet to be notified in accordance with section 21 of the Act. The provision requires the inspector to show the person when making the direction his or her identity card and a copy of the signed declaration.

It is an offence to fail to comply with a direction under this section where the person is given a direction by an inspector, and at that time the inspector produces a copy of the signed declaration, and produces their identity card and warns the person that failing to comply with the direction is an offence. 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. If an inspector requires the use of a vehicle or boat under an inspector's direction the inspector is not liable to pay a fee for the use of the vehicle or boat.

Section 47D – Safe use of lake areas

This section inserts provisions that empower an inspector to give directions to a person where the inspector believes on reasonable grounds that the direction is necessary to ensure the safety of a person or ensure compliance with the Act or to prevent damage to property in a lake area.

It is an offence to fail to comply with a direction under this section where the person is given a direction by an inspector, and at that time the inspector produces their identity card and warns the person that failing to comply with the direction is an offence. 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.

The offence in this provision of failing to comply with a direction applies to the person even if complying with the direction is an offence against another provision in the Act. However, it is a defence to a prosecution for an offence against the Act if the person was complying with a direction given under this section at the time the offence was committed. If an inspector requires the use of a vehicle or boat under an inspector's direction the inspector is not liable to pay a fee for the use of the vehicle or boat.

Section 47E – Passengers on domestic commercial vessels

This section inserts provisions that empower the person responsible for the operation of a domestic commercial vessel to give directions to a person to ensure the safe operation of the vessel and to ensure the number of people on the vessel does not exceed the maximum number of people permitted on the vessel. It is an offence to fail to comply with a direction except where the person is a statutory position holder carrying out his or her statutory functions under a law of the Territory or the Commonwealth.

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 *designated person*, for a domestic commercial vessel means a person on board the vessel who is responsible for the navigation, operation, or management of the vessel and includes a person who is responsible for the conduct of operations where the vessel is berthed.

In this section, a *relevant officer*, means; an inspector, a safety investigator, an officer of the Commonwealth or Territory, or an officer of a statutory authority created under a law of the Commonwealth or Territory.

New Division 5.2C – Lighting, marking and removing obstructions

This new division relates to the Lighting, marking and removing obstructions on a lake.

Section 47F – Lighting and marking obstructions

This section inserts provisions that empower an inspector to give directions to an owner of an obstruction where the inspector believes the obstruction may present a hazard to navigation, to mark or light the obstruction and maintain the marking or lighting in good condition. The direction must be in writing and state the requirements for installing, maintaining the marking and lighting and period for marking or lighting the obstruction. The person must also notify an inspector in the event the lighting or marking becomes defective. If the owner fails to comply with the direction the inspector may mark or light the obstruction and recover the costs for marking or lighting the obstruction from the owner. It is an offence to fail to comply with a direction under this section. 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.

Section 47G – Notices to remove obstructions

This section inserts provisions that empower an inspector to give directions to an owner of an obstruction to remove the obstruction. It is an offence to fail to comply with a direction. A person found guilty of an offence against this section is liable for a 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.

Section 47H – Removing obstructions

This section inserts provisions that empower an inspector or entity authorised by an inspector to destroy, if it is reasonable in the circumstances, or remove an obstruction to navigation and to recover reasonable costs for its removal from the owner.

Section 47I – Disposing of obstructions

This section inserts a provision that empower an inspector to dispose of an obstruction to navigation removed under section 47H where the inspector has taken all reasonable steps to return the obstruction to the owner.

Clause 24 – Division 5.3 heading

This clause omits the existing Division 5.3 heading, General, with the section in Division 5.3 replaced by new sections in Part 5, Safety and Part 5A Drug and alcohol offences.

Clause 25 – Section 48 and 49

This clause omits existing section 48, Reckless or negligent operation of boat, which is replaced by new provisions in Part 5, Safety and also omits existing section 49, Causing unreasonable interference, as this offence provision will be remade and included in the Lakes Regulation.

Clause 26 – Section 50

This clause omits existing section 50, Navigation of a boat while intoxicated, which is replaced by new provisions in Part 5A, Drug and alcohol offences.

Clause 27 – New part 5A

This clause inserts a new Part 5A for Drug and alcohol offences. Part 5A inserts offences for persons who operate a boat on a lake who may be under the influence of drugs and alcohol. These provisions are modelled on the ACT road transport drug and alcohol provisions under the *Road Transport (Alcohol and Drugs) Act 1977*.

The provisions inserted by this clause set out the prescribed concentrations of alcohol, which form part of offences in Part 5A. One of the goals of the Act is that operators of vessels on an ACT lake should be subject to the same standards as operators of a vehicle on an ACT road. Accordingly, the prescribed concentrations of alcohol and drugs, and offences for using vessels while under the influence of drugs or alcohol in Part 5A, are based on those in the *Road Transport (Alcohol and Drugs) Act 1977*.

Section 50A – Definitions – pt 5A

This section prescribes the amounts of alcohol in people's breath or blood, which constitute high level, low level, medium level, special level and youth range prescribed concentrations of alcohol and the relevant period when a breath analysis or sample of a person blood may be taken.

Section 50B – People under 18 years old

This section creates an offence for a person under 18 years of age who has been operating a boat, or supervising a juvenile operator, while having in the person's breath or blood the special level prescribed concentration of alcohol. This concentration is prescribed in section 50A as more than zero grams, but less than 0.05 grams per 210 litres of breath or 100 millilitres of blood. A person found guilty of an offence against this section is liable for a penalty of 10 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.

Section 50C – Special level of alcohol

This section creates an offence for a person who has been operating a boat for commercial purposes, while having in the person's breath or blood the special level prescribed concentration of alcohol. This concentration is prescribed in section 50A as more than zero grams, but less than 0.05 grams per 210 litres of breath or 100 millilitres of blood. A person found guilty of an offence against this section is liable for a penalty of 10 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.

Section 50D – Low level of alcohol

This section creates an offence for a person who has been operating a boat, while having in the person's breath or blood the low level prescribed concentration of alcohol. This concentration is prescribed in section 50A as more than 0.05 grams, but less than 0.08 grams per 210 litres of breath or 100 millilitres of blood. A person found guilty of an offence against this section is liable for a penalty of 10 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.

Section 50E – Medium level of alcohol

This section creates an offence for a person who has been operating a boat, while having in the person's breath or blood the medium level prescribed concentration of alcohol. This concentration is prescribed in section 50A as more than 0.08 grams, but less than 0.15 grams per 210 litres of breath or 100 millilitres of blood. A person found guilty of an offence against this section is liable for a penalty of 10 penalty units, imprisonment for 6 months or both. 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.

Section 50F – High level of alcohol

This section creates an offence for a person who has been operating a boat, while having in the person's breath or blood the high level prescribed concentration of alcohol. This concentration is prescribed in section 50A as more than 0.15 grams per 210 litres of breath or 100 millilitres of blood. A person found guilty of an offence against this section is liable for a penalty of 20 penalty units, imprisonment for 12 months or both. 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.

Section 50G – Under the influence of alcohol or drugs

This section creates an offence for a person who operates a boat on a lake whilst under the influence of alcohol or a drug to the extent that the person is incapable of having proper control of the boat. A person found guilty of an offence against this section is liable for a penalty of 30 penalty units, imprisonment for 12 months or both.

Section 50H – Drugs

This section creates an offence for a person who has been operating a boat, while under the influence of a prescribed drug. The definition of a *prescribed drug* is the same as detailed in the dictionary in the Road Transport (Alcohol and Drugs) Act. Proof of presence of a prescribed drug in a person blood for the purposes of this section must be carried out in accordance with section 15A of the Road Transport (Alcohol and Drugs) Act.

A person found guilty of an offence against this section is liable for a penalty of 25 penalty units, imprisonment for 3 months or both. For an offence against this section a person cannot rely on the mistaken belief regarding the identity of the prescribed drug including a belief that the prescribed drug was a *controlled drug* as defined under section 36 of the Criminal Code.

Section 50I – Evidence of alcohol levels

This section sets out the evidentiary requirement to demonstrate an offence under section 50B (People under 18 years old); (section 50C (Special level of alcohol); section 50D (Low level of alcohol); section 50E (Medium level of alcohol); section 50F (High level of alcohol); (section 50G (Under the influence of alcohol) in relation to the alcohol concentration present in a person's breath or blood.

50J – Alternative verdicts – medium level of alcohol

This section provides that if a person is being prosecuted for an offence against section 50E, but the court is satisfied that at the relevant period, the person had in their breath the low level prescribed concentration of alcohol, the court can convict the person of an offence against 50D.

50K – Alternative verdicts – high level of alcohol

This section provides that if a person is being prosecuted for an offence against section 50F, but the court is satisfied that at the relevant period, the person had in their breath or blood the medium level prescribed concentration of alcohol, or the low range prescribed concentration of alcohol, the court can convict the person of an offence against 50D or 50E.

50L – Alternative verdicts—high, medium, and low levels of alcohol

This section provides that if a person is being prosecuted for an offence against section 50D, 50E or 50F, but the court is satisfied that at the relevant period, the person had in their breath or blood the special level range prescribed concentration of alcohol, rather than the low, middle, high or special level prescribed concentration of alcohol, the court can convict the person of an offence against 50B if the person is under 18 years or age or 50C if the person was operating the boat for a commercial purpose under section 33.

50M – Defence – Special level of alcohol

This section provides defence for a person being persecuted for an offence against section 50B or 50C where the person had in their breath or blood the special level prescribed concentration of alcohol and that the concentration of alcohol in the dependent's blood or breath was caused by the consumption of an alcoholic beverage that formed part of a religious observance or the consumption or use of a substance that was not, entirely or partly, consumed or used for its alcohol content.

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

This section sets out the provisions in the Road Transport (Alcohol and Drugs) Act that apply to a person who operates a boat on an ACT lake. If a provision of the Road Transport (Alcohol and Drugs) Act 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.

An entity that has a function under the *Road Transport (Alcohol and Drugs) Act* includes an analyst, a police officer, an authorised operator, a doctor or nurse, and an approved laboratory. This section applies powers to collect evidence under the Road Transport (Alcohol and Drugs) Act 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 to a person who operates a boat on a lake.

Clause 28 – New parts 5B to 5D

This clause inserts new Parts 5B to 5D, which insert provisions on the responsibility of masters of a boat in the event of a boating accident.

New Part 5B – Boating Accidents

New Part 5B includes provisions in relation to boating accidents on ACT lakes.

Section 50O - Obligation to stop

This section creates an obligation on the master of a vessel to stop, if their vessel is involved in a boating accident involving another vessel or the death or injury of another person. Failing to stop in these circumstances will constitute an offence. A person found guilty of an offence against this section is liable for a 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. It is a defence against this section if the person has a reasonable excuse for failing to stop the boat.

Section 50P - Obligation to give assistance

This section creates an obligation on the master of a vessel to give any necessary assistance, if their vessel is involved in a boating accident involving another vessel or the death or injury of another person. Negligently failing to give assistance in these circumstances constitutes an offence. A person found guilty of an offence against this section is liable for a penalty of 50 penalty units.

Section 50Q - Obligation to produce licence and give particulars

This section creates an offence if a person is the master of a boat, the boat is involved in a boating accident, and a person involved in the accident asks the master to produce information from the boat driving licence or permit held by the master, particulars of the master's name and address, or the name and address of the owner of the boat, or the name of the boat and any distinguishing number on the boat; the master must disclose this information. Failing to provide the information requested constitutes an offence. A person found guilty of an offence against this section is liable for a penalty of 50 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. It is a defence against this section if the master has a reasonable excuse for failing to comply with the request.

Section 50R - Obligation to report boating accidents to the Minister

This section creates an obligation to send a report of a boating accident to the Minister, containing particulars of the boating accident as soon as possible. These particulars include the time, place and type of accident; the name and number of each boat involved; the name and address of each person who was involved in, or witnessed, the accident; and any loss of life, injury or damage resulting from the accident.

The report must be sent by the master (and the owner of the vessel if they are aware of the accident). Reports need not be sent if a report of the accident has already been sent by the owner or master or if the marine accident involves recreational boats only and does not result in loss of life or injury; property damage greater than \$5,000, or damage or risk of damage to the environment. Failing to send a report, if a person is required to send a report, is an offence. A person found guilty of an offence against this section is liable for a penalty of 50 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.

For this section *particulars of the boating accident* means the following: the time, place and nature of the boating accident; the name and distinguishing number (if any) of each boat involved in the boating accident; the name and address of each person who was involved in, or was a material witness to, the boating accident and a description of the estimated extent of any injury or damage, or any loss of life, resulting from the boating accident.

Section 50S – Obligation to preserve evidence

This section imposes an obligation to preserve evidence on the owner or master of a boat, or a person otherwise concerned in an accident. If a person is the owner or master of a vessel involved in a marine accident, or is otherwise concerned in a marine accident, and the person has reason to believe that evidence relating to the marine accident may be required for an investigation into the marine accident, and the person negligently fails to preserve the evidence, this constitutes an offence. The maximum penalty for

the offence is 50 penalty units. Evidence relating to the boating accident includes navigation charts, logbooks and other documents.

New Part 5C – Safety Investigations

New Part 5C includes provisions in relation to boat safety investigations on ACT lakes.

Section 50T – Safety Investigations

This section inserts a provision in relation to a boat safety investigation on an ACT lake. The Minister can order a safety investigation into a boating accident, a situation that could cause a boating accident, alleged incompetence or misconduct by a boat operator, or a boat detained because it is unsafe. Safety investigations are intended to determine the circumstances of a boating accident or other matters relating to boating safety, and make recommendations to prevent similar accidents or circumstances from occurring again.

Safety investigations can be carried out even if they relate to matters that are being investigated under other laws, or may be the subject of criminal or civil proceedings. If an investigation is carried out into the holder of a current boat driving licence, the Minister may notify the State or Territory, which granted the licence about that investigation.

Section 50U – Appointment of safety investigators and powers

This section gives the Minister the power to appoint safety investigators to carry out investigations. A safety investigator must be appointed in writing, and are subject to the control and direction of the Minister, except in relation to the contents of their investigation report. The Minister can appoint either a police officer, or a person with qualifications or experience relevant to the investigation, as a safety investigator.

Section 50V – People assisting safety investigators

This section inserts provisions which allow a person to assist a safety investigator in the execution of their duties, if it is necessary and reasonable and the person follows the directions given by the safety investigator. Powers exercised, or functions or duties performed by a person's assisting, in accordance with the directions of a safety investigator are taken to have been exercised or performed by the safety investigator.

Section 50W – Conduct of safety investigations

This section sets out the way safety investigations may be conducted. A safety investigator may conduct an investigation in the way they consider appropriate, given the purpose of the investigation.

The investigation may deal with events and circumstances prior to the boating accident or other matter relating to the accident. A safety investigator may rely on evidence about the matter being investigated, which has been given in civil or criminal proceedings, or in any coronial or other judicial inquiry.

The Minister can determine at any time to discontinue a marine safety investigation and require the marine safety investigator to prepare and submit a report.

Section 50X – People to give information, produce documents or answer questions

This section enables a safety investigator to give a notice to a person requiring the person to give the safety investigator information, to produce a document, or to answer questions before a stated inspector.

The notice must specify the period within which the person is required to comply with the notice, which must be at least 14 days after the notice is given to the person. It must also specify the manner in which the person is required to comply with the notice, the time and place at which the person is expected to appear (if applicable), and that it is an offence not to comply with the notice.

A safety investigator may require answers to questions given by a person, who is required by the notice to answer questions, to be given under oath or affirmation, and to be given either orally or in writing. The safety investigator to whom information or answers are verified or given may administer the oath or affirmation.

If the place specified in the notice is more than 16 kilometres from the person's place of residence when the person receives the notice, the person is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in connection with appearing before the safety investigator. Failing to comply with a notice given under this section is an offence. A person found guilty of this offence against this section is liable for a 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.

Section 50Y – Safety investigation reports

This section sets out the particulars of a safety investigation report into a boating accident or other matter. After a safety investigation is completed, or if the investigator is requested to conclude an investigation under the previous section, the safety investigator must prepare and submit a safety investigation report to the Minister.

The report must include findings as to the facts of the boating accident or matter; the cause or most likely cause of the accident; and any recommendations to prevent the recurrence of similar accidents or matters. At any time, the marine safety investigator may submit an interim report to the Minister.

The safety investigator must not include an adverse comment in relation to a person in a final safety investigation report unless the safety investigator has given the person a reasonable opportunity to respond to the proposed comment.

Section 50Z – Actions by Minister following safety investigations

This section sets out the courses of action the Minister may take after receiving a safety investigation report.

The Minister may: choose to take no further action; take action to improve safety procedures; reprimand the holder of a boat driving licence for incompetence or misconduct; inform the State or Commonwealth authority, which granted the boat driving licence about the report and any action taken after the report; recommend that criminal or other legal proceedings be taken against a person.

Before making a final decision on action under this section, the Minister can conduct a further investigation of the matter; or can refer the matter to a safety investigator for further investigation and report. The Minister may refer the matter to the original safety investigator, or to a different safety investigator.

The Minister must give written notice to the holder of a boat driving licence of any action taken against them, as well as a copy of the final safety investigation report. If a person holds more than one boat driving licence, action taken under this section can affect any of the person's boat driving licences.

Section 50ZA – Public release of safety investigation reports and recommendations

This section enables a safety investigator to make recommendations to the Minister at any time during the course of a safety investigation. It also empowers the Minister to publicly release recommendations, if it is in the interests of safety to do so.

The Minister can publicly release a report submitted to him or her by a safety investigator, either wholly or in part, unless doing so might prejudice the rights of any person in criminal proceedings connected with the matter.

Section 50ZB – Protection from liability

This section provides that if a person supplies information to the Minister or a safety investigator in connection with a safety investigation, civil proceedings for defamation or breach of confidence in respect of that information cannot be brought against the Territory, the Minister, the safety investigator, an inspector or the person who supplied the information.

New Part 5D – Enforcement

New Part 5D includes provisions in relation to enforcement of the Act.

New Division 5D.1 – Definitions – pt 5D

This new division contains definitions for Part 5D.

Section 50ZC – Definitions – pt 5D

This section inserts two new definitions for Part 5D; *enter* - meaning a place of inspection or boat and includes to board a boat; and, *place of inspection* - which means a place, premises, vehicle or boat.

New Division 5D.2 – Inspectors

This new division contains provisions in relation to inspectors appointed under the Act.

Section 50ZD – Inspectors

This section places the existing provisions in relation to the appointment of inspectors previously under Part 2, Administration, section 7 of the Act into this Division which relates specifically to inspectors and their powers under the Act.

Section 50ZE – Identity cards

This section places the existing provisions in relation to the issuing of identity cards to inspectors previously under Part 2, Administration, section 8 of the Act into this Division which relates specifically to inspectors and their powers under the Act.

Section 50ZF – Powers not to be exercised before identity card shown

This section provides that an inspector must show his or her identity card before exercising his or her powers under the Act.

Section 50ZG – People assisting inspectors

This section inserts provisions which allow a person to assist an inspector in the execution of their duties, if it is necessary and reasonable, and the person follows the directions given by the inspector. Powers exercised, or functions or duties performed by a person assisting, in accordance with the directions of an inspector, are taken to have been exercised or performed by the inspector.

New Division 5D.3 – Entry and inspection

This new division includes provisions in relation to entry and inspection under the Act.

Section 50ZH - Entering places of inspection and boats in lake areas

This section provides that an inspector may enter a place of inspection with consent, in accordance with a warrant, or to protect life or property, if the inspector believes on reasonable grounds the circumstances are so serious and urgent that immediate entry to the premises without authority of a warrant is necessary. New section 50ZH(1)(c) applies to both property and life because there may be situations where a boat could present a serious risk to property - of the boat itself or nearby boats or a jetty, etc. While it may not be clear that a person is present, there may be a clear indication that a boat is sinking or adrift and may cause further property damage or environmental damage if it sinks due to an oil leakage, etc. It is more practical for the inspector to be able to take action if it appears there is an emergency without having to ascertain whether a person is present or not.

New section 50ZH(1)(d) states that an inspector may also enter a boat if the inspector believes on reasonable grounds that an offence against the Act is being or has been committed. It is important for inspectors to be able to act quickly if they suspect an offence, e.g. of failing to wear life jacket, because in

many cases, the temporary nature of the use of a boat will make it impractical to obtain a warrant. The inspection power is limited to boats and will not include the power to seize things which will require a warrant.

An inspector may enter a place, premise or a boat at any time to gain consent.

50ZI - Producing identity cards

This section requires that an inspector must not remain at a place of inspection entered under this division if, on request by the occupier, the inspector does not produce the inspector's identity card.

50ZJ – Consent to entry

This section requires that an inspector must produce his or her identity card when seeking consent to enter a premises or a boat and tell the occupier the purpose for which he or she is seeking entry and that anything found and seized may be used in evidence in court and that consent may be refused. In the event the occupier grants consent the inspector must ask the occupier to sign a written acknowledgement detailing that the occupier has been provided with the advice required by this section and provide the occupier with a copy of the acknowledgement. For the purposes of this section unless the contrary is proven, a court must presume that the occupier did not consent to an entry if the requirements of this section have not been met.

Section 50ZK – Warrants

This section inserts provisions that enable an inspector to apply to a magistrate for a warrant and enter premises for inspection and to seize evidence. The application must be in writing and state the grounds on which the warrant is sought. The magistrate may issue the warrant detailing the hours when it may be executed and that evidence may be seized only if satisfied there are reasonable ground for suspecting an offence against the Act and that the evidence being sought is or maybe at the place within the next 14 days.

Section 50ZL – Warrants – application made other than in person

This section inserts provisions that detail the methods by which a warrant may be sought from a magistrate, including by phone, fax, email, radio or other form of communication the inspector considers reasonable in the circumstance where the circumstances are urgent or there are other special circumstances. This section details the considerations and processes for initiating and confirming the warrant in these circumstances.

Section 50ZM – General powers on entry

This section inserts provisions detailing the powers of an inspector who enters premises under this division. This includes the types of evidence that can be taken and methods of taking the evidence. It is an offence against this section if a person fails to take reasonable steps to help the inspector in collection of the information being sought under the warrant. A person found guilty of an offence against this section is liable for a penalty of 50 penalty units.

Section 50ZN – Power to seize evidence

This section inserts provisions detailing the requirements for an inspector who enters a place of inspection with a warrant. This includes that an inspector may seize things as evidence where the inspector believes on reasonable grounds that the thing is connected to an offence under the Act or a related law and the seizure is necessary to prevent the thing being concealed, lost, destroyed or used to commit or continue or repeat the offence being investigated. The inspector may also seize a thing where the inspector believes that the thing may pose a risk to a person, public safety, property or the environment. This section also details the actions an inspector can take in seizing the thing including its removal or restricting access to it. It is an offence against this section for a person to interfere with a thing that is seized. A person found guilty of an offence against this section is liable for a penalty of 50 penalty units.

New Division 5D.4 – Boarding of boats

This new division contains provisions in relation to the boarding of boats under the Act.

Section 50ZO – Facilitating boarding of boats

This section inserts provisions detailing the reasonable steps an inspector must take in requesting a person to allow an inspector to board a boat. It is an offence against this section for a person to fail to comply with the request. A person found guilty of an offence against this section is liable for a penalty of 50 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.

Section 50ZP – Directing boats after boarding

This section inserts provisions detailing what an inspector who has boarded a boat may direct a person to do, including stopping or manoeuvring the boat, adopting or maintain a stated course or speed or taking a boat to a stated place. It is an offence against this section for a person to fail to comply with a direction. A person found guilty of an offence against this section is liable for a penalty of 50 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.

Section 50ZQ – Requiring information after entry

This section inserts provisions detailing the information a person may be required to provide to an inspector, including the person's name, residential address, date of birth and evidence of the person's identity. The inspector may require information only if the information is to assist the inspector to carry out the inspector's functions under this Act. It is an offence against this section for a person to fail to comply with the request. A person found guilty of an offence against this section is liable for a penalty of 50 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.

New Division 5D.5 – Gathering Information

This new division contains provisions in relation to gathering of information under the Act.

Section 50ZR – Masters to answer questions

This section inserts provisions that detail that an inspector may require the master of a boat to answer questions about the nature or operation of the boat. It is an offence against this section for a person to fail to answer the questions. A person found guilty of an offence against this section is liable for a penalty of 50 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.

Section 50ZS – Masters to produce records

This section inserts provisions that detail that an inspector may require the master of a boat to produce records in the possession of the master about the nature or operation of the boat. It is an offence against this section for a person to fail to provide the records. A person found guilty of an offence against this section is liable for a penalty of 50 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.

Section 50ZT – People to provide information about owners or masters of boats

This section inserts provisions that detail that an inspector may require a person to provide information about the identity and address of the owner or master of a boat. The information may be provided orally or by the production of documents or records in the person's possession. It is an offence against this section for a person to fail to provide the information in their possession or orally. A person found guilty of an offence against this section is liable for a penalty of 50 penalty units.

Section 50ZU – Boat licences

This section inserts provisions that detail that an inspector may require a person to produce the person's boat license or permit if the person purports to be the holder of a permit or licenses and the person is operating a boat on a lake. It is an offence against this section for a person to fail to provide the licence or permit immediately or within 24 hours or other time agreed by the inspector. A person found guilty of an offence against this section is liable for a penalty of 50 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.

New Division 5D.6 – Dealing with things seized

This new division contains provisions in relation to dealing with things seized under the Act.

Section 50ZV – Receipts for things seized

This section inserts provisions detailing the actions an inspector must take after a thing has been seized and includes that the inspector must provide a receipt of the thing seized to the person from whom the thing was seized or leave the receipt in a reasonably secure and conspicuous place when it is not possible to provide it to the person.

Section 50ZW – Access to things seized

This section inserts provisions detailing the access a person has to a seized thing to inspect it or if it's a document take extracts or make copies of it.

Section 50ZX – Return of things seized

This section inserts provisions detailing the actions an inspector must take to return a thing seized including any reasonable compensation due to the owner for loss of a thing where a prosecution has not been commenced within 90 days or the court does not find the offence proved in a prosecution for an offence relating to the thing.

Section 50ZY – Disposal of things seized

This section inserts provisions detailing the actions an inspector may take in disposing of a thing seized including that the inspector must take all reasonable steps to return the thing to the owner.

New Division 5D.7 – Detaining Boats

This new division contains provisions in relation to detaining boats under the Act.

Section 50ZZ – Inspectors may detain boats

This section inserts provisions that allow an inspector to detain a boat and take it to a holding area, where an inspector reasonably suspects the boat is or has been involved in an offence against the Act. This section also details the actions an inspector must take in advising the owner of the boat that the boat has been detained. A person commits an offence against this section if they operate or cause a boat that has been detained to operate. A person found guilty of an offence against this section is liable for a penalty of 50 penalty units.

Section 50ZZA – Territory to pay costs of detention

This section inserts provisions detailing that the Territory is liable to pay costs to the owner of a boat detained where there was no reasonable or probable cause for detaining the boat. This includes provisions for a court or ACAT to determine the cost where the owner and the Territory cannot agree on the amount to be paid.

Section 50ZZB – Owner to pay costs of detention

This section inserts provisions detailing that the owner of a boat detained under section 50ZZ is liable to pay costs to the Territory where the Territory incurred costs in detaining the boat. This includes provisions for a court or ACAT to determine the cost where the Territory and the owner cannot agree on the amount to be paid.

Clause 29 – Evidence – Section 52

This clause omits the reference to section 15 and substitutes new sections 15, 20, 20A, or 20B in relation to evidence that a sign was erected, placed or displayed within a lake area.

Clause 30 – New section 53

This clause inserts a new section heading in relation to self-incrimination and exposure to civil penalty under the Act.

Section 53 – Privileges against self-incrimination and exposure to civil penalty

This section inserts a new provision that details that a person is not excused from giving information, producing a document or thing or answering a question under section 45 (Owners and operators to provide information about life jackets), section 47B (Owners and operators to provide information about safety equipment), 50Q (Obligation to produce license and give particulars), section 50X (People to give information, produce documents or answer questions), section 50 ZR (Requiring information after entry) or division 5D.5 (Gathering information, other than section 50ZV – Boat licences on the grounds that the information, production of the document or thing, or the answer to the question, might tend to incriminate the person or expose the person to a penalty).

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 an offence against section 45 (Owners and operators to provide information about life jackets), section 47B (Owners and operators to provide information about safety equipment), section 50Q (Obligation to produce license and give particulars), section 50X (People to give information, produce documents or answer questions), section 50 ZR (Requiring information after entry) or division 5D.5 (Gathering information, other than section 50ZV – Boat licences) or any other offence in relation to the falsity of the information, document, other thing, or answer.

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

This clause inserts new provisions to section 56(2) for additional matters to be dealt with by regulation which include; requirements for the registration of boats; equipment to be carried on a boat; 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; the qualifications that a person requires to operate a power boat; prohibiting a person from operating a kind of boat; lighting, marking, removing, and disposing of obstructions to navigation in a lake area; safety, including requirements for the following: safety equipment of boats; navigation; operating a boat; the conduct of a person on a boat; signals and lights and their use on a boat; avoiding collisions; the use of a lake or lake area and preventing a person from interfering with a boat or lights, navigation aids, or equipment. The clause also updates section 56(4) to detail the current maximum penalty of 30 penalty units permitted for offences against a regulation provision, in accordance with the Guide for Framing Offences (JACS, April 2010).

This clause inserts new provisions to section 56(3) which disapplies sections 47(5) and (6) of the *Legislation Act 2001*, which provide that any instrument that is applied as law in the ACT is taken to be a notifiable instrument. Section 56(3) also disapplies section 47(3) which provides that the relevant instrument may make provision about the matter by applying a law of another jurisdiction, or an instrument, as in force only at a particular time. Section 47 (3) will always apply unless an Act, subordinate law or disallowable instrument expressly excludes it in a particular case. For this reason, provision has been made for it to be excluded.

The reason for disapplying the application of section 47(5) and 47(6) is to avoid breaching copyright by publishing Australian Standards as notifiable instruments on the Legislation Register. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia.

Many Australian and International Standards are available for viewing at the National Library of Australia (NLA). An online search of the NLA's catalogue can be undertaken to identify which Standards it has available. To further assist with public access, copies of the relevant standards are available for viewing upon request by members of the public at the Environment, Planning and Sustainable Development Directorate's offices. Contact and address details are available on the Directorate's website, <http://www.environment.act.gov.au/about/contact>.

Clause 32 – New sections 57 to 59

This clause inserts new provisions in relation to exemptions which can be granted by the Minister from certain provisions of the Act.

Section 57 – Exemptions by Minister

This section enables the Minister to grant exemptions from Part 4 of the Act relating to use of a lake. The exemptions may cover a person or a vessel. The exemption must be given to each person to whom it applies, and may specify conditions.

The Minister cannot grant an exemption or impose conditions, unless satisfied the exemption is in the public interest and is made taking into consideration

any matters prescribed by regulation and that the exemption and any conditions will not jeopardise the safety of a person on board a vessel, or a vessel; or compromise the conduct of a safety investigation.

Section 58 – Breaching conditions of exemptions

This section provides an offence for a person, who operates a boat on a lake or performs an action in a lake area, which has been granted an exemption by the Minister and the person fails to comply with the conditions. A person found guilty of this offence against this section is liable for a penalty of 50 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.

Section 59 - Compensation—acquisition of property

This section inserts provisions in relation to the payment of compensation where the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms and where the parties cannot agree on the amount of compensation the parties proceeding to a court of competent jurisdiction or ACAT for determination of the amount.

Clause 33 – New schedule 3

This clause inserts a map of the area declared as the Kingston Harbour.

Clause 34 – New schedule 4

This clause inserts a map of the area declared as the Molonglo Reach.

Clause 35 – Dictionary, note 2

This clause inserts the additional terms; *Commonwealth, national capital authority, Self-Government Act and state*, to note 2 in the dictionary for the Act.

Clause 36 – Dictionary, new definitions

This clause inserts a new definition to the Dictionary for *boating accident* which includes an accident which results in a loss of, or injury to, a person or boat, damage to or from a boat, a fire on a boat, damage to the environment caused by a boat or substance discharged from a boat but does not include an event prescribed by regulation.

Clause 37 – Dictionary, new definition of *Commonwealth Minister*

This clause inserts a new definition to the Dictionary for *Commonwealth Minister* which means the minister responsible for administration of the *Lakes Ordinance 1976 (Cmlth)*.

Clause 38 – Dictionary, new definitions

This clause inserts new definitions to the Dictionary for the Act including; *domestic commercial vessel* which means a vessel as defined in the Marine Safety (Domestic Commercial Vessel) National Law and *enter* which means to enter a place of inspection or boat for the purposes of Part 5D (Enforcement).

Clause 39 – Dictionary, new definition of *high level*

This clause inserts a new definition to the Dictionary for the Act for *high level* which means a concentration of 0.15g or more of alcohol in 210L of breath or 100mL of blood.

Clause 40 – Dictionary, definition of *inspector*

This clause substitutes the existing definition in the Act for *inspector* with; *inspector* means a person who is an inspector under section 50ZE (Inspectors).

Clause 41 – Dictionary, new definition of *Kingston Harbour*

This clause inserts a new definition to the Dictionary for the *Kingston Harbour* which means the lake area defined in clause 33, Schedule 3 of the Bill.

Clause 42 – Dictionary, definition of *lake*

This clause substitutes the existing definition for a *lake* in the dictionary with a new definition that inserts Kingston Harbour, Lake Burley Griffin and the Molonglo Reach as declared lakes and any other lake declared by the Minister under section 5 of the Act. The clause also adds a new note to clarify that the definition of *lake area* for the purposes of the Act includes Lake Burley Griffin to the extent it is Territory land.

Clause 43 – Dictionary, definition of *Lake Burley Griffin*

This clause inserts a new definition of *Lake Burley Griffin* meaning the area of the Molonglo River between Scrivener Dam and Molonglo Reach (as defined in clause 34, Schedule 4 of the Bill) but does not include Kingston Harbour (as defined in clause 33, Schedule 3 of the Bill).

Clause 44 – Dictionary, new definition of *low level*

This clause inserts a new definition to the Dictionary for the Act for *low level* for part 5A (Drug and alcohol offences) which means a concentration of 0.05g or more, but less than 0.08g, of alcohol in 210L of breath or 100mL of blood.

Clause 45 – Dictionary, new definitions

This clause inserts new definitions to the Dictionary for the Act including; *Marine Safety (Domestic Commercial Vessel) National Law* which means the national law as set out in schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cwlth) and *marine pilot* which means a person who has the conduct of, but does not belong to, a boat and master which means the person having the command or charge of a boat, but does not include a marine pilot.

Clause 46 – Dictionary, new definition of *medium level*

This clause inserts a new definition to the Dictionary for the Act for *medium level* for part 5A (Drug and alcohol offences) which means a concentration of 0.08g or more, but less than 0.15g, of alcohol in 210L of breath or 100mL of blood.

Clause 47 – Dictionary, new definitions

This clause inserts new definitions to the Dictionary for the Act including; *Molonglo Reach* which means the area outlined in bold on the plan in clause 34, schedule 4 of the Bill and *obstruction to navigation* which means any thing in or on a lake that is either a risk to the safe navigation of boats; or moored, berthed or placed in contravention of this Act or the Marine Safety (Domestic Commercial Vessel) National Law; but does not include anything lawfully constructed in or over a lake.

Clause 48 – Dictionary, new definition of *operate*

This clause inserts a new definition for *operate* to the dictionary for the Act which means to determine or exercise control over the course or direction of the boat or over the means of propulsion of the boat (whether or not the boat is underway) and to attempt to operate a boat on a lake area. To operate a boat includes; supervising a person under 17 years old to operate a boat, launching a boat, anchoring a boat and mooring a boat. This maintains consistency of terminology throughout the Act.

Clause 49 – Dictionary, definition of *operator*

This clause omits the existing definition of *operator* which is replaced by the new definition in clause 48. This maintains consistency of terminology throughout the Act.

Clause 50 – Dictionary, definition of *owner*

This clause inserts a new definition to the Dictionary for the Act for *owner* of a boat. Under the new definition *owner* includes a person who 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 the Commonwealth. *Owner* also includes any person who exercises functions of the owner, is a charterer or joint owner of the boat. The section also makes it clear that ownership can be through a mortgage, charter, lease or hire.

Clause 51 – Dictionary, new definitions

This clause inserts a new definition to the Dictionary for the Act for *place of inspection* for part 5D (Enforcement). The new definition references new section 50ZC which states that *place of inspection* means a place, premises, vehicle or boat.

This clause also inserts a new definition to the Dictionary for the Act for *recreational boat* which means a boat other than a domestic commercial vessel, or a regulated Australian vessel as defined in the *Navigation Act 2012 (Cwlth)* and for Division 5.2A (Other safety equipment), does not include a canoe, kayak, kiteboard, paddleboard, sailboard or surfboard.

Clause 52 – Dictionary, new definition of *relevant period*.

This clause inserts a new definition to the Dictionary for the Act for *relevant period* for part 5A (Drug and alcohol offences) which means the period that begins when a person stops operating a boat and ends at the latest time when either 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 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.

Clause 53 – Dictionary, new definitions

This clause inserts a new definition to the Dictionary for the Act for *required safety equipment* for a boat, and *required standards* for safety equipment which means as defined in Division 5.2A, section 47 of the Bill.

Clause 54 – Dictionary, new definition of *RMS*

This clause inserts new definitions to the Dictionary for the Act for *RMS* which means the NSW Roads and Maritime Service (RMS) as defined in section 46 of the *Transport Administration Act 1988 (NSW)*.

Clause 55 – Dictionary, new definitions

This clause inserts new definitions to the Dictionary for the Act for *safety investigation* as defined under section 50T of the Bill, *safety investigation report* as defined under section 50Y of the Bill and *safety investigator* as defined under section 50U of the Bill.

Clause 56 – Dictionary, new definition of *special level*

This clause inserts a new definition to the Dictionary for the Act for *special level* for part 5A (Drug and alcohol offences) which means a concentration of more than 0g, but less than 0.05g, of alcohol in 210L of breath or 100mL of blood.

Clause 57 – Dictionary, definition of *sports club*

This clause substitutes the existing definition of *sports club*, to clarify that the definition includes a person who is a member of the sports club.

Clause 58 – Dictionary, definitions of *Sylvia Curley bridge*

This clause omits the definitions of *Sylvia Curley bridge* as it is to longer representative of the boundary defining the Molonglo Reach lake area (as now detailed in clause 36, Schedule 4 of the Bill).

Clause 59 – Dictionary, new definition of *unsafe*

This clause inserts a new definition of *unsafe* in relation to a boat, detailing the conditions which would make the boat a danger to human life, including its condition, condition of equipment on the boat and manner in which things are stored on the boat.

Clause 60 – Dictionary, definition of *visible*

This clause omits the definitions of *visible*, as it is not a term used in the provisions in the Bill. The existing lighting provisions relating to visibility in the Act will be included in the new regulations.

Clause 61 – Lakes Act 1976 – renumbering

This clause details that the Act will be renumbered on the commencement of the last section of this Act.

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

This schedule inserts for the strict liability offences under sections 11A and 11B, section 15 and sections 18 to 43 of the Bill penalty units and infringement amounts in the *Magistrates Court (Lakes Infringement Notices) Regulation 2004*.