

EXPOSURE DRAFT



EXPOSURE DRAFT (18 February 2022)

Australian Capital Territory National Land (Lakes) Ordinance 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Nola Marino [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

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Preliminary **Part 1**
Preliminary **Division 1**

Section 1

Part 1—Preliminary

Division 1—Preliminary

1 Name

This Ordinance is the *Australian Capital Territory National Land (Lakes) Ordinance 2022*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	1 April 2022.	1 April 2022

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under the *Seat of Government (Administration) Act 1910*.

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Part 1 Preliminary

Division 2 Simplified outline of this Ordinance

Section 4

Division 2—Simplified outline of this Ordinance

4 Simplified outline of this Ordinance

This Ordinance regulates boating and other activities on a lake and in the surrounding area. Rules may prescribe areas that are suitable or unsuitable for particular activities, and some activities are generally prohibited or require a permit. A lake area may be closed for reasons of safety or for an event.

The Ordinance includes requirements for the safe operation of boats, including drug and alcohol offences, and provision for the reporting and investigation of boating accidents.

Inspectors, who include police officers, are given powers to enforce the Ordinance and to investigate matters relating to its provisions.

Division 3—Interpretation

5 Definitions

In this Ordinance:

accompanied sailing boat means a boat that:

- (a) has a sail; and
- (b) is engaged in a training session organised by a sports club or school; and
- (c) is accompanied by a power-driven boat capable of being used for rescue purposes;

but does not include a boat when it is being propelled (in whole or part) by mechanical power.

all-round light means a light on a boat that shows an unbroken light over an arc of visibility of 360 degrees.

appropriate lifejacket means a lifejacket that:

- (a) meets any of the standards or specifications prescribed by the rules for the purposes of this paragraph; and
- (b) does not rely solely on oral inflation for buoyancy; and
- (c) is the correct size for the wearer; and
- (d) was:
 - (i) purchased or otherwise acquired new no more than 12 months before the date it is being worn by a person or carried on a boat; or
 - (ii) serviced no more than 12 months before the date it is being worn by a person or carried on a boat; or
 - (iii) if the manufacturer's instructions for the lifejacket allow a period longer than 12 months before the first service is conducted or between services—purchased (or otherwise acquired new) or serviced within that longer period before the date it is being worn by a person or carried on a boat.

associated work includes a wharf or jetty that is:

- (a) owned by the Australian Capital Territory or the Commonwealth; and
- (b) erected in a lake area.

boat includes a launch, yacht, canoe, raft, pontoon and anything else that can carry people or goods through or on water.

boating accident means any of the following involving a boat in a lake area:

- (a) death of, or injury to, a person on the boat;
- (b) loss of a person from the boat;
- (c) death of, or injury to, a person that is caused by the boat;
- (d) loss, or presumed loss, of the boat (including the sinking or abandonment of the boat);
- (e) capsizing, grounding or flooding of the boat;
- (f) collision of the boat with another boat or with an object;

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Part 1 Preliminary

Division 3 Interpretation

Section 5

- (g) the boat being disabled and requiring assistance;
- (h) a fire on the boat;
- (i) damage caused to the boat (including any structural failure);
- (j) damage to the environment caused by the boat or by a substance on, or discharged from, the boat;
- (k) an incident that causes a risk of the events mentioned in paragraphs (a) to (j) happening.

channel means an area of a lake that, whether or not indicated by navigation marks, provides a passage for boats.

Chief Executive of the National Capital Authority means the Chief Executive of the National Capital Authority appointed under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

chief police officer means the police officer responsible to the Commissioner of Police of the Australian Federal Police for the day-to-day administration and control of police services in the Australian Capital Territory.

commercial activity means any of the following:

- (a) selling or offering for sale food, drink or other things;
- (b) letting or offering to let on hire bicycles, boats or other things;
- (c) carrying or offering to carry passengers or things in or on a boat for fee or reward;
- (d) carrying on the business of boat repair;
- (e) undertaking any other activities prescribed by the rules for the purposes of this paragraph.

Delegate for Lakes means the Delegate for Lakes appointed under section 158.

domestic commercial vessel has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law.

dragon boat means a boat that is:

- (a) carvel constructed; and
- (b) designed to be propelled with paddles by a crew of 10 or more people; and
- (c) built so as to float if swamped or capsized.

dragon boat operating requirements: see section 6.

drug means:

- (a) a substance specified in Schedule 1 to the *Road Transport (Alcohol and Drugs) Act 1977 (ACT)* as in force at the commencement of this Ordinance; or
- (b) a controlled drug within the meaning of section 301.1 of the *Criminal Code*; or
- (c) any other substance that, if taken by a person (whether on its own or in combination with alcohol), may influence the operation of a boat by the person.

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Preliminary **Part 1**
Interpretation **Division 3**

Section 5

entity includes an unincorporated body and a person (including a person occupying an office or a position).

exercise a function includes perform the function.

fairway means that part of an area of a lake that is usually used by boats for navigating through the area.

foreshores, in relation to a lake, means the area of land from the level of water in the lake to 100 metres beyond the high water level of the lake, but does not include land:

- (a) held under lease from the Commonwealth; or
- (b) occupied:
 - (i) with the authority of the Australian Capital Territory or the Commonwealth; or
 - (ii) under a law in force in the Australian Capital Territory.

function includes power, duty or authority.

general safety equipment for a boat means the following equipment:

- (a) a sound signal (such as an airhorn, bell or whistle);
- (b) a waterproof torch;
- (c) if the boat has an electric start motor, a gas installation, a fuel stove or a battery—at least one fire extinguisher, and other fire extinguishers if potential sources of fire and the size of the boat require it;
- (d) if the boat has a covered bilge or a closed under-floor compartment that is not an airtight void space—as many bilge pumps as are required to ensure that the pumps are capable of draining each compartment;
- (e) if the boat is less than 6 metres in length and has only one independent means of propulsion—at least one paddle or a pair of oars with rowlocks;
- (f) if the boat is not a sailing boat less than 6 metres in length—an anchor with a chain or line;
- (g) if the boat is not a sailing boat with a permanently enclosed self-draining hull or a boat mentioned in paragraph (d)—a bailer or bucket.

Example: For the purposes of paragraph (e), one or more sails on a boat are one independent means of propulsion.

inspector means a person who is an inspector under section 159.

keep its course: see subsection 60(2).

keep out of the way: see subsection 60(1).

lake means:

- (a) Lake Burley Griffin; or
- (b) any other area of National Land declared by the Minister to be a lake under section 157.

Note: This Ordinance applies to the lake area of Lake Burley Griffin to the extent that it is National Land (see section 8). The *Lakes Act 1976* (ACT) and instruments made under that Act apply in relation to the remaining area of Lake Burley Griffin.

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Part 1 Preliminary

Division 3 Interpretation

Section 5

lake area means an area consisting of a lake, the foreshores of the lake and the islands (if any) in the lake.

Lake Burley Griffin means the waters of the Molonglo River between Scrivener Dam and Molonglo Reach (within the meaning of the *Lakes Act 1976 (ACT)* as in force at the commencement of this Ordinance), but does not include Kingston Harbour (within the meaning of that Act).

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

Marine Safety (Domestic Commercial Vessel) National Law means the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

Note: The Marine Safety (Domestic Commercial Vessel) National Law is set out in Schedule 1 to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and, when applying as a law of the Commonwealth, may be referred to as the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth (see section 4 of that Act).

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

masthead light means a light on a boat that shows an unbroken white light over an arc of visibility of 225 degrees, showing from anywhere ahead of the boat to just behind the beam of the boat on both sides.

mooring permit: see subsection 19(2).

National Capital Authority means the body continued in existence by the *Australian Capital Territory (Planning and Land Management) Act 1988*.

National Land has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988*.

night means the period between sunset on one day and sunrise on the next day.

obstruction to navigation means any thing in a lake area, other than a thing that is lawfully constructed in the lake area, that is:

- (a) a risk to the safe navigation of boats; or
- (b) moored, berthed or placed in contravention of this Ordinance or the Marine Safety (Domestic Commercial Vessel) National Law.

off-the-shore boat means a sailing boat that:

- (a) is not ballasted; and
- (b) does not have a cabin or fixed keel; and
- (c) does not have an engine; and
- (d) is not a sailboard.

operate, in relation to a boat, means determine or exercise control over, or attempt to determine or exercise control over, the course or direction of the boat or the means of propulsion of the boat, whether or not the boat is under way.

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owner, of a boat (including a boat that is mortgaged, chartered, leased or hired), includes a person who:

- (a) is registered as an owner of the boat in a certificate of registry, or a certificate or unique identifier issued for the boat, under a law of the Commonwealth, a State or the Northern Territory; or
- (b) is a joint owner of the boat; or
- (c) whether on the person's own behalf or on behalf of someone else:
 - (i) exercises any of the functions of the owner of the boat; or
 - (ii) publicly represents that the person has those functions or accepts the obligation to exercise those functions; or
- (d) is the charterer of the boat.

Note: For the purposes of paragraph (a), a certificate or unique identifier may be issued for a boat under the Marine Safety (Domestic Commercial Vessel) National Law.

personal watercraft means a power boat that:

- (a) has a fully enclosed hull; and
- (b) does not retain water that is taken on if it capsizes; and
- (c) is designed to be operated by a person lying, standing, sitting astride or kneeling on the boat, but not seated within the boat.

Example: A jet ski or a jet-powered surfboard.

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

police officer means a member or special member of the Australian Federal Police.

power boat means a boat propelled by mechanical power, and includes a boat under both power and sail.

prescribed drug means any of the following:

- (a) methylamphetamine;
- (b) delta-9-tetrahydrocannabinol;
- (c) N, α -Dimethyl-3,4-(Methylenedioxy)phenylethylamine (MDMA).

prescribed mooring area means an area prescribed for the purposes of section 14 to be a mooring area.

recreational boat means a boat other than:

- (a) a domestic commercial vessel; or
- (b) a regulated Australian vessel (within the meaning of the *Navigation Act 2012*).

regulated activity permit means a permit issued under Division 2 of Part 4 of the *Australian Capital Territory National Land (Unleased) Ordinance 2022*.

relevant period, in relation to the operation of a boat by a person, means the period beginning when the person stops operating the boat and ending at the latest time when:

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Part 1 Preliminary

Division 3 Interpretation

Section 5

- (a) a breath or oral fluid analysis of the person may be carried out under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) as it applies under section 114 of this Ordinance in relation to the person; or
- (b) a sample of the person's blood may be taken under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) as it applies under section 114 of this Ordinance in relation to the person.

Note The *Road Transport (Alcohol and Drugs) Act 1977* (ACT) provides for breath and oral fluid analysis and the taking of samples from a person.

required safety equipment, for a kind of recreational boat: see section 92.

required standards, for safety equipment: see section 93.

rules means rules made under section 166.

safety investigation means an investigation under section 122.

safety investigation report means a report under section 127.

safety investigator means a person appointed under section 123.

sailing boat means a boat with a sail, but does not include such a boat when it is being propelled (in whole or part) by mechanical power.

sidelights means lights on a boat that show:

- (a) an unbroken green light on the starboard side of the boat over an arc of visibility of 112.5 degrees, from ahead of the boat to just behind the beam of the boat on the starboard side; and
- (b) an unbroken red light on the port side of the boat over an arc of visibility of 112.5 degrees, from ahead of the boat to just behind the beam of the boat on the port side.

small boat means a dinghy, row boat or inflatable boat that:

- (a) is less than 3 metres in length; and
- (b) is built so as to float if swamped or capsized; and
- (c) is not a tender or a boat carrying an engine or fuel.

small tender means a tender that:

- (a) is less than 3 metres in length; and
- (b) only operates within 200 metres of the shore.

sports club means an entity established for a sporting or athletic purpose, and includes each person who is a member of the entity or who is participating in a competition that is run by the entity.

sternlight means a light on a boat that shows an unbroken white light behind the boat over an arc of visibility of 135 degrees.

tender means a boat that:

- (a) is less than 7.5 metres in length; and
- (b) only transports goods or people; and
- (c) only operates between its parent boat and the shore or another boat; and

(d) only operates within 1 nautical mile from its parent boat.

Transport for NSW means the body of that name constituted by the *Transport Administration Act 1988* (NSW), as in force at the commencement of this Ordinance.

under way, in relation to a boat, means the boat is not anchored, moored, aground or made fast to the shore or a jetty.

unsafe, in relation to a boat, means the boat is a danger to human life or to the environment because of any of the following:

- (a) the condition of the boat or equipment on the boat;
- (b) the manner or place in which cargo or equipment on the boat is stowed or secured;
- (c) the nature of the cargo on the boat;
- (d) the overloading of the boat.

6 Meaning of *dragon boat operating requirements*

A dragon boat meets the *dragon boat operating requirements* if:

- (a) the boat is operating:
 - (i) within 200 metres of the shore; and
 - (ii) in weather and water conditions that are not, and are not predicted to become, unsuitable for boating; and
- (b) each person on board while the boat is operating has undergone a safety drill in relation to the possible emergencies that may arise on the boat; and
- (c) if the boat is operating in a channel—the boat is operating on the starboard side (bowside) of the channel and not in the middle of the channel; and
- (d) if the boat is operating at night or when visibility is restricted because of a weather event—the boat is operating with lights on board or showing in compliance with section 75.

7 References to entering a place of inspection

A reference to entering a place of inspection is, in relation to a boat, a reference to boarding the boat.

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Part 1 Preliminary

Division 4 Application of this Ordinance

Section 8

Division 4—Application of this Ordinance

8 Application of this Ordinance—National Land

- (1) This Ordinance applies in relation to a lake or lake area to the extent that the lake or lake area is on National Land.

Note: The *Lakes Act 1976* (ACT) and instruments made under that Act apply in relation to the lakes and lake areas in the Australian Capital Territory to the extent that those lakes and lake areas are not National Land.

- (2) This Ordinance does not apply to the management, or regulation, of the taking of water on National Land.

Note: The ACT Executive has responsibility for the management and regulation of the taking of water on National Land (see subsections 6(2) and 29(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988*).

9 Application of this Ordinance—emergencies

- (1) This Ordinance (other than Part 5—Drug and alcohol offences) does not apply to:
- (a) the exercise, or purported exercise, by a relevant person of a function under the *Emergencies Act 2004* (ACT) for the purpose of:
 - (i) protecting life or property; or
 - (ii) controlling, extinguishing or preventing the spread of a fire; or
 - (b) action by:
 - (i) an authorised officer (within the meaning of section 14 of the *Environment Protection Act 1997* (ACT)); or
 - (ii) a person acting under the direction of such an authorised officer; to prevent, minimise or remedy serious or material environmental harm under Division 11.3 (Emergency powers) of Part 11 of the *Environment Protection Act 1997* (ACT).

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Note 2: An authorised officer includes the Environment Protection Authority appointed under the *Environment Protection Act 1997* (ACT) (see section 14 of that Act).

- (2) A person is a **relevant person** for the purposes of paragraph (1)(a) if the person is:
- (a) a member of any of the following services:
 - (i) the ACT Ambulance Service;
 - (ii) the ACT Fire and Rescue Service;
 - (iii) the ACT Rural Fire Service;
 - (iv) the ACT State Emergency Service; or
 - (b) any other person under the control of the chief officer (within the meaning of the *Emergencies Act 2004* (ACT)) for a service mentioned in paragraph (a); or
 - (c) an emergency controller (within the meaning of that Act); or

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Preliminary **Part 1**
Application of this Ordinance **Division 4**

Section 9

- (d) any other person under the control of an emergency controller (within the meaning of that Act); or
 - (e) a police officer.
- (3) A reference in this section to:
- (a) the *Emergencies Act 2004* (ACT); or
 - (b) the *Environment Protection Act 1997* (ACT);
- is a reference to that Act as in force at the commencement of this Ordinance.

EXPOSURE DRAFT

Part 2 Management and control of a lake

Section 10

Part 2—Management and control of a lake

10 Alterations in flow and water level

- (1) For the purposes of the maintenance and preservation of a lake and the maintenance, testing and preservation of associated works, the Minister may authorise:
 - (a) a raising or lowering, by any means, of the level of water in a lake; or
 - (b) stopping the flow, or reducing the rate of flow, of water from a lake; or
 - (c) the flow, or an increase in the rate of flow, of water from a lake.
- (2) The Minister must ensure that any action necessary to minimise any detriment, inconvenience and damage that may result from doing something under subsection (1) is taken.

11 Compensation for damage

- (1) If any land is injuriously affected by the doing of an act authorised by the Minister under subsection 10(1), the owner of the land:
 - (a) must be paid compensation by the Commonwealth; and
 - (b) is not entitled to any other remedy or relief;in respect of the injurious effect.
- (2) The amount of the compensation is to be determined by the Minister.
- (3) This section does not exclude or limit any liability of the Commonwealth or a person, apart from this section, in respect of a matter in relation to which compensation is not payable under this section.
- (4) In this section:

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

Part 3—Use of a lake

Division 1—Introduction

12 Simplified outline of this Part

The rules may prescribe the areas in which boating activities, such as launching or mooring a boat, and other activities such as swimming may take place, and may impose speed limits and other restrictions for boats (Division 2).

A lake area or part of a lake area may be closed for reasons such as safety or for an event (Division 3).

Power boats are more specifically regulated by Division 4.

Certain activities in a lake area such as the use of hovercraft, camping and waterskiing are generally prohibited by Division 5.

Division 6 prohibits various forms of interference with the use of a lake area by others.

Division 7 enables temporary admission charges to be imposed for access to a lake area or part of a lake area.

Division 8 enables the Minister to exempt a person from provisions in this Part.

13 Offences in Part do not apply to inspectors

An offence in this Part does not apply to an inspector exercising a function of the inspector under this Ordinance.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

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Part 3 Use of a lake

Division 2 Regulation of use

Section 14

Division 2—Regulation of use

14 Rules may prescribe areas to regulate use

The rules may prescribe an area within a lake area to be any of the following:

- (a) a launching area;
- (b) a beaching area;
- (c) an area where embarkation on to, or disembarkation from, a boat is not permitted;
- (d) an area where the landing of boats is not permitted;
- (e) a swimming area;
- (f) an area where swimming or diving is not permitted;
- (g) a mooring area.

15 General restrictions on boats

- (1) A person commits an offence of strict liability if the person:
 - (a) puts a boat in a lake or takes a boat from a lake at a place that is not in a launching area prescribed for the purposes of section 14; or
 - (b) beaches, cleans or repairs a boat in a lake area at a place that is not in a beaching area prescribed for the purposes of section 14; or
 - (c) embarks on to, or disembarks from, a boat on a lake in an area prescribed for the purposes of section 14 to be an area where embarkation and disembarkation are not permitted; or
 - (d) lands a boat on a lake shore, or an island in a lake, in an area prescribed for the purposes of section 14 to be an area where landing of boats is not permitted.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if the person's conduct is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

16 Restrictions on swimming and diving

- (1) A person commits an offence of strict liability if the person swims in a lake or dives into a lake in an area prescribed for the purposes of section 14 to be an area where swimming or diving is not permitted.

Penalty: 4 penalty units.

- (2) Subsection (1) does not apply if the swimming or diving is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person commits an offence of strict liability if the person:

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- (a) swims in Lake Burley Griffin between Kings Avenue Bridge and Commonwealth Avenue Bridge (including directly under either bridge); or
 - (b) dives into Lake Burley Griffin from Kings Avenue Bridge or Commonwealth Avenue Bridge, or between those bridges;
- and the swimming or diving is not in an area prescribed to be a swimming area for the purposes of section 14.

Penalty: 23 penalty units.

- (4) Subsection (3) does not apply if the swimming or diving is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

17 Buoys, wharves and jetties

- (1) A person may apply to the Minister in writing for approval to:
 - (a) anchor a buoy in a lake; or
 - (b) erect a wharf or jetty in a lake area.

Note: A fee may be prescribed for an application under this subsection (see section 164).

- (2) The Minister may give approval subject to any conditions the Minister thinks necessary.
- (3) A person commits an offence of strict liability if:
 - (a) the person anchors a buoy in a lake; and
 - (b) the anchoring has not been approved by the Minister.

Penalty: 4 penalty units.

- (4) A person commits an offence of strict liability if:
 - (a) the person erects a wharf or jetty in a lake area; and
 - (b) the erection has not been approved by the Minister.

Penalty: 4 penalty units.

18 Restriction on kind of boat that may use wharf or jetty

- (1) The rules may prescribe the kinds of boats that may use a wharf or jetty in a lake area.
- (2) A person commits an offence of strict liability if:
 - (a) the person attaches a boat to a wharf or jetty; and
 - (b) the rules prescribe the kind of boats that may use the wharf or jetty; and
 - (c) the boat is not of a kind prescribed by the rules.

Penalty: 4 penalty units.

EXPOSURE DRAFT

Part 3 Use of a lake

Division 2 Regulation of use

Section 19

19 Mooring permit

- (1) A person may apply to the Minister in writing for a permit to moor a boat in a prescribed mooring area.
Note: A fee may be prescribed for an application under this subsection (see section 164).
- (2) The Minister may give the person a written permit (a *mooring permit*), on such conditions (if any) as the Minister thinks fit.
- (3) A mooring permit remains in force for the period, which must not be longer than 12 months, stated in the permit.
- (4) A person who holds a mooring permit may apply to the Minister in writing for a condition of the permit to be varied or revoked.
- (5) The Minister may, at any time, by notice in writing to a person who holds a mooring permit:
 - (a) impose further conditions on the permit; or
 - (b) vary or revoke a condition of the permit (whether or not the Minister has received an application under subsection (4)).

20 Mooring offences

- (1) A person commits an offence of strict liability if:
 - (a) the person moors a boat on a lake; and
 - (b) the person does not hold a mooring permit.Penalty: 38 penalty units.
- (2) A person who holds a mooring permit commits an offence of strict liability if the person moors a boat on a lake at a place that is not in a prescribed mooring area.
Penalty: 23 penalty units.
- (3) Subsection (2) does not apply if the mooring is authorised by a regulated activity permit.
Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).
- (4) A person who holds a mooring permit commits an offence of strict liability if:
 - (a) the person moors a boat in a prescribed mooring area; and
 - (b) the boat is moored to something other than:
 - (i) a buoy anchored in accordance with an approval given by the Minister under section 17; or
 - (ii) a wharf or jetty erected in accordance with an approval given by the Minister under section 17.Penalty: 4 penalty units.
- (5) A person who holds a mooring permit commits an offence of strict liability if:
 - (a) the person moors a boat in a prescribed mooring area; and

- (b) the mooring does not comply with the conditions on the person's mooring permit.

Penalty: 4 penalty units.

21 Speed limits

- (1) The rules may prescribe the speed limit for operating a boat on a lake.
- (2) The rules may prescribe:
 - (a) a different speed limit for different parts of a lake; and
 - (b) a different speed limit for different classes of boat; and
 - (c) a different speed limit for different circumstances of operation.
- (3) A person commits an offence of strict liability if:
 - (a) the person operates a boat on a place in a lake; and
 - (b) the boat is operated at a speed greater than the speed limit applying to the operation of the boat in that place.

Penalty: 15 penalty units.

- (4) Subsection (3) does not apply if operating the boat at that speed is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

22 Restrictions on kinds of boats

- (1) The rules may prescribe:
 - (a) the kinds of boats that may be operated on all or part of a lake; or
 - (b) the purposes for which a kind of boat may be operated on all or part of a lake.
- (2) A person commits an offence of strict liability if:
 - (a) the person operates a boat on a lake; and
 - (b) the rules prescribe the kinds of boats that may be operated on the lake, or on the part of the lake where the person is operating the boat; and
 - (c) the boat is not of a kind prescribed by the rules.

Penalty: 15 penalty units.

- (3) A person commits an offence of strict liability if:
 - (a) the person operates a boat on a lake; and
 - (b) the rules prescribe the purposes for which a boat of that kind may be operated on the lake, or on the part of the lake where the person is operating the boat; and
 - (c) the boat is not operated for a purpose prescribed by the rules.

Penalty: 15 penalty units.

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Part 3 Use of a lake

Division 2 Regulation of use

Section 23

- (4) Subsections (2) and (3) do not apply if operating the boat is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

23 Signs

- (1) The Minister may, by a sign installed in a lake area, give information or warning to people using the lake area, including information or warning relating to:
- (a) areas prescribed for the purposes of section 14; or
 - (b) speed limits prescribed for the purposes of section 21; or
 - (c) restrictions prescribed for the purposes of section 18 or 22.
- (2) A person (other than the Minister or a person authorised by the Minister) commits an offence of strict liability if the person interferes with, changes or removes a sign installed under subsection (1).

Penalty: 4 penalty units.

Division 3—Closed areas

24 Closure of lake area for safety, maintenance etc.

- (1) The Minister may, by notice published on the NCA’s website, temporarily close a lake area or part of a lake area.
- (2) The Minister must not close an area under subsection (1) unless:
 - (a) the Minister is satisfied the condition of the waters of a lake or a part of a lake, as the case may be, is such as to constitute a threat to the health of a person entering those waters; or
 - (b) the Minister is satisfied the closure is reasonably necessary in connection with the maintenance or preservation of a lake or the maintenance, preservation or testing of an associated work; or
 - (c) the chief police officer has given the Minister a certificate in writing, stating that the chief police officer is satisfied the closure is reasonably necessary to enable police officers to carry out their duties in a lake or in a lake area; or
 - (d) the Minister is satisfied it is necessary or desirable to do so by reason of an emergency in a lake or a lake area; or
 - (e) the Minister is satisfied it is otherwise in the public interest to do so.
- (3) The Minister must, at least 5 business days before the area is to be closed, publish a notice about the proposal to close the area on the NCA’s website.
- (4) Subsection (3) does not apply in urgent circumstances.
- (5) The Minister may cause a boundary of a closed area to be marked by such means as the Minister thinks necessary.
- (6) A person commits an offence of strict liability if:
 - (a) the person enters or remains in an area that is closed under subsection (1); and
 - (b) an inspector has told the person that:
 - (i) the area is a closed area; and
 - (ii) the person must not enter, or remain in, the area.

Penalty: 38 penalty units.

25 Closing parts of lake area for events

- (1) The Minister may, by notice published on the NCA’s website, close a part of a lake area for a period for the conduct of an event by an entity.
- (2) The Minister must, at least 5 business days before the area is to be closed, publish a notice about the proposal to close the area on the NCA’s website that specifies the area to be closed, the period of closure, the event to be conducted and the entity that is to conduct the event.
- (3) A person commits an offence of strict liability if:

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Part 3 Use of a lake

Division 3 Closed areas

Section 26

- (a) the person enters or remains in an area that is closed under subsection (1); and
- (b) an inspector has told the person that:
 - (i) the area is a closed area; and
 - (ii) the person must not enter, or remain in, the area.

Penalty: 38 penalty units.

26 Access to leased or occupied land

The Minister must not close a part of a lake area under section 24 or 25 that provides access to land:

- (a) held under lease from the Commonwealth; or
- (b) occupied:
 - (i) with the authority of the Australian Capital Territory or the Commonwealth; or
 - (ii) under a law in force in the Australian Capital Territory.

Division 4—Power boats

27 Operating unregistered power boat

- (1) This section does not apply to the operation of a domestic commercial vessel.
- (2) A person commits an offence of strict liability if:
 - (a) the person operates a power boat on a lake; and
 - (b) the boat is not registered under a law of a State or the Northern Territory;
and
 - (c) the boat is not exempt from registration under a law of a State or the Northern Territory.

Penalty: 23 penalty units.

28 Breaching condition of power boat registration

- (1) This section does not apply to the operation of a domestic commercial vessel.
- (2) A person commits an offence of strict liability if:
 - (a) the person operates a power boat on a lake; and
 - (b) the boat is registered under a law of a State or the Northern Territory that allows the boat to be operated in the State or Territory; and
 - (c) the operation of the boat breaches a condition of its registration.

Penalty: 15 penalty units.

29 Restrictions—power boats

- (1) A person commits an offence of strict liability if:
 - (a) the person operates a power boat on a lake; and
 - (b) the person is not authorised to operate the power boat on the lake under section 30, 31 or 32.

Penalty: 38 penalty units.

- (2) A person commits an offence of strict liability if:
 - (a) the person is the owner of a power boat; and
 - (b) the person causes or allows someone else to operate the power boat on a lake; and
 - (c) the person is not authorised to operate the power boat on the lake under section 30, 31 or 32.

Penalty: 38 penalty units.

- (3) A person commits an offence if:
 - (a) the person is a passenger on a power boat on a lake; and
 - (b) another person operates the power boat; and

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Part 3 Use of a lake

Division 4 Power boats

Section 30

- (c) the other person is not authorised to operate the power boat on the lake under section 30, 31 or 32; and
- (d) the person knows the other person is not allowed to operate the power boat.

Penalty: 8 penalty units.

30 Use of power boats by interstate licence holders

- (1) This section applies to a person who holds a licence or permit (however described) under a law of the Commonwealth, a State or the Northern Territory that authorises the person to operate a power boat, or to cause or allow someone else to operate a power boat that the person owns.
- (2) Subject to subsection (3), the person is authorised under this section to operate a power boat on a lake, or cause or allow someone else to operate a power boat that the person owns on a lake, if the person complies with:
 - (a) any conditions or restrictions (however described) to which the person's licence or permit is subject; and
 - (b) any conditions prescribed by the rules for the purposes of this paragraph.

Example: For the purposes of paragraph (a), if a licence authorises a person to operate a power boat of up to a stated engine capacity, the person is authorised to operate a power boat (other than a domestic commercial vessel) of not more than that engine capacity on a lake.

- (3) Subsection (2) does not authorise the operation of a domestic commercial vessel.

31 Power boats operated under 10 knots

- (1) Subject to subsection (2), a person is authorised under this section to operate a power boat on a lake if:
 - (a) the power boat is operated at a speed of less than 10 knots; and
 - (b) the person complies with any conditions prescribed by the rules for the purposes of this paragraph.
- (2) Subsection (1) does not authorise the operation of:
 - (a) a domestic commercial vessel; or
 - (b) a personal watercraft.

32 Other use of power boats

- (1) A person may apply to the Minister in writing for authorisation to operate:
 - (a) a domestic commercial vessel on a lake; or
 - (b) any other power boat on a lake for a stated purpose.

Note: A fee may be prescribed for an application under this subsection (see section 164).

- (2) A sports club may apply to the Minister in writing for authorisation to operate a power boat on a lake in connection with the conduct of, or the training of persons for, a competition in an aquatic sport.

Note: A fee may be prescribed for an application under this subsection (see section 164).

- (3) The Minister may give an authorisation to a person who has applied under subsection (1), or a sports club that has applied under subsection (2), on such conditions (if any) as the Minister thinks fit.
- (4) A person or sports club authorised under subsection (3) may apply to the Minister in writing for a condition of the authorisation to be varied or revoked.
- (5) The Minister may, at any time, by notice in writing to a person or sports club authorised under subsection (3):
 - (a) impose further conditions on the authorisation; or
 - (b) vary or revoke a condition of the authorisation (whether or not the Minister has received an application under subsection (4)).
- (6) The Minister may, by notice in writing to a person or sports club authorised under subsection (3), revoke the authorisation if the person or sports club:
 - (a) fails to comply with a provision of this Ordinance; or
 - (b) fails to comply with a condition of the authorisation.
- (7) A notice under this section may be served on a sports club:
 - (a) by giving a copy of the notice to a member of the governing body of the club; or
 - (b) by sending it by prepaid post, addressed to the governing body of the club, at the club's last known address.

33 Operating power boat near swimming area

- (1) A person commits an offence of strict liability if the person operates a power boat:
 - (a) in a swimming area prescribed for the purposes of section 14; or
 - (b) within 60 metres of a swimming area prescribed for the purposes of section 14.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if:
 - (a) the person is operating the boat to undertake works or maintenance for the Commonwealth or the Australian Capital Territory; or
 - (b) the operation of the boat is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

EXPOSURE DRAFT

Part 3 Use of a lake

Division 5 Other prohibitions

Section 34

Division 5—Other prohibitions

34 Anchoring boats at night

- (1) A person commits an offence of strict liability if the person anchors a boat on a lake at night.

Penalty: 38 penalty units.

- (2) Subsection (1) does not apply if anchoring the boat is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

- (a) the boat was anchored to allow fishing by a hand-held rod and line; and
- (b) the defendant or someone else was fishing by a hand-held rod and line for most of the time the boat was anchored.

Note: A defendant bears a legal burden in relation to the matter in this subsection (see section 13.4 of the *Criminal Code*).

35 Use of hovercraft prohibited

- (1) A person commits an offence if the person operates a hovercraft in or over a lake area.

Penalty: Imprisonment for 6 months, or 38 penalty units, or both.

- (2) Subsection (1) does not apply if operating the hovercraft is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

36 Houseboats prohibited

- (1) A person commits an offence of strict liability if the person uses a boat as a houseboat or place of living in a lake area.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if the use is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

37 Camping or caravanning

- (1) A person commits an offence of strict liability if the person camps or keeps a caravan in a lake area at night.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if the camping or the keeping of the caravan is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

38 Waterskiing and other prohibited activities

- (1) A person commits an offence of strict liability if:
- (a) the person operates a boat on a lake; and
 - (b) another person is:
 - (i) being towed by the boat on or over the lake (including waterskiing or parasailing from the boat); or
 - (ii) wakeboarding or wakesurfing from the boat (including doing so without a rope).

Penalty: 23 penalty units.

- (2) A person commits an offence of strict liability if:
- (a) the person is being towed by a boat on or over a lake (including waterskiing or parasailing from the boat); or
 - (b) the person is wakeboarding or wakesurfing from a boat (including doing so without a rope).

Penalty: 23 penalty units.

- (3) Subsections (1) and (2) do not apply if the person's conduct is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

39 Commercial activity

A person commits an offence of strict liability if:

- (a) the person undertakes a commercial activity in a lake area; and
- (b) the activity is not authorised by a regulated activity permit.

Penalty: 23 penalty units.

EXPOSURE DRAFT

Part 3 Use of a lake

Division 6 Interference

Section 40

Division 6—Interference

40 Interfering with use of waters or land

A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the operation of the boat interferes with another person's lawful use of the lake area.

Penalty: 23 penalty units.

41 Interfering with other boats

A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the operation of the boat causes wash that damages or impacts unreasonably on another boat.

Example: Wash that causes other smaller boats to rock, or damages moored boats.

Penalty: 23 penalty units.

42 Interfering with dredges or immobile boats

A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the boat passes a dredge or other boat that:
 - (i) is engaged in underwater operations and restricted in its ability to manoeuvre; and
 - (ii) is displaying shapes or lights indicating safe passage on one side in accordance with section 77 or 78; and
- (c) the boat does not pass on the side of the dredge or other boat on which safe passage is indicated.

Penalty: 23 penalty units.

43 Interfering with navigation aids

A person commits an offence of strict liability if the person secures a boat to a device used for the safety of navigation that is in or on a lake.

Example: A beacon or a marine mark.

Penalty: 23 penalty units.

44 Interfering with equipment on boats

A person commits an offence if:

- (a) the person severs, unties or detaches any rope, cable, chain or other means by which a boat is secured on a lake; and

- (b) the person is not authorised to do so by the person who is operating the boat or the owner of the boat.

Penalty: 23 penalty units.

45 Interfering with safety equipment

A person commits an offence of strict liability if:

- (a) the person unties or detaches any safety equipment stored in a lake area;
and
- (b) the person does so for a purpose other than:
 - (i) securing the safety of any person; or
 - (ii) preventing the loss of, or damage to, property; or
 - (iii) maintenance or replacement of the equipment.

Penalty: 23 penalty units.

EXPOSURE DRAFT

Part 3 Use of a lake

Division 7 Admission charges

Section 46

Division 7—Admission charges

46 Power for Delegate for Lakes to charge for admission

- (1) The Minister may authorise the Delegate for Lakes to:
 - (a) charge for admission to a lake area or a part of a lake area during a period;
and
 - (b) specify the amount of the admission charge.
- (2) When authorised under subsection (1), the Delegate for Lakes may exclude a person who does not pay the admission charge from the lake area or part of the lake area.

47 Exclusive right of occupation and use

- (1) The Minister may, in writing, grant a person the exclusive right to occupy and use a part of a lake area specified in the instrument for the period and purpose specified in the instrument, and on any conditions specified in the instrument.
- (2) The Minister may also grant the person the right to charge an amount for admission to the part of the lake area, not exceeding the amount specified by the Minister.
- (3) If the Minister grants a person an exclusive right of occupation and use of a part of a lake area under subsection (1), the person may:
 - (a) exclude any person from that part of the lake area during the period for which the right is granted; or
 - (b) if the Minister grants the right to charge for admission:
 - (i) charge an amount, not exceeding the amount specified by the Minister, for admission to that part of the lake area during the period for which the right is granted; and
 - (ii) exclude any person who does not pay the admission charge.

Division 8—Exemptions

48 Exemption by Minister

- (1) The Minister may, on application in writing and by notifiable instrument, exempt a person or boat from a provision of this Part.
- (2) An exemption may be given subject to conditions.
- (3) The Minister must not exempt a person or boat unless the Minister is satisfied that the exemption:
 - (a) is in the public interest; and
 - (b) will not jeopardise the safety of a boat or a person on board a boat; and
 - (c) will not compromise the conduct of a safety investigation.
- (4) If the Minister is satisfied that an exemption will meet the requirements of subsection (3) only if the exemption is subject to conditions, the Minister must only grant the exemption subject to those conditions.

49 Breaching condition of exemption

A person commits an offence of strict liability if:

- (a) the person:
 - (i) operates a boat on a lake; or
 - (ii) carries out an action in a lake area; and
- (b) the person, or boat, is exempt from a provision of this Part; and
- (c) the exemption is subject to a condition; and
- (d) the person fails to comply with the condition.

Penalty: 38 penalty units.

EXPOSURE DRAFT

Part 4 Safety

Division 1 Simplified outline of this Part

Section 50

Part 4—Safety

Division 1—Simplified outline of this Part

50 Simplified outline of this Part

This Part includes the following kinds of requirements in relation to boating:

- (a) to avoid dangerous operation of boats (Division 2);
- (b) to follow right of way rules (Division 3);
- (c) for persons on boats (including passengers) to avoid dangerous behaviour (Division 4);
- (d) for lights and signals to be used on boats at night or when visibility is restricted (Division 5);
- (e) prohibitions of the unnecessary use of lights and signals (Division 6);
- (f) for the provision and use of lifejackets (Division 7);
- (g) for other safety equipment on boats (Division 8);
- (h) for safe doors and hatches on boats (Division 9).

Division 10 requires people in a lake area to follow safety directions from an inspector, and passengers on a boat to follow safety directions from the person responsible for the boat.

Division 2—Safe operation of boats

51 Operating unsafe boat

A person commits an offence if:

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

Penalty: Imprisonment for 6 months, or 38 penalty units, or both.

52 Reckless or negligent operation of boat

A person commits an offence if:

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

Penalty: Imprisonment for 6 months, or 38 penalty units, or both.

53 Climbing onto boat

A person commits an offence if:

- (a) the person climbs onto, or attaches themselves to, a boat on a lake; and
- (b) neither the owner nor the master of the boat has allowed the person to climb onto, or attach themselves to, the boat.

Penalty: 38 penalty units.

54 Speed limit when people under 18 years old on boat

A person commits an offence of strict liability if:

- (a) the person operates a boat on a lake; and
- (b) the boat is operated at a speed of more than 60 knots; and
- (c) a person under the age of 18 years is on the boat.

Penalty: 23 penalty units.

55 Exceeding power rating for boat

- (1) A person commits an offence of strict liability if:
 - (a) the person operates a boat on a lake; and
 - (b) there is an appropriate power rating for the boat; and
 - (c) the boat is powered by a motor that exceeds the appropriate power rating.
- (2) The *appropriate power rating* for a boat is:

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- (a) the power rating stated for the boat by the manufacturer; or
- (b) if no power rating is stated by the manufacturer or the power rating is not apparent:
 - (i) for a boat with an outboard motor—the maximum power capacity calculated in accordance with Australian Standard AS 1799.1-2021, *Small craft, Part 1: General requirements for power boats*, as in force at the commencement of this Ordinance; or
 - (ii) for any other kind of boat—the power rating (if any) approved by Transport for NSW for boats of that kind.

56 Minimum distance requirements

- (1) A person commits an offence if:
 - (a) the person operates a boat on a lake at a speed of 10 knots or more; and
 - (b) the boat is less than 60 metres from:
 - (i) a person on or in the lake; or
 - (ii) another boat (other than a power boat or a boat that is moored or anchored).

Penalty: 23 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
 - (a) it was not possible for the boat to be 60 metres or more from the person or other boat; and
 - (b) the defendant operated the boat at a safe distance from the person or other boat.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4 of the *Criminal Code*).

Example: For the purposes of paragraph (a), the land in all navigable directions was less than 60 metres from the person or other boat.

- (3) A person commits an offence if:
 - (a) the person operates a boat on a lake at a speed of 10 knots or more; and
 - (b) the boat is less than 30 metres from:
 - (i) a power boat; or
 - (ii) a boat that is moored or anchored; or
 - (iii) any land, structure or other thing.

Example: For the purposes of subparagraph (b)(iii), a diving platform, fountain or pontoon.

Penalty: 15 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that:
 - (a) it was not possible for the boat to be 30 metres or more from the other boat, land, structure or other thing; and
 - (b) the defendant operated the boat at a safe distance from the other boat, land, structure or other thing.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4 of the *Criminal Code*).

Example: For the purposes of paragraph (a), the land in all navigable directions was less than 30 metres from the other boat.

(5) In this section:

safe distance means:

- (a) for the distance of a boat from a person—a distance at which, taking into account all relevant safety factors including the weather, visibility and speed, the boat could not cause danger or injury to the person; or
- (b) for the distance of a boat from another boat, land, structure or other thing—a distance at which, taking into account all relevant safety factors including the weather, visibility and speed, the boat could not cause damage to the boat, land, structure or other thing.

57 Dangerous operation of boat

A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the operation of the boat is:
 - (i) at a speed that is dangerous to the public; or
 - (ii) dangerous to the public in any other way.

Penalty: 23 penalty units.

58 Unsafe towing or pushing of boat or object

(1) A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the boat is towing or pushing:
 - (i) another boat; or
 - (ii) an object; and
- (c) the other boat or object is not secured to the boat.

Penalty: 23 penalty units.

(2) A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the boat is towing or pushing:
 - (i) another boat; or
 - (ii) an object; and
- (c) the visibility from the boat is obscured by the other boat or object.

Penalty: 23 penalty units.

(3) A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the boat is towing or pushing:
 - (i) another boat (other than a tender); or

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- (ii) an object; and
- (c) there is no other person who is:
 - (i) in a position (in the boat or otherwise) to observe the other boat or object; and
 - (ii) giving safety instructions to the person operating the boat.

Penalty: 23 penalty units.

59 Unsafe loading of boats

- (1) A person commits an offence if:
 - (a) the person operates a boat on a lake; and
 - (b) the boat is registered under a law of a State or the Northern Territory that allows the boat to be operated in the State or Territory; and
 - (c) the person fails to comply with a safe loading requirement that applies to the boat under a law of the State or Territory where the boat is registered.

Note: A power boat must be registered under the law of a State or the Northern Territory or exempt from registration (see section 27).

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if the boat is any of the following:
 - (a) a boat used solely for racing or competition;
 - (b) a boat that is propelled by oars or paddles and that does not have an engine;
 - (c) a sailing boat (with or without an engine);
 - (d) a domestic commercial vessel operated in accordance with a certificate of survey in force under the Marine Safety (Domestic Commercial Vessel) National Law.

- (3) In this section:

safe loading requirement means a requirement relating to the maximum number of people, or maximum weight of people and equipment, that a boat may carry (including a requirement to display a label on the boat about the maximum number of people that the boat may carry).

Division 3—Right of way rules

Subdivision A—General

60 Keeping out of the way and keeping course

- (1) If a boat is required to *keep out of the way* of another boat, then:
 - (a) as far as is practicable, the boat must not cross ahead of the other boat; and
 - (b) if the boat is a power boat, it must slow down, stop or reverse if necessary to avoid colliding with the other boat.
- (2) If a boat is required to *keep its course*, then the boat must keep its course and speed unless this could cause the boat to collide with another boat.

Note 1: An inspector may issue a direction to a person to follow the rules in this Division. Failing to comply with a direction is an offence (see section 97).

Note 2: A breach of a section in this Division may be dangerous to the public and could constitute an offence under section 57.

61 Exception for boat races

This Division does not apply to a boat taking part in a boat race, in relation to another boat taking part in the race, to the extent that this Division conflicts with a rule approved for the race by the entity controlling the race.

Subdivision B—Specific right of way rules

62 Sailing boats

- (1) This section applies if a sailing boat is approaching another sailing boat on a lake.
- (2) If one boat is close-hauled on the port tack and the other boat is close-hauled on the starboard tack:
 - (a) the boat that is close-hauled on the port tack must keep out of the way of the other boat; and
 - (b) the other boat must keep its course.
- (3) If one boat is running free with the wind on one side and the other boat is running free with the wind on the opposite side:
 - (a) the boat that has the wind on the port side must keep out of the way of the other boat; and
 - (b) the other boat must keep its course.
- (4) If one boat is running free with the wind on one side and the other boat is running free with the wind on the same side:
 - (a) the boat that is to windward must keep out of the way of the boat that is to leeward; and
 - (b) the boat that is to leeward must keep its course.

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Division 3 Right of way rules

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63 Power boats

- (1) If a power boat is approaching another power boat on a lake, each boat must alter course to the starboard side so that each boat passes on the port side of the other boat.
- (2) If 2 power boats are crossing:
 - (a) the boat with the other boat on its own starboard side must keep out of the way of the other boat; and
 - (b) the other boat must keep its course.

64 Power boats and sailing boats

If a power boat and a sailing boat are approaching each other on a lake:

- (a) the power boat must keep out of the way of the sailing boat; and
- (b) the sailing boat must keep its course.

65 Rowing boats and sailing boats

If a rowing boat and a sailing boat are approaching each other on a lake:

- (a) the rowing boat must keep out of the way of the sailing boat; and
- (b) the sailing boat must keep its course.

66 Overtaking

- (1) A boat that is overtaking another boat must keep out of the way of the other boat, and the other boat must keep its course.
- (2) A boat is ***overtaking*** another boat if it is moving toward the other boat from a direction abaft the other boat's beam of more than 22.5 degrees.

67 Navigating channels

- (1) This section applies if a channel or fairway is shown on a lake by bearings, buoys or other means (the ***markings***).
- (2) A boat must not exit the channel or fairway other than as shown by the markings.

Division 4—Conduct of people

68 Dangerous conduct

A person commits an offence if:

- (a) the person is on a boat on a lake; and
- (b) the person does something that is dangerous to the public.

Penalty: 23 penalty units.

69 Conduct on power boats

(1) A person commits an offence of strict liability if:

- (a) the person operates a power boat (other than a personal watercraft) on a lake; and
- (b) the power boat is being propelled by its engine; and
- (c) another person on the power boat extends a part of that person's body outside the perimeter of the boat.

Penalty: 15 penalty units.

(2) A person commits an offence of strict liability if:

- (a) the person is on a power boat (other than a personal watercraft) on a lake; and
- (b) the power boat is being propelled by its engine; and
- (c) the person extends a part of the person's body outside the perimeter of the boat.

Penalty: 15 penalty units.

(3) A person commits an offence if:

- (a) the person operates a power boat (other than a personal watercraft) on a lake; and
- (b) the power boat is being propelled by its engine; and
- (c) another person is on the bow of the power boat in a position that puts that person at an increased risk of falling overboard.

Penalty: 15 penalty units.

(4) A person commits an offence if:

- (a) the person is on the bow of a power boat (other than a personal watercraft) on a lake in a position that puts the person at an increased risk of falling overboard; and
- (b) the power boat is being propelled by its engine.

Penalty: 15 penalty units.

(5) A person commits an offence of strict liability if:

- (a) the person operates a power boat (other than a personal watercraft) on a lake; and

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- (b) the power boat is being propelled by its engine; and
- (c) another person is on, or is hanging onto, a swim ladder, swim platform or transom attached to the power boat.

Penalty: 15 penalty units.

- (6) A person commits an offence of strict liability if:
 - (a) the person is on, or is hanging onto, a swim ladder, swim platform or transom attached to a power boat (other than a personal watercraft) on a lake; and
 - (b) the power boat is being propelled by its engine.

Penalty: 15 penalty units.

- (7) Subsections (1) to (6) do not apply to a person who is:
 - (a) anchoring, mooring or casting off; or
 - (b) fishing from a boat that is anchored, moored or drifting; or
 - (c) involved in an activity relating to securing the safety of a person or property.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsections (1) to (6) do not apply if the person's conduct is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

70 Passengers on domestic commercial vessels

- (1) A person commits an offence if:
 - (a) the person is a passenger on a domestic commercial vessel on a lake; and
 - (b) the person obstructs someone engaged in the navigation or operation of the vessel.

Penalty: 23 penalty units.

- (2) A person commits an offence if:
 - (a) the person is a passenger on a domestic commercial vessel on a lake; and
 - (b) the person damages a part of the vessel or equipment on the vessel.

Penalty: 23 penalty units.

- (3) A person commits an offence if:
 - (a) the person is a passenger on a domestic commercial vessel on a lake; and
 - (b) the person uses a part of the vessel or equipment on the vessel for a purpose for which it was not intended.

Penalty: 23 penalty units.

- (4) A person commits an offence if:
 - (a) the person is a passenger on a domestic commercial vessel on a lake; and

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Section 70

- (b) the person removes, damages or defaces:
 - (i) a sign or notice on the vessel that relates to the vessel's safe and proper use; or
 - (ii) a plate fixed to the boat indicating the boat's capability and capacity.

Penalty: 23 penalty units.

- (5) A person commits an offence if:
 - (a) the person is a passenger on a domestic commercial vessel on a lake; and
 - (b) the person is:
 - (i) on a roof, awning or mast of the vessel; or
 - (ii) in or on a part of the vessel for which there is a notice displayed at the entry to the part that prohibits a passenger's entry to the part of the vessel.

Penalty: 23 penalty units.

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Division 5 Lights and shapes

Section 71

Division 5—Lights and shapes

71 Liability of persons on boat where no master

If there is no master on a boat (that is, there is no-one in charge or command of the boat), then a reference in this Division to the master of the boat is taken to be a reference to each person who is on the boat.

Note: In this circumstance, an offence provision that ordinarily applies to the master of the boat will apply to each person on the boat.

72 Visible distance of lights

- (1) The master of a boat commits an offence of strict liability if:
 - (a) the boat is showing an all-round light, masthead light, sidelight or sternlight required under this Division; and
 - (b) the light is not visible at the distance from the boat required for the light and the boat under this section.

Penalty: 15 penalty units.

- (2) For an all-round light or sternlight and any boat, the distance required is 2 nautical miles.
- (3) For a masthead light, the distance required is:
 - (a) if the boat is less than 12 metres in length—2 nautical miles; or
 - (b) if the boat is at least 12 metres in length and less than 20 metres in length—3 nautical miles; or
 - (c) if the boat is at least 20 metres in length—5 nautical miles.
- (4) For a sidelight, the distance required is:
 - (a) if the boat is less than 12 metres in length—1 nautical mile; or
 - (b) if the boat is at least 12 metres in length—2 nautical miles.

73 Lights for power boats

- (1) The master of a power boat commits an offence of strict liability if:
 - (a) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (b) the boat does not show lights in accordance with the requirements of this section for the boat.

Penalty: 15 penalty units.

Power boat less than 7 metres in length and lower speed

- (2) A power boat that is less than 7 metres in length and has a maximum speed of no more than 7 knots must show a white all-round light. The light must be placed:
 - (a) as far as practicable, over the boat's fore and aft centreline; and
 - (b) at least 1 metre above the boat's gunwale.

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Power boat 7 to 12 metres in length, or less than 7 metres in length and higher speed

- (3) Subsection (4) sets out requirements for:
- (a) a power boat that is at least 7 metres in length but less than 12 metres in length; and
 - (b) a power boat that is less than 7 metres in length and has a maximum speed of more than 7 knots.
- (4) The power boat must show sidelights (either placed separately on each side of the boat or in a combined unit carried on the fore and aft centreline of the boat), and either:
- (a) a white all-round light placed at least 1 metre above the sidelights and, as far as practicable, over the boat's fore and aft centreline; or
 - (b) both:
 - (i) a masthead light placed at least 1 metre above the sidelights and, as far as practicable, over the boat's fore and aft centreline; and
 - (ii) a sternlight placed near the stern of the boat.

Power boat 12 to 20 metres in length

- (5) A power boat that is at least 12 metres in length but less than 20 metres in length must show:
- (a) sidelights, either placed separately on each side of the boat or in a combined unit carried on the fore and aft centreline of the boat; and
 - (b) a masthead light that is placed:
 - (i) as far as practicable, over the boat's fore and aft centreline; and
 - (ii) at least 1 metre above the sidelights; and
 - (c) a sternlight placed near the stern of the boat.

Power boat at least 20 metres in length

- (6) A power boat that is at least 20 metres in length must show:
- (a) sidelights, placed separately on each side of the boat; and
 - (b) a masthead light that is placed:
 - (i) as far as practicable, over the boat's fore and aft centreline; and
 - (ii) at least 1 metre above the sidelights; and
 - (c) a sternlight placed near the stern of the boat.

74 Lights for sailing boats and boats being rowed

Sailing boats less than 7 metres in length and boats being rowed

- (1) Subsection (2) applies to the master of:
- (a) a sailing boat that is less than 7 metres in length that is under way on a lake at night or when visibility on the lake is restricted because of a weather event; or

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- (b) a boat (other than a rowing boat, dragon boat, kayak or canoe) that is being rowed on a lake at night or when visibility on the lake is restricted because of a weather event.
- (2) The master of the boat commits an offence if the boat does not:
- (a) if practicable—show sidelights and a sternlight, either placed separately on each side of the boat and near the stern or in a combined unit carried at or near the top of the boat’s mast; or
 - (b) if it is not practicable to show the lights mentioned in paragraph (a):
 - (i) have on board an electric torch or lighted lantern that shows a white light and is ready for immediate use; and
 - (ii) show the illuminated torch or lantern in sufficient time to prevent a collision.

Penalty: 15 penalty units.

Sailing boats 7 to 20 metres in length

- (3) The master of a sailing boat commits an offence of strict liability if:
- (a) the boat is at least 7 metres in length but less than 20 metres in length; and
 - (b) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (c) the boat does not show sidelights and a sternlight, either placed separately on each side of the boat and near the stern or in a combined unit carried at or near the top of the boat’s mast.

Penalty: 15 penalty units.

Sailing boats at least 20 metres in length

- (4) The master of a sailing boat commits an offence of strict liability if:
- (a) the boat is at least 20 metres in length; and
 - (b) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (c) the boat does not show sidelights and a sternlight placed separately on each side of the boat and near the stern.

Penalty: 15 penalty units.

All-round lights must not be displayed on mast with combined unit

- (5) The master of a sailing boat commits an offence of strict liability if:
- (a) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (b) the boat has a combined unit, carried at or near the top of the boat’s mast, to show sidelights and a sternlight; and
 - (c) the boat displays:
 - (i) a red all-round light at or near the top of the mast; and
 - (ii) a green all-round light in a vertical line below the red light.

Penalty: 15 penalty units.

75 Lights for rowing boats, dragon boats, kayaks and canoes

Boats less than 4 metres in length

- (1) The master of a rowing boat, dragon boat, kayak or canoe commits an offence if:
 - (a) the boat is less than 4 metres in length; and
 - (b) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (c) the boat does not:
 - (i) have on board an electric torch or lighted lantern that shows a white light and is ready for immediate use; and
 - (ii) show the illuminated torch or lantern in sufficient time to prevent a collision.

Penalty: 15 penalty units.

Boats at least 4 metres in length

- (2) The master of a rowing boat, dragon boat, kayak or canoe commits an offence of strict liability if:
 - (a) the boat is at least 4 metres in length; and
 - (b) the boat is under way on a lake at night or when visibility on the lake is restricted because of a weather event; and
 - (c) the boat does not show lights in accordance with subsection (3).

Penalty: 15 penalty units.

- (3) The boat must have a white light-emitting diode (LED) on the fore end and aft end of the boat. Each LED must show light over an arc of visibility of 360 degrees, either continuously or flashing at least once per second. At least one LED must be visible at a distance of 1 kilometre from the boat in any direction.

76 Lights for boats at anchor

- (1) The master of a boat (or, if no-one is on the boat, the owner of the boat) commits an offence if:
 - (a) the boat is at anchor on a lake at night or when visibility is restricted because of a weather event; and
 - (b) the boat does not show a white all-round light placed, as far as practicable, over the boat's fore and aft centreline.

Penalty: 15 penalty units.

- (2) Subsection (1) does not apply if:
 - (a) the boat is less than 7 metres in length; and
 - (b) the boat is not in or near a narrow channel, fairway or anchorage; and
 - (c) the boat is not in an area where other boats normally navigate.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

77 Lights on certain boats restricted in their ability to manoeuvre

- (1) The master of a boat that is at least 12 metres in length commits an offence if:
- (a) the boat is engaged in underwater operations (including dredging operations and diving operations); and
 - (b) the boat is on a lake at night or when visibility is restricted because of a weather event; and
 - (c) the boat is restricted in its ability to manoeuvre; and
 - (d) the boat does not show the following lights:
 - (i) 2 red all-round lights to indicate the side on which the underwater operations are being carried out;
 - (ii) 2 green all-round lights to indicate the side on which another boat may pass.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the boat is engaged in diving operations; and
 - (b) it is impractical to show all of the lights mentioned in paragraph (1)(d); and
 - (c) the boat is showing the following:
 - (i) 3 all-round lights in a vertical line in a position where it can best be seen, with red lights at the top and bottom of the line and a white light in the middle of the line;
 - (ii) a rigid replica of the International Code of Signals flag “A” that is at least 1 metre in height and in a visible position.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

78 Shapes on certain boats restricted in their ability to manoeuvre

- (1) The master of a boat that is at least 12 metres in length commits an offence if:
- (a) the boat is engaged in underwater operations (including dredging operations and diving operations); and
 - (b) the boat is on a lake during the day and when visibility is not restricted because of a weather event; and
 - (c) the boat is restricted in its ability to manoeuvre; and
 - (d) the boat does not show the following shapes:
 - (i) 2 balls in a vertical line to indicate the side on which the underwater operations are being carried out;
 - (ii) 2 diamonds in a vertical line to indicate the side on which another boat may pass.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the boat is engaged in diving operations; and

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- (b) it is impractical to show all of the shapes mentioned in paragraph (1)(d); and
- (c) the boat is showing the following:
 - (i) 3 all-round lights in a vertical line in a position where it can best be seen, with red lights at the top and bottom of the line and a white light in the middle of the line;
 - (ii) a rigid replica of the International Code of Signals flag “A” that is at least 1 metre in height and in a visible position.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

79 Emergency lights

- (1) The master of a boat commits an offence of strict liability if:
 - (a) the boat is under way or anchored; and
 - (b) the boat is on a lake at night or when visibility is restricted because of a weather event; and
 - (c) the boat does not have on board an electric torch or lighted lantern ready for immediate use.

Penalty: 23 penalty units.

- (2) The master of a boat commits an offence of strict liability if:
 - (a) the boat is under way or anchored; and
 - (b) the boat is on a lake at night or when visibility is restricted because of a weather event; and
 - (c) a light required to be shown under this Division fails; and
 - (d) the boat does not show an illuminated torch or lantern in substitution for the failed light.

Penalty: 23 penalty units.

- (3) This section does not apply in relation to:
 - (a) a sailing boat that is less than 7 metres in length that is required to comply with 74(2)(b); or
 - (b) a boat that is being rowed (other than a rowing boat, dragon boat, kayak or canoe) that is required to comply with paragraph 74(2)(b); or
 - (c) a rowing boat, dragon boat, kayak or canoe that is less than 4 metres in length.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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Part 4 Safety

Division 6 Unnecessary use of lights and signals

Section 80

Division 6—Unnecessary use of lights and signals

80 Unnecessary use of distress signals

- (1) A person commits an offence if:
- (a) the person is on a boat on a lake; and
 - (b) the person uses distress signalling equipment, or makes a distress signal, other than for the purpose of indicating distress.

Penalty: 23 penalty units.

- (2) A person commits an offence if:
- (a) the person is in a lake area; and
 - (b) the person uses distress signalling equipment, or makes a distress signal, in circumstances where there was no distress to a person or boat in the lake area.

Penalty: 23 penalty units.

- (3) A person commits an offence if:
- (a) the person operates a boat on a lake; and
 - (b) another person on the boat uses distress signalling equipment, or makes a distress signal, in circumstances where there was no distress to a person or boat in the lake area.

Penalty: 23 penalty units.

81 Unnecessary use of warning or guide lights and signals

- (1) A person commits an offence if:
- (a) the person is:
 - (i) on a boat on a lake; or
 - (ii) in a lake area; and
 - (b) the person displays or makes a light or other visual signal or makes a sound signal; and
 - (c) the light or signal is of a kind used as a warning or guide to boats; and
 - (d) the person does not have an adequate reason to display or make the light or signal.

Penalty: 23 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a boat on a lake; and
 - (b) another person on the boat displays or makes a light or other visual signal or makes a sound signal; and
 - (c) the light or signal is of a kind used as a warning or guide to boats; and
 - (d) the other person does not have an adequate reason to display or make the light or signal.

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Safety **Part 4**
Unnecessary use of lights and signals **Division 6**

Section 82

Penalty: 23 penalty units.

82 Unauthorised use of emergency patrol signals

- (1) A person commits an offence if:
- (a) the person operates a boat on a lake; and
 - (b) the boat displays an emergency patrol signal.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the person is permitted, in writing, by a police officer to display the emergency patrol signal for carrying out an emergency patrol; or
 - (b) the person operates the boat for any of the following persons for the purpose of carrying out an emergency patrol:
 - (i) a member of the ACT Ambulance Service;
 - (ii) a member of the ACT Fire and Rescue Service;
 - (iii) a member of the ACT Rural Fire Service;
 - (iv) a member of the ACT State Emergency Service;
 - (v) a police officer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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Part 4 Safety

Division 7 Lifejackets for recreational boats

Section 83

Division 7—Lifejackets for recreational boats

83 Children under 12 years

- (1) A person commits an offence of strict liability if:
 - (a) the person operates a recreational boat on a lake; and
 - (b) the boat is less than 8 metres in length and is under way; and
 - (c) a child under 12 years old is:
 - (i) in an open area on the boat; and
 - (ii) not wearing an appropriate lifejacket.

Penalty: 23 penalty units.

- (2) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that the person took all reasonable steps to ensure that the child was wearing an appropriate lifejacket.

Note: A defendant bears a legal burden in relation to the matter in this subsection (see section 13.4 of the *Criminal Code*).

84 Wearing a lifejacket on certain recreational boats

- (1) This section applies in relation to the following recreational boats:
 - (a) an off-the-shore boat;
 - (b) any other recreational boat that:
 - (i) is less than 4.8 metres in length; and
 - (ii) is not a kiteboard, paddleboard, sailboard or surfboard.
- (2) A person commits an offence of strict liability if:
 - (a) the person is on a recreational boat to which this section applies on a lake; and
 - (b) the person is not wearing an appropriate lifejacket.

Note: See section 86 for a defence for failure to wear a lifejacket as required by subsection (2).

Penalty: 23 penalty units.

- (3) A person commits an offence of strict liability if:
 - (a) the person operates a recreational boat to which this section applies on a lake; and
 - (b) another person on the boat is not wearing an appropriate lifejacket.

Penalty: 23 penalty units.

85 Direction by master to wear lifejacket on boat

A person commits an offence of strict liability if:

- (a) the person is on a recreational boat on a lake; and

- (b) the master of the boat directs the person to wear an appropriate lifejacket on the boat; and
- (c) the person fails to comply with the direction.

Note: See section 86 for a defence for failure to wear a lifejacket as required by this section.

Penalty: 23 penalty units.

86 Failure to wear lifejackets—defence

It is a defence to a prosecution of a person for an offence against subsection 84(2) or section 85 if the person proves that:

- (a) the person was not operating the boat; and
- (b) there was no available appropriate lifejacket on the boat when the person was required to wear an appropriate lifejacket.

Note: A defendant bears a legal burden in relation to the matter in this section (see section 13.4 of the *Criminal Code*).

87 Owner and operator of boat to ensure lifejackets are available

- (1) This section applies in relation to a recreational boat that is not a canoe, kayak, kiteboard, paddleboard, sailboard or surfboard.
- (2) A person operating a recreational boat on a lake, or who owns a recreational boat that is operating on a lake, must ensure that:
 - (a) the boat carries the number of lifejackets specified in subsection (4) for the kind of boat; and
 - (b) the lifejackets are appropriate lifejackets for the intended wearers; and
 - (c) the lifejackets are:
 - (i) in good condition; and
 - (ii) maintained in accordance with the manufacturer's instructions (if any) provided for the lifejackets; and
 - (iii) replaced when the manufacturer's expiry date (if any) for the lifejackets is reached; and
 - (d) the lifejackets are stored on the boat in a place that:
 - (i) enables the lifejackets to be accessed quickly and easily; and
 - (ii) is marked with a clearly visible sign that has the word "lifejackets" on it in red letters on a white background, or white letters on a red background.
- (3) A person commits an offence of strict liability if:
 - (a) the person:
 - (i) operates a recreational boat on a lake; or
 - (ii) is the owner of a recreational boat that is operating on a lake; and
 - (b) the person fails to comply with subsection (2).

Penalty: 23 penalty units.

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Part 4 Safety

Division 7 Lifejackets for recreational boats

Section 88

- (4) The specified number of lifejackets for a kind of recreational boat mentioned in column 1 of an item in the following table is the number mentioned in column 2 of the item.

Number of lifejackets that must be carried on recreational boats		
Item	Column 1	Column 2
	Kind of recreational boat	Number of lifejackets
1	Dragon boat that: (a) meets the dragon boat operating requirements; and (b) is carrying the safety equipment mentioned in paragraph (b) of column 2 of item 2 of the table in section 92	0
2	Rowing shell	0
3	Recreational boat not covered by item 1 or 2	1 per person on board the boat

88 Owner and operator of boat to provide information about lifejackets

- (1) This section applies in relation to a recreational boat that is not a canoe, kayak, kiteboard, paddleboard, sailboard or surfboard.
- (2) An inspector may direct a person operating a recreational boat on a lake, or who owns 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 boat.
- (3) A person commits an offence of strict liability if:
- (a) the person is given a direction under subsection (2) to provide information; and
 - (b) the person fails to provide the information within 24 hours after the direction was given.

Penalty: 23 penalty units.

Division 8—Other safety equipment for recreational boats

89 Application of this Division

- (1) This Division does not apply in relation to the following recreational boats:
 - (a) a canoe;
 - (b) a kayak;
 - (c) a kiteboard;
 - (d) a paddleboard;
 - (e) a sailboard;
 - (f) a surfboard.
- (2) This Division also does not apply in relation to a recreational boat if:
 - (a) the boat is ordinarily operated in a State or the Northern Territory; and
 - (b) the requirements for safety equipment that apply to the boat in that State or Territory are met; and
 - (c) the boat has been in the Australian Capital Territory for less than 90 consecutive days.

90 Owner and operator of boat to ensure safety equipment available

- (1) A person operating a recreational boat on a lake, or who owns a recreational boat that is operating on a lake, must ensure that:
 - (a) the boat carries the required safety equipment for the kind of boat (see section 92); and
 - (b) the safety equipment:
 - (i) complies with any required standards for the safety equipment (see section 93); and
 - (ii) is in good condition; and
 - (iii) is maintained in accordance with the manufacturer's instructions (if any) provided for the equipment; and
 - (iv) is replaced when the manufacturer's expiry date (if any) for the equipment is reached; and
 - (v) is stored on the boat in a place that enables the equipment to be accessed quickly and easily.
- (2) A person commits an offence of strict liability if:
 - (a) the person:
 - (i) operates a recreational boat on a lake; or
 - (ii) is the owner of a recreational boat that is operating on a lake; and
 - (b) the person fails to comply with subsection (1).

Penalty: 23 penalty units.

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Part 4 Safety

Division 8 Other safety equipment for recreational boats

Section 91

91 Owner and operator of boat to provide information about safety equipment

- (1) An inspector may direct a person operating a recreational boat on a lake, or who owns 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.
- (2) A person commits an offence of strict liability if:
 - (a) the person is given a direction under subsection (1) to provide information; and
 - (b) the person fails to provide the information within 24 hours after the direction was given.

Penalty: 23 penalty units.

92 Required safety equipment for recreational boats

The *required safety equipment* for a kind of recreational boat mentioned in column 1 of an item in the following table is the safety equipment mentioned in column 2 of the item.

Required safety equipment for recreational boats		
Item	Column 1 Kind of recreational boat	Column 2 Safety equipment
1	Small tender	Either: (a) the general safety equipment for the boat; or (b) the following equipment: <ol style="list-style-type: none">(i) a paddle or a pair of oars with rowlocks;(ii) a bailer, bucket or bilge pump;(iii) if the boat is operating at night—a waterproof torch
2	Dragon boat that meets the dragon boat operating requirements	Either: (a) the general safety equipment for the boat; or (b) the following equipment: <ol style="list-style-type: none">(i) a bailer or bucket;(ii) a rope that is at least 25 metres long and 12 millimetres in diameter, is of the type known as “silver rope”, and is securely attached to the boat for towing;(iii) if the boat is operating at night—flares, or a mobile telephone, in a waterproof container
3	Recreational boat that is any of the following: (a) an accompanied sailing boat;	Nil

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Required safety equipment for recreational boats		
Item	Column 1	Column 2
	Kind of recreational boat	Safety equipment
	(b) a small boat operating in daylight within 200 metres of the shore;	
	(c) an off-the-shore boat that does not have sufficient storage to carry safety equipment;	
	(d) a rowing shell	
4	Recreational boat not covered by item 1, 2 or 3	The general safety equipment for the boat

93 Required standards for safety equipment

- (1) The requirements prescribed by this section in relation to safety equipment are the *required standards* for the safety equipment.

Anchors with chain or line

- (2) An anchor with a chain or line must be suitable for the purpose of securing the boat on which it is carried.

Note: Whether an anchor is suitable in relation to a boat may depend on the boat's size, weight and area of operation.

- (3) The chain or line must be:
- (a) of sufficient strength and durability for the purpose of securing the boat; and
 - (b) securely attached to both the anchor and the boat.

Bailers

- (4) A bailer must:
- (a) be suitable for bailing water from the boat on which it is carried; and
 - (b) have a lanyard or rope attached to it.
- (5) The lanyard or rope must be:
- (a) securely attached to the bailer; and
 - (b) of a length that will allow the bailer to be cast over the side of the boat and retrieved.

Buckets

- (6) A bucket must:
- (a) be suitable for both bailing water from the boat on which it is carried and collecting water for use in case of fire; and
 - (b) be manufactured from metal or a robust plastic or canvas; and
 - (c) be designed so as not to collapse, distort or lose the handle when full of water; and
 - (d) have a lanyard or rope attached to it.

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Part 4 Safety

Division 8 Other safety equipment for recreational boats

Section 93

- (7) The lanyard or rope must be of a length that will allow the bucket to be cast over the side of the boat and retrieved full of water.

Bilge pumps

- (8) A bilge pump must:
- (a) be capable of draining each compartment of the boat on which it is carried; and
 - (b) have a suction pipe that is fitted with a strainer of sufficiently small mesh size to prevent choking of the pump.

Fire extinguishers

- (9) A fire extinguisher must be designed and manufactured in accordance with an Australian standard specific for portable fire extinguishers.
- (10) If fuel is carried on a boat, a fire extinguisher on the boat must be of a type suitable for the fuel as stated in Australian Standard AS 1799.1-2021, *Small craft, Part 1: General requirements for power boats*, as in force at the commencement of this Ordinance.

Paddles and oars

- (11) A paddle or pair of oars must be capable of being used to row the boat on which the paddle or pair of oars is carried.

Waterproof torches

- (12) A waterproof torch must be:
- (a) of a type that is water resistant and can float; and
 - (b) in operational order; and
 - (c) capable of being used to signal.

Division 9—Hatches and exterior doors on recreational boats

94 Application of this Division

This Division does not apply in relation to a recreational boat if:

- (a) the boat is ordinarily operated in a State or the Northern Territory; and
- (b) the requirements for safety equipment that apply to the boat in that State or Territory are met; and
- (c) the boat has been in the Australian Capital Territory for less than 90 consecutive days.

95 Construction

- (1) Subject to section 94, this section applies in relation to a recreational boat if the hull construction of the boat commenced on or after 1 January 1991.
- (2) The owner of a recreational boat commits an offence if:
 - (a) the boat is operating on a lake; and
 - (b) a hatch or exterior door on the boat that can be used to enter or leave the boat cannot be opened from both the outside and the inside of the boat.

Penalty: 23 penalty units.

- (3) A person commits an offence if:
 - (a) the person operates a recreational boat on a lake; and
 - (b) a hatch or exterior door on the boat that can be used to enter or leave the boat cannot be opened from both the outside and the inside of the boat.

Penalty: 23 penalty units.

- (4) A person commits an offence if:
 - (a) the person supplies a recreational boat to another person; and
 - (b) the person knows that the boat will be, or is likely to be, used for recreational purposes on a lake; and
 - (c) a hatch or exterior door on the boat that can be used to enter or leave the boat cannot be opened from both the outside and the inside of the boat.

Penalty: 23 penalty units.

96 Locking hatches and exterior doors

A person commits an offence if:

- (a) the person operates a recreational boat on a lake; and
- (b) a hatch or exterior door on the boat that can be used to enter or leave the boat is locked while the boat is under way; and
- (c) it is reasonably practicable for the door or hatch to be unlocked while the boat is under way.

Penalty: 23 penalty units.

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Part 4 Safety

Division 10 Safety directions

Section 97

Division 10—Safety directions

97 Safe use of lake areas or associated works

Inspector may give a direction

- (1) An inspector may direct a person using a lake area, or an associated work, to do or not to do something if the inspector reasonably believes that the direction is necessary to:
 - (a) ensure the safety of a person; or
 - (b) ensure compliance with this Ordinance; or
 - (c) prevent damage to property in the lake area or the associated work.

Offence for non-compliance with direction

- (2) A person commits an offence of strict liability if:
 - (a) the person is given a direction by an inspector under subsection (1); and
 - (b) at the time the direction is given, the inspector:
 - (i) if the inspector is not a police officer—produces the inspector's identity card to the person; and
 - (ii) warns the person that failing to comply with the direction is an offence; and
 - (c) the person fails to comply with the direction.

Penalty: 23 penalty units.

Compliance required despite another offence under this Ordinance

- (3) Subsection (2) applies to a person even if, in complying with the direction, the person commits an offence against another provision in this Ordinance.
- (4) It is a defence to a prosecution of a person for an offence against another provision in this Ordinance if the person proves that the person was complying with a direction given under subsection (1) of this section at the time the offence was committed.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4 of the *Criminal Code*).

98 Passengers on domestic commercial vessels

- (1) A person (the *designated person*) who is:
 - (a) responsible for the navigation, operation or management of a domestic commercial vessel on a lake; or
 - (b) responsible for the conduct of operations at the berth of a domestic commercial vessel on a lake;

may direct another person not to board, or not to remain on board, the vessel if the designated person considers that the direction is necessary to ensure the number of people on the vessel does not exceed the maximum number of people the vessel is authorised to carry.

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- (2) A person (the *designated person*) who is:
- (a) responsible for the navigation, operation or management of a domestic commercial vessel on a lake; or
 - (b) responsible for the conduct of operations at the berth of a domestic commercial vessel on a lake;
- may direct another person not to enter, or not to remain in, a part of the vessel if the designated person considers that the direction is necessary to ensure the number of people in the part of the vessel does not exceed the maximum number of people the part of the vessel is authorised to carry.
- (3) A person (the *designated person*) who is responsible for the navigation, operation or management of a domestic commercial vessel on a lake may direct another person on the vessel to:
- (a) move to or from a part of the vessel; or
 - (b) stop an activity in which the person is engaged on the vessel;
- if the designated person considers that the direction is necessary to ensure the proper navigation, operation or management of the vessel.
- (4) A person must not give a direction under this section to any of the following officers if the officer is exercising the officer's functions:
- (a) an inspector;
 - (b) a safety investigator;
 - (c) an APS employee;
 - (d) a member of the ACT Public Service;
 - (e) an employee of a statutory authority created under a law of the Commonwealth or the Australian Capital Territory.
- (5) A person commits an offence of strict liability if:
- (a) the person is given a direction under this section; and
 - (b) the person fails to comply with the direction.

Penalty: 23 penalty units.

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Part 4 Safety

Division 11 Obstructions

Section 99

Division 11—Obstructions

99 Lighting and marking obstruction to navigation

Direction to mark or light obstruction

- (1) An inspector may direct the owner of an obstruction to navigation to:
 - (a) mark or light the obstruction; or
 - (b) maintain the marking or lighting of the obstruction in good condition; or
 - (c) notify an inspector of any defect in relation to the marking or lighting of the obstruction as soon as the person becomes aware of the defect.
- (2) The direction:
 - (a) must be in writing; and
 - (b) if the direction is to mark or light the obstruction:
 - (i) must state a time by which the marking or lighting is to be completed; and
 - (ii) may state how the lighting or marking is to be carried out; and
 - (c) may state a period for which the marking or lighting must be maintained, including for an indefinite period.
- (3) A person commits an offence of strict liability if:
 - (a) the person is given a direction under subsection (1); and
 - (b) the person fails to comply with the direction.

Penalty: 23 penalty units.

Causing an obstruction to be marked or lit

- (4) If the owner of an obstruction to navigation fails to mark or light the obstruction within the time required by a direction given to the owner under subsection (1), an inspector may take action to cause the obstruction to be marked or lit.
- (5) If an inspector takes action under subsection (4) in relation to an obstruction to navigation, the Commonwealth may recover the reasonable costs and expenses of causing the obstruction to be marked or lit from the owner of the obstruction by action in a court of competent jurisdiction.

100 Removing and disposing of obstruction to navigation

Direction to remove obstruction

- (1) An inspector may direct the owner of an obstruction to navigation to remove the obstruction. The direction must:
 - (a) be in writing; and
 - (b) state a time by which the obstruction to navigation must be removed.
- (2) A person commits an offence of strict liability if:
 - (a) the person is given a direction under subsection (1); and

- (b) the person fails to comply with the direction.

Penalty: 23 penalty units.

Inspector may remove obstruction

- (3) An inspector may remove an obstruction to navigation:
 - (a) in any way the inspector considers appropriate; and
 - (b) whether or not the inspector has given a direction under subsection (1).
- (4) The removal of an obstruction to navigation under subsection (3) may include:
 - (a) the destruction of the obstruction if the inspector is satisfied it is reasonable in the circumstances; or
 - (b) authorising another entity to remove the obstruction.
- (5) If an inspector removes an obstruction to navigation under subsection (3), the Commonwealth may recover the reasonable costs and expenses of removing the obstruction from the owner of the obstruction by action in a court of competent jurisdiction.

Disposal of obstruction

- (6) If an obstruction to navigation is removed under subsection (4) other than by its destruction, an inspector may dispose of the removed obstruction, in any way the inspector considers appropriate, if:
 - (a) the inspector has taken reasonable steps to return the removed obstruction to its owner; and
 - (b) one or more of the following applies:
 - (i) the inspector has been unable to locate the owner;
 - (ii) the owner has refused to take possession of the removed obstruction;
 - (iii) the inspector has contacted the owner about the return of the removed obstruction and the owner has not taken possession of the removed obstruction within 30 days after the day contact was made.

101 Operator of boat must warn of obstruction or danger

A person commits an offence if:

- (a) the person operates a boat on a lake; and
- (b) the boat, or any equipment associated with the boat, is a potential obstruction to navigation or a danger to other boats on the lake; and
- (c) the person does not give other operators of boats on the lake adequate warning of the potential obstruction or danger.

Penalty: 23 penalty units.

102 Obstructing fairways and channels

- (1) A person commits an offence if:
 - (a) the person operates a boat on a lake; and

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Part 4 Safety

Division 11 Obstructions

Section 103

- (b) the boat obstructs, or restricts or impedes access to, a fairway or channel in the lake.

Penalty: 23 penalty units.

- (2) Subsection (1) does not apply if the person's conduct is authorised by a regulated activity permit.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

103 Obstructing wharves and jetties, etc.

A person commits an offence if:

- (a) the person operates a boat on a lake (other than launching, landing or mooring the boat); and
- (b) the boat obstructs the approach to, or restricts or impedes the proper use of, a wharf, jetty, boatshed, slip, launching ramp, courtesy mooring or emergency mooring in the lake area.

Penalty: 23 penalty units.

104 Obstructing boats

- (1) A person commits an offence if the person obstructs or impedes:

- (a) the launching or securing of a boat on a lake; or
- (b) the removal of a boat from a lake.

Penalty: 23 penalty units.

- (2) A person commits an offence if the person obstructs or impedes the safe navigation of a boat on a lake.

Penalty: 23 penalty units.

105 Obstructing passengers

A person commits an offence if the person obstructs or impedes passengers from embarking on or disembarking from a boat on a lake.

Penalty: 23 penalty units.

106 Obstructing loading or unloading cargo

A person commits an offence if the person obstructs or impedes the loading of cargo onto, or unloading of cargo from, a boat on a lake.

Penalty: 23 penalty units.

107 Causing obstruction, nuisance or damage with objects

- (1) A person commits an offence if:

- (a) the person:

- (i) throws, propels or projects an object into a lake; or
 - (ii) does anything else that results in an object being in, or extending over, a lake; and
- (b) the object obstructs, or is likely to obstruct, a boat from navigating the lake.

Penalty: 23 penalty units.

- (2) A person commits an offence if:
- (a) the person:
 - (i) throws, propels or projects an object into a lake; or
 - (ii) does anything else that results in an object being in, or extending over, a lake; and
 - (b) the object causes, or is likely to cause, a nuisance or danger to a person.

Penalty: 23 penalty units.

- (3) A person commits an offence if:
- (a) the person:
 - (i) throws, propels or projects an object into a lake; or
 - (ii) does anything else that results in an object being in, or extending over, a lake; and
 - (b) the object causes, or is likely to cause, damage to property.

Penalty: 23 penalty units.

108 Moving vehicles and boats in lake area

- (1) If, in the opinion of an inspector, a vehicle or boat in a lake area:
- (a) is obstructing or is likely to obstruct the free passage of any person, vehicle or boat in the lake area; or
 - (b) is moored other than in accordance with a mooring permit; or
 - (c) should, in the interests of safety or of the public, be moved;
- the inspector may direct the owner or person in charge of the vehicle or boat to move it to another place in, or to remove it from, the lake area.
- (2) If an inspector:
- (a) is unable to give a direction under subsection (1) because of the absence of the owner or person in charge of the vehicle or boat; or
 - (b) gives a direction under subsection (1) and the owner or person in charge of the vehicle or boat does not comply with the direction;
- the inspector may, with such assistance (if any) and by such means as the inspector thinks necessary, move the vehicle or boat to another place in, or remove it from, the lake area.
- (3) If an inspector moves or removes a vehicle or boat under subsection (2), the Commonwealth may recover the cost of moving or removing the vehicle or boat from the owner of the vehicle or boat by action in a court of competent jurisdiction.

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Part 4 Safety

Division 11 Obstructions

Section 108

- (4) An inspector is not liable for any damage that the inspector may cause to a vehicle or boat in the proper exercise of powers under this section.
- (5) A person who assists an inspector to move a vehicle or boat under subsection (2) is not liable for any damage that the person may cause to the vehicle or boat in providing assistance.

Part 5—Drug and alcohol offences

109 Simplified outline of this Part

This Part contains offences relating to operation of a boat under the influence of drugs or alcohol. Much of the ACT legislation relating to driving motor vehicles is applied to the operation of a boat.

110 Prescribed concentration of alcohol in blood or breath

- (1) A person commits an offence of strict liability if:
- (a) the person has been operating a boat on a lake; and
 - (b) the person has, within the relevant period of operating the boat, the prescribed concentration of alcohol in the person's blood or breath.

Note: For the definition of *relevant period*, see section 5.

Penalty: as specified in subsection (2).

- (2) If a person is convicted of an offence against subsection (1) and the convicting court finds that the concentration of alcohol in the person's blood or breath was at a level specified in column 1 of an item in the table, the person is punishable by the penalty specified in column 2 of that item.

Penalty for offence against subsection (1)		
Item	Column 1 Alcohol concentration level	Column 2 Penalty
1	less than 0.08 g	8 penalty units
2	0.08 g or more but less than 0.15 g	imprisonment for 6 months or 8 penalty units, or both
3	0.15 g or more	imprisonment for 12 months or 15 penalty units, or both

- (3) For the purposes of paragraph (1)(b), the *prescribed concentration* of alcohol is:
- (a) for a person under 18 years old—more than 0 g of alcohol in 100 mL of blood or 210 L of breath; or
 - (b) for a person operating a boat for a commercial purpose—more than 0g of alcohol in 100 mL of blood or 210 L of breath; or
 - (c) for any other person—0.05g or more of alcohol in 100m L of blood or 210 L of breath.
- (4) In a prosecution for an offence against subsection (1):
- (a) evidence may be given of alcohol in the person's blood based on an analysis of a sample of the person's blood carried out at an approved laboratory and certified to be accurate by an analyst in accordance with the

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Part 5 Drug and alcohol offences

Section 111

Road Transport (Alcohol and Drugs) Act 1977 (ACT) as it applies under section 114 of this Ordinance; and

- (b) evidence may be given of alcohol in the person's breath based on an analysis of a sample of the person's breath carried out in accordance with the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) as it applies under section 114 of this Ordinance.

111 Defence—lower concentration of alcohol from allowable source

- (1) This section applies if:
 - (a) a person is charged with an offence against subsection 110(1); and
 - (b) the person is:
 - (i) under 18 years old; or
 - (ii) a person operating a boat for a commercial purpose; and
 - (c) the concentration of alcohol in the person's blood or breath within the relevant period was less than 0.02 g in 100 mL of the person's blood or 210 L of the person's breath.

Note: For the definition of *relevant period*, see section 5.

- (2) It is a defence to a prosecution for the offence if the defendant proves that the concentration of alcohol in the defendant's blood or breath was caused by:
 - (a) the consumption of an alcoholic beverage that formed part of a religious observance; or
 - (b) the consumption or use of a substance that was not, wholly or partly, consumed or used for its alcohol content.

Example: Food or medicine that contains alcohol.

Note: The defendant has a legal burden in relation to the matters mentioned in subsection (2) (see section 13.4 of the *Criminal Code*).

112 Prescribed drug in oral fluid or blood

- (1) A person commits an offence of strict liability if:
 - (a) the person has been operating a boat on a lake; and
 - (b) the person has a prescribed drug in the person's oral fluid or blood within the relevant period of operating the boat.

Note: For the definition of *relevant period*, see section 5.

Penalty: Imprisonment for 3 months or 20 penalty units, or both.

- (2) In a prosecution for an offence against this section, a person cannot rely on section 9.2 of the *Criminal Code* (mistake of fact—strict liability) in relation to the identity of the prescribed drug if the person claims to have:
 - (a) considered, and been under a mistaken belief about, the identity of the prescribed drug; and
 - (b) believed that the prescribed drug was a controlled drug (within the meaning of section 301.1 of the *Criminal Code*).
- (3) In a prosecution for an offence against subsection (1):

- (a) evidence may be given that a person has a prescribed drug in the person's oral fluid based on an analysis of a part of a sample of the person's oral fluid that:
 - (i) is carried out in accordance with section 13G (Oral fluid—confirmatory analysis) of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) as it applies under section 114 of this Ordinance; and
 - (ii) indicates that a prescribed drug is present in the sample; and
- (b) evidence may be given that a person has a prescribed drug in the person's blood based on an analysis of a part of a sample of the person's blood that:
 - (i) is carried out in accordance with section 15A (Analysis of blood samples) of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) as it applies under section 114 of this Ordinance; and
 - (ii) indicates that a prescribed drug is present in the sample.

113 Under the influence of alcohol or drugs

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

Penalty: Imprisonment for 12 months or 23 penalty units, or both.

- (2) If a person is charged with an offence against subsection (1):
 - (a) the charge may allege that the person was under the influence of alcohol or a drug; and
 - (b) the charge in relation to paragraph (1)(b) may be proven by showing the person was under the influence of alcohol, or a drug, or both, to the extent mentioned in that paragraph.

Note: A police officer who has a screening device immediately available is not entitled to arrest a person for an offence against this section unless certain requirements are met (see section 114 of this Ordinance which applies section 45 of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT)).

114 Application of *Road Transport (Alcohol and Drugs) Act 1977* (ACT)

- (1) A provision of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT), as in force at the commencement of this Ordinance, mentioned in subsection (2) of this section applies in relation to a person who operates a boat on a lake as if:
 - (a) a reference to a road or road related area included a reference to a lake or lake area; and
 - (b) a reference to a driver of a motor vehicle on a road in the Territory included a reference to a person operating a boat on a lake; and
 - (c) a reference to a driver of a motor vehicle included a reference to a person who operates a boat; and
 - (d) a reference to driving included a reference to operating; and
 - (e) a reference to a motor vehicle included a reference to a boat; and
 - (f) a reference to a motor vehicle involved in an accident included a reference to a boat involved in an accident; and

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Part 5 Drug and alcohol offences

Section 114

- (g) a reference to an offence against section 24 of that Act included a reference to an offence against section 113 of this Ordinance; and
 - (h) a reference to an offence against that Act included a reference to an offence against this Part; and
 - (i) a reference to that Act included a reference to this Part; and
 - (j) a reference to the DPP were a reference to the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983*.
- (2) The following provisions of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) and any regulation made for the purpose of the following provisions (as in force at the commencement of this Ordinance), apply in relation to a person who operates a boat on a lake:
- (a) section 4D and sections 5 to 6;
 - (b) Part 2 (other than sections 9A, 10, 13BA, 13C, and 18B);
 - (c) sections 22 to 23 and section 25 (other than subsection 25(2));
 - (d) Part 7;
 - (e) Part 9 (other than sections 50 and 51);
 - (f) any definitions in the Dictionary of terms used in provisions mentioned in paragraphs (a) to (e) of this subsection, except the definitions of ***drug***, ***prescribed concentration*** and ***prescribed drug***.
- (3) If a provision of the *Road Transport (Alcohol and Drugs) Act 1977* (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.
- Example: Entities who have functions under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) include an analyst, a police officer, an authorised operator, a doctor or nurse, and an approved laboratory.
- (4) Part 8 of this Ordinance (Enforcement) does not restrict the operation of a provision of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) that applies under this section.
- Note: This section applies powers to collect evidence under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) that are in addition to, and not constrained by, any other powers under this Ordinance. This section also applies offences from the *Road Transport (Alcohol and Drugs) Act 1977* (ACT) to a person who operates a boat on a lake.

Part 6—Boating accidents

115 Simplified outline of this Part

This Part includes obligations to stop and assist in the case of a boating accident, and to report accidents.

116 Obligation to stop

The master of a boat commits an offence of strict liability if:

- (a) the boat is involved in a boating accident:
 - (i) involving another boat; or
 - (ii) in which a person dies or is injured; and
- (b) the master fails to stop the boat.

Penalty: 23 penalty units.

117 Obligation to give assistance

The master of a boat commits an offence if:

- (a) the boat is involved in a boating accident:
 - (i) involving another boat; or
 - (ii) in which a person dies or is injured; and
- (b) the master negligently fails to give assistance to any person injured, or boat damaged, in the boating accident.

Penalty: 38 penalty units.

118 Obligation to give information when involved in boating accident

The master of a boat commits an offence of strict liability if:

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

Penalty: 38 penalty units.

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Part 6 Boating accidents

Section 119

119 Obligation to report boating accidents to the Minister

- (1) If a boat is involved in a boating accident, a report containing the particulars of the accident listed in subsection (5) must be given to the Minister as soon as practicable after the accident by:
 - (a) the master of the boat; or
 - (b) the owner of the boat if the owner is aware of the accident.
- (2) The master or owner of the boat is not required to give a report if the other has already done so.
- (3) A report is not required to be given if the boating accident involves a recreational boat only and does not result in any of the following:
 - (a) death of or injury to a person;
 - (b) property damage of a value greater than \$5,000;
 - (c) damage to, or the risk of damage to, the environment.
- (4) A person commits an offence of strict liability if:
 - (a) the person is required to give a report to the Minister under subsection (1); and
 - (b) the person fails to give the report to the Minister.

Penalty: 38 penalty units.

- (5) For the purposes of subsection (1), the particulars of a boating accident required in a report are the following:
 - (a) the time, place and nature of the accident;
 - (b) the name and distinguishing number (if any) of each boat involved in the accident;
 - (c) the name and address of each person who was involved in, or was a material witness to, the accident;
 - (d) a description of any death, or the estimated extent of any injury or damage, resulting from the boating accident.

120 Obligation to preserve evidence

A person commits an offence if:

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

Example: For the purposes of paragraph (b), evidence may include nautical charts or log books.

Penalty: 38 penalty units.

Part 7—Safety investigations

121 Simplified outline of this Part

The Minister may order an investigation into an accident or other situations. Safety investigators are given powers to enable an investigation to be carried out. Safety investigators report to the Minister, who may decide to release recommendations and reports.

122 Safety investigations

- (1) The Minister may order an investigation (a *safety investigation*) into any of the following matters:
 - (a) a boating accident that has been reported under section 119 or that the Minister believes may have happened;
 - (b) a situation that has the potential to cause a boating accident;
 - (c) alleged incompetence or misconduct of a person who holds a licence or permit under a law of the Commonwealth, a State or the Northern Territory when operating a power boat as permitted by section 30;
 - (d) a boat that has been seized under section 149 in relation to an offence against section 51 (Operating unsafe boats).
- (2) The purposes of a safety investigation are:
 - (a) to decide the circumstance of, or in relation to, a boating accident or other matters that affect safety on a lake; and
 - (b) to make recommendations to prevent similar boating accidents or other matters happening again.
- (3) The Minister may order a safety investigation whether or not it relates to a matter that:
 - (a) is being investigated, or has been investigated, under another Commonwealth law or law of the Australian Capital Territory; or
 - (b) is or may be the subject of criminal or civil proceedings.
- (4) If the Minister orders a safety investigation into the matter mentioned in paragraph (1)(c), the Minister may notify the authority of the Commonwealth, State or Northern Territory that granted the licence or permit of the investigation.

123 Appointment of safety investigators

- (1) The Minister may, in writing, appoint one or more persons (*safety investigators*) to carry out a safety investigation.
- (2) The Minister may appoint as a safety investigator:
 - (a) a police officer; or
 - (b) a person who has qualifications or experience relevant to conducting a safety investigation.

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Part 7 Safety investigations

Section 124

- (3) A safety investigator is subject to the control and direction of the Minister, except in relation to the content of a safety investigation report.

124 People assisting safety investigators

A person may assist a safety investigator in the conduct of a safety investigation if:

- (a) the assistance is necessary and reasonable; and
- (b) the person follows any direction given to the person by the safety investigator.

125 Conduct of safety investigations

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

126 Safety investigator may require people to give information, produce documents or answer questions

- (1) A safety investigator may give a written notice under subsection (2) to a person if the safety investigator reasonably believes that the person has information or a document that is relevant to a safety investigation.
- (2) The notice may require the person:
 - (a) to give information to the safety investigator or to an inspector specified in the notice; or
 - (b) to produce a document to the safety investigator or to an inspector specified in the notice; or
 - (c) to appear before the safety investigator or an inspector specified in the notice to answer questions.
- (3) A notice mentioned in paragraph (2)(a) or (b) must state:
 - (a) the day by which the person must comply with the notice, which must be at least 14 days after the day the notice is given to the person; and
 - (b) the way in which the person must comply with the notice; and
 - (c) that it is an offence under this Ordinance to fail to comply with the notice.
- (4) A notice mentioned in paragraph (2)(c) must state:
 - (a) the time and place at which the person must appear; and

- (b) that it is an offence under this Ordinance to fail to comply with the notice.
- (5) The safety investigator or inspector may require a person who has been given a notice mentioned in paragraph (2)(c):
 - (a) to answer any question relevant to the safety investigation; and
 - (b) to give any answer:
 - (i) on oath or affirmation; and
 - (ii) orally or in writing.
- (6) The safety investigator or inspector may administer an oath or affirmation for the purposes of subsection (5).
- (7) If the place stated in a notice mentioned in paragraph (2)(c) is more than 16 kilometres from the place of residence of the person given the notice, the person is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in relation to appearing before the safety investigator or inspector.
- (8) A person commits an offence of strict liability if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Penalty: 38 penalty units.

127 Safety investigation reports

- (1) A safety investigator must prepare a safety investigation report:
 - (a) after completing a safety investigation into a boating accident or other matter; or
 - (b) if requested to do so by the Minister under subsection 125(4).
- (2) The safety investigation report must include:
 - (a) findings of fact for the boating accident or other matter, and if the facts cannot be established with certainty, the safety investigator's opinion as to the most probable facts; and
 - (b) for a boating accident—the cause or most probable cause of the boating accident; and
 - (c) recommendations that the safety investigator considers should be implemented to prevent a similar boating accident or other matter from happening again.
- (3) The safety investigator must not include an adverse comment in relation to a person in a safety investigation report unless the safety investigator has given the person a reasonable opportunity to respond to the proposed comment.
- (4) The safety investigator must submit a safety investigation report to the Minister.
- (5) A safety investigator may, at any time during a safety investigation, prepare an interim safety investigation report and submit it to the Minister.

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Part 7 Safety investigations

Section 128

128 Actions by Minister following safety investigations

- (1) After receiving a safety investigation report into a boating accident or other matter, the Minister may do one or more of the following (but is not required to take any action):
 - (a) take action to improve safety procedures for activities in a lake area;
 - (b) reprimand the holder of a licence or permit (however described) under the law of the Commonwealth, a State or the Northern Territory that authorises the holder to use a boat;
 - (c) inform the authority of the Commonwealth, a State or the Northern Territory that granted the licence or permit mentioned in paragraph (b) of the report and any action taken by the Minister on the report;
 - (d) recommend that criminal or other legal proceedings be taken against a person.
- (2) Before taking action under this section, the Minister may conduct a further investigation of the matter, or refer the matter to the same or a different safety investigator for further investigation and a further safety investigation report.
- (3) Any action taken under this section may extend to more than one permit or licence held by a person.
- (4) The Minister must give written notice to the holder of a licence or permit of any action taken under this section against the holder, together with a copy of the final safety investigation report.

129 Public release of safety investigation reports and recommendations

- (1) A safety investigator may, at any time during the course of a safety investigation, make recommendations to the Minister.
- (2) The Minister may cause the recommendations to be made public if the Minister considers that it is in the interests of safety to do so.
- (3) The Minister may publicly release all or part of any safety investigation report submitted to the Minister.

Note: Subsections (2) and (3) constitute authorisations for the purposes of the *Privacy Act 1988* and other laws.
- (4) The Minister must not publicly release all or part of a safety investigation report if the release might prejudice the rights of any person in any criminal proceedings started in relation to the matter.

130 Protection from liability

- (1) This section applies if a person, honestly and without recklessness, gives information to the Minister, a safety investigator or an inspector in relation to a safety investigation.
- (2) Civil proceedings may not be brought against any of the following in relation to anything in the information mentioned in subsection (1) that is alleged to be defamatory or a breach of confidence:

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Safety investigations **Part 7**

Section 130

- (a) the Commonwealth;
- (b) the Minister;
- (c) the safety investigator;
- (d) the inspector;
- (e) the person who supplied the information.

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Part 8 Enforcement
Division 1 Introduction

Section 131

Part 8—Enforcement

Division 1—Introduction

131 Simplified outline of this Part

<p>This Part provides for inspectors to enter premises or board a boat (either with consent or a warrant), gather information, and seize a boat that is believed to have been involved in an offence.</p>

132 Powers not to be exercised before identity card shown

An inspector who is not a police officer may exercise a power under Division 4 of this Part in relation to a person only if the inspector first shows the person the inspector's identity card.

133 People assisting inspectors

A person may assist an inspector under this Part if:

- (a) the assistance is necessary and reasonable; and
- (b) the person follow any direction given to the person by the inspector.

Division 2—Entry and inspection

134 Entering places of inspection

- (1) An inspector may enter a place of inspection:
 - (a) at any time with the consent of the occupier; or
 - (b) in accordance with a warrant; or
 - (c) to protect life or property, if the inspector reasonably believes the circumstances are so serious and urgent that immediate entry without authority of a warrant is necessary.

Note: To enter a place of inspection includes boarding a boat (see the definition of *place of inspection* in section 5 and section 7).

- (2) An inspector may board a boat in a lake area if the inspector reasonably believes that an offence against this Ordinance is being or has been committed.

135 Producing identity cards

An inspector who is not a police officer must not remain at a place of inspection entered under section 134 if, on request by the occupier, the inspector does not produce the inspector's identity card.

136 Consent to entry

- (1) An inspector may enter a place of inspection without the occupier's consent to ask the occupier for consent to enter the place under section 134.
- (2) When seeking the consent of an occupier to enter a place of inspection under section 134, an inspector must:
 - (a) if the inspector is not a police officer—produce the inspector's identity card; and
 - (b) tell the occupier:
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized may be used in evidence in court; and
 - (iii) that consent may be refused.
- (3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgement that:
 - (a) the occupier was told:
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under section 140 may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) the occupier consented to the entry.
- (4) The acknowledgement of consent must record the date and time when consent was given.

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Part 8 Enforcement

Division 2 Entry and inspection

Section 137

- (5) If the occupier signs an acknowledgement of consent, the inspector must as soon as practicable give a copy to the occupier.
- (6) A court must presume that an occupier of a place of inspection did not consent to an entry to the place by an inspector under section 134 if:
 - (a) the question whether the occupier consented to the entry arises in proceedings in the court; and
 - (b) an acknowledgement under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

137 Warrants

- (1) An inspector may apply to a magistrate for a warrant to enter a place of inspection.
- (2) The inspector must give the magistrate information on oath or affirmation stating the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate such further information (if any) the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting:
 - (a) there is a particular thing (*relevant evidence*) or activity that may provide evidence of an offence against this Ordinance; and
 - (b) either:
 - (i) the relevant evidence is, or may be within the next 14 days, at the place of inspection; or
 - (ii) the activity is occurring, or may occur within the next 14 days, at the place of inspection.
- (5) The warrant must state:
 - (a) that an inspector may, with necessary assistance and force, enter the place of inspection and exercise the inspector's powers under this Division; and
 - (b) the offence for which the warrant is sought; and
 - (c) the relevant evidence that may be seized under the warrant; and
 - (d) the hours when the place of inspection may be entered; and
 - (e) the date, within 14 days after the warrant's issue that the warrant ends.

138 Warrants—applications made other than in person

- (1) An inspector may apply for a warrant by telephone, fax, email, radio or other form of communication if the inspector considers it necessary because of urgency or other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an information stating the grounds on which the warrant is sought.

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- (3) The inspector may apply for the warrant before the information is sworn or affirmed.
- (4) After issuing the warrant, the magistrate must immediately provide a written copy to the inspector if it is reasonably practicable to do so.
- (5) If it is not reasonably practical for the magistrate to provide a written copy to the inspector:
 - (a) the magistrate must tell the inspector:
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it:
 - (i) the name of the magistrate; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.
- (6) The written copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's other powers stated in the warrant issued by the magistrate.
- (7) The inspector must send the magistrate at the first reasonable opportunity:
 - (a) the information referred to in subsection (2), which must have been sworn or affirmed; and
 - (b) if the inspector completed a warrant form—the warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an inspector was not authorised by a warrant under this section if:
 - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

139 General powers on entry

- (1) An inspector who enters a place of inspection under section 134 may, for the purposes of this Ordinance:
 - (a) inspect, measure, photograph or film the place of inspection or anything at the place of inspection; or
 - (b) copy a document at the place of inspection; or
 - (c) test or take samples of, or from, anything at the place of inspection; or
 - (d) take into the place of inspection any people, equipment or material the inspector reasonably needs for exercising a power under this Part; or
 - (e) require the occupier or another person at the place of inspection to give the inspector reasonable help to exercise a power under this Part.
 - (2) A person commits an offence if:
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Part 8 Enforcement

Division 2 Entry and inspection

Section 140

- (a) an inspector requires the person to give the inspector reasonable help under paragraph (1)(e); and
- (b) the person fails to take reasonable steps to comply with the requirement.

Penalty: 38 penalty units.

140 Power to seize evidence

- (1) An inspector who enters a place of inspection in accordance with a warrant issued under this Division may seize the evidence for which the warrant was issued.
- (2) An inspector who enters a place of inspection under section 134 with the occupier's consent may seize a thing at the place of inspection if:
 - (a) the inspector is satisfied on reasonable grounds that the thing is connected with an offence against this Ordinance; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (3) An inspector who enters a place of inspection under section 134 may seize anything at the place of inspection if the inspector is satisfied on reasonable grounds that:
 - (a) the thing is connected with an offence against this Ordinance; and
 - (b) seizure of the thing is necessary to prevent the thing being:
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) An inspector who enters a place of inspection under section 134 may seize anything at the place of inspection if the inspector is satisfied on reasonable grounds that the thing poses a risk to:
 - (a) the health or safety of a person; or
 - (b) public or private property; or
 - (c) the environment.
- (5) The powers of an inspector under subsections (3) and (4) are additional to the powers of the inspector under subsection (1) or (2) or under any other law.
- (6) If an inspector seizes a thing at a place of inspection, an inspector may:
 - (a) move the thing from the place of inspection to another place; or
 - (b) leave the thing at the place of inspection but restrict access to it.

Note: Division 6 of this Part (Dealing with things seized) applies to a thing seized under this section.
- (7) A person commits an offence if:
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under paragraph (6)(b); and
 - (b) the person does not have an inspector's approval to interfere with the thing.

Penalty: 38 penalty units.

141 Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by this Division is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or as a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if the magistrate were exercising the power:
 - (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

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Part 8 Enforcement

Division 3 Boarding of boats

Section 142

Division 3—Boarding of boats

142 Facilitating boarding of boats

- (1) An inspector may request a person to take reasonable steps to allow the inspector to board a boat under section 134.
- (2) The inspector may make the request to the master of the boat or someone else.
- (3) A person commits an offence of strict liability if:
 - (a) an inspector makes a request to the person under subsection (1); and
 - (b) the person fails to comply with the request.

Penalty: 38 penalty units.

143 Directing boats after boarding

- (1) An inspector who boards a boat under section 134 may direct the master of the boat to do any of the following:
 - (a) stop or manoeuvre the boat;
 - (b) adopt a stated course or speed;
 - (c) maintain a stated course or speed;
 - (d) take the boat to a stated place.
- (2) A person commits an offence of strict liability if:
 - (a) an inspector directs the person to take an action under subsection (1); and
 - (b) the person fails to take reasonable steps to take the action.

Penalty: 38 penalty units.

144 Requiring information after boarding

- (1) An inspector who boards a boat under section 134 may require a person on the boat to provide any of the following information if the information is to assist the inspector to carry out the inspector's functions under this Ordinance:
 - (a) the person's name;
 - (b) the person's residential address;
 - (c) the person's date of birth;
 - (d) evidence of the person's identity.
- (2) A person commits an offence of strict liability if:
 - (a) an inspector requires the person to provide information under subsection (1); and
 - (b) the person fails to take reasonable steps to provide the information.

Penalty: 38 penalty units.

Division 4—Gathering information

145 Master may be required to answer questions

- (1) An inspector may require the master of a boat to answer questions about the nature or operation of the boat.
- (2) A person commits an offence of strict liability if:
 - (a) an inspector requires the person to answer a question under subsection (1); and
 - (b) the person fails to answer the question.

Penalty: 38 penalty units.

146 Master may be required to produce records

- (1) An inspector may require the master of a boat to produce a document in the master's possession about the operations of the boat.
- (2) A person commits an offence of strict liability if:
 - (a) an inspector requires the person to produce a document under subsection (1); and
 - (b) the person fails to produce the document.

Penalty: 38 penalty units.

147 Requirement to provide information about owner or master of boat

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

Penalty: 38 penalty units.

148 Requirement to produce boat licence or permit

- (1) An inspector may require a person to produce the person's licence or permit (however described) under a law of the Commonwealth, a State or the Northern Territory that authorises the person to use a boat, if:
 - (a) the person is, or purports to be, the holder of such a licence or permit; or
 - (b) the person is operating a boat on a lake or doing anything for which such a licence or permit is required.

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Part 8 Enforcement

Division 4 Gathering information

Section 148

- (2) If the person does not have the licence or permit in the person's possession at the time the requirement is made, the person must produce the licence or permit to an inspector within 24 hours or any longer period approved by the inspector.
- (3) An inspector may seize a licence or permit that is not current or that the inspector reasonably believes is false.

Note: Division 6 of this Part (Dealing with things seized) applies to a thing seized under this section.

- (4) A person commits an offence of strict liability if:
- (a) the person is required to produce a licence or permit under subsection (1); and
 - (b) the person:
 - (i) fails to produce the licence or permit; or
 - (ii) if subsection (2) applies—fails to produce the licence or permit within the required time.

Penalty: 38 penalty units.

Division 5—Seizing boats

149 Inspector may seize boat

- (1) An inspector may seize a boat in a lake area and bring the boat to a holding area if the inspector reasonably believes that the boat is or has been involved in an offence against this Ordinance.
- (2) If an inspector seizes a boat under subsection (1), the inspector must give written notice, within 14 days, to:
 - (a) the owner of the boat; or
 - (b) if the owner is not able to be located—the person who had possession or control of the boat immediately before it was seized.
- (3) If it is not practicable for the inspector to give the notice to the person, the inspector may give the notice by fixing the notice to a prominent part of the boat.
- (4) The notice must:
 - (a) identify the boat; and
 - (b) state that the boat has been seized; and
 - (c) state the reason the boat has been seized; and
 - (d) state the contact details of an inspector who can provide further information; and
 - (e) include information about the return of the boat.
- (5) A person commits an offence if:
 - (a) a boat is seized under subsection (1); and
 - (b) the person operates the boat, or causes or allows the boat to be operated; and
 - (c) an inspector has not consented to the operation of the boat.

Penalty: 38 penalty units.

150 When Commonwealth to pay compensation relating to seizure

- (1) If there was no reasonable or probable cause for the seizure of a boat under section 149, the Commonwealth is liable to pay the owner of the boat a reasonable amount of compensation for any loss or damage incurred by the owner as a result of the seizure.
- (2) The owner of a boat seized under section 149 may institute proceedings in a court of competent jurisdiction for the recovery of compensation payable under subsection (1).

151 Owner to pay costs of seizure

- (1) This section applies if:
 - (a) a boat was seized under section 149; and

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- (b) the Commonwealth incurs costs in relation to the seizure and holding of the boat; and
 - (c) the seizure was reasonable in the circumstances.
- (2) The owner of the boat is liable to pay to the Commonwealth:
 - (a) the costs of, and incidental to, the seizure and holding of the boat; and
 - (b) compensation for any loss or damage incurred by the Commonwealth as a result of the seizure and holding of the boat.
- (3) If the owner and the Commonwealth cannot agree on the amount payable under subsection (2), the Commonwealth may recover the costs or compensation by action in a court of competent jurisdiction.

Division 6—Dealing with things seized

152 Receipts for things seized

- (1) As soon as practicable after an inspector seizes a thing under section 140 or section 148, the inspector must give a receipt for it to the person from whom it was seized.

Note: For notice of seizure of a boat, see section 149.

- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

153 Access to things seized

A person who would, apart from the seizure, be entitled to a thing seized under section 140, 148 or 149 may:

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

154 Return of things seized

- (1) A thing seized under section 140, 148 or 149 must be returned to its owner, or reasonable compensation must be paid to the owner by the Commonwealth for the loss of the thing, if:
 - (a) a prosecution for an offence relating to the thing is not instituted within 90 days of the seizure; or
 - (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under section 140, 148 or 149 is forfeited to the Commonwealth if a court:
 - (a) finds an offence relating to the thing to be proved; and
 - (b) orders the forfeiture.
- (3) If paragraph (2)(a) applies but a court does not order forfeiture of the thing seized, the Commonwealth must return the thing to its owner or pay reasonable compensation to the owner in relation to the loss of the thing.

155 Disposal of things seized

- (1) An inspector may dispose of a thing seized under section 140, 148 or 149 if:
 - (a) an inspector has taken reasonable steps under section 154 to return the thing to the person from whom it was seized; and
 - (b) the inspector has been unable to locate the person or the person has refused to take possession of the thing.

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- (2) The inspector may dispose of the thing in any way that the inspector considers appropriate.

Part 9—Administration

156 Simplified outline of this Part

This Part provides for declaration of additional lakes on National Land (in addition to Lake Burley Griffin), the appointment of the Delegate of Lakes and of inspectors in addition to police officers, and the supply of identity cards to inspectors.

157 Declaration of area as lake

The Minister may, by notifiable instrument, declare an area of National Land to be a lake for the purposes of this Ordinance.

158 Delegate for Lakes

- (1) The Minister must, in writing, appoint one of the following as the Delegate for Lakes:
 - (a) the Chief Executive of the National Capital Authority;
 - (b) a member of the staff of the National Capital Authority.

Note: For rules in relation to appointing a person to act in an office, see subsection 33(4) of the *Acts Interpretation Act 1901*.

- (2) The Minister may make the appointment by:
 - (a) naming the person appointed; or
 - (b) nominating the person holding or occupying a specified position or office at a particular time or from time to time.

159 Inspectors

- (1) The Minister may, in writing, appoint any of the following as an inspector for the purposes of this Ordinance:
 - (a) the Chief Executive of the National Capital Authority;
 - (b) a member of the staff of the National Capital Authority.
- Note: For rules in relation to appointing a person to act in an office, see subsection 33(4) of the *Acts Interpretation Act 1901*.
- (2) The Minister may make the appointment by:
 - (a) naming the person appointed; or
 - (b) nominating the person holding or occupying a specified position or office at a particular time or from time to time.
 - (3) The following persons are also inspectors for the purposes of this Ordinance:
 - (a) the Delegate for Lakes;
 - (b) a police officer.

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Part 9 Administration

Section 160

160 Identity cards for inspectors

- (1) The Minister must issue an identity card to an inspector (other than a police officer).

Form of identity card

- (2) The identity card must:
- (a) state the person's full name; and
 - (b) state that the person is an inspector for the purposes of this Ordinance; and
 - (c) contain a photograph of the person that is no more than 5 years old; and
 - (d) state the date the card is issued and the date the card expires; and
 - (e) comply with any other requirements prescribed by the rules.

Offence

- (3) A person commits an offence of strict liability if:
- (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an inspector; and
 - (c) the person does not return the identity card to the Minister within 7 days after ceasing to be an inspector.

Penalty: 1 penalty unit.

Exception—card lost, stolen or destroyed

- (4) Subsection (3) does not apply to a person if the person's identity card was:
- (a) lost or stolen; or
 - (b) destroyed by another person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Part 10—Miscellaneous

161 Simplified outline of this Part

This Part includes provisions relating to liability for offences, the power for the Minister to set fees, compensation for acquisition of property, and the ability of the Minister to make rules under this Ordinance.

162 Acts and omissions of representative of individual

- (1) In this section:

representative, of an individual, means an employee or agent of the individual.

Note: For corporate criminal responsibility, see Part 2.5 of the *Criminal Code*.

state of mind, of an individual, includes:

- (a) the individual's knowledge, intention, opinion, belief or purpose; and
- (b) the individual's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for an offence against this Ordinance.
- (3) If it is relevant to prove an individual's state of mind about an act or omission, it is enough to show:
- (a) the act was done or the omission was made by a representative of the individual within the scope of the individual's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of an individual by a representative of the individual, within the scope of the representative's actual or apparent authority, is also taken to have been done or omitted to be done by the individual.
- (5) However, subsection (4) does not apply if the individual establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

163 Privilege against self-incrimination

- (1) This section applies if an individual is required to answer a question, give information or produce a document or other thing under any of the following provisions:
- (a) section 88 (Owner and operator of boat to provide information about lifejackets);

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- (b) section 91 (Owner and operator of boat information about safety equipment);
 - (c) section 118 (Obligation to give information when involved in boating accident);
 - (d) section 119 (Obligation to report boating accidents to Minister);
 - (e) section 126 (Safety investigator may require people to give information, produce documents or answer questions);
 - (f) section 144 (Requiring information after boarding);
 - (g) section 145 (Master may be required to answer questions);
 - (h) section 146 (Master may be required to produce records);
 - (i) section 147 (Requirement to provide information about owner or master of boat).
- (2) The individual is not excused from answering the question, giving the information or producing the document or other thing on the ground that doing so might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (3) However:
- (a) the answer given, information given or document or other thing produced; and
 - (b) the answering of the question, giving of the information or production of the document or other thing; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question, giving of the information or production of the document or other thing;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against a section mentioned in subsection (1) or an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to a section mentioned in subsection (1).

164 Fees for making applications

- (1) The rules may prescribe a fee for making an application to the Minister under a provision of this Ordinance.
- (2) A fee must not be such as to amount to taxation.
- (3) The rules may:
 - (a) prescribe different fees for different kinds of applications; or
 - (b) make provision about exempting a person from payment of the fee; or
 - (c) make provision about waiving, postponing or refunding the fee (completely or partly).

165 Compensation for acquisition of property

- (1) If the operation of this Ordinance would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the

Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

166 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Ordinance to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) directly amend the text of this Ordinance.