

SOUTH AUSTRALIA

BOATING ACT, 1974

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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BOATING ACT, 1974

being

Boating Act, 1974, No. 132 of 1974
[Royal Assent proclaimed 16 January 1975]¹

as amended by

Boating Act Amendment Act, 1975, No. 78 of 1975 [Assented to 23 October 1975]²
Boating Act Amendment Act, 1978, No. 108 of 1978 [Assented to 7 December 1978]³
Boating Act Amendment Act, 1980, No. 22 of 1980 [Assented to 17 April 1980]⁴
Boating Act Amendment Act, 1988, No. 94 of 1988 [Assented to 15 December 1988]⁵
Boating Act Amendment Act, 1990, No. 83 of 1990 [Assented to 20 December 1990]

¹ Came into operation (except Parts II and III) 16 January 1975, Part II came into operation 1 September 1975, Part III came into operation 1 June 1976: *Gaz.* 16 January 1975, p. 138.

² Came into operation 5 August 1976: *Gaz.* 5 August 1976, p. 322.

³ Came into operation 1 November 1979: *Gaz.* 1 November 1979, p. 1104.

⁴ Came into operation 1 August 1980: *Gaz.* 24 July 1980, p. 294.

⁵ Came into operation 1 October 1989: *Gaz.* 21 September 1989, p. 914.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix I.

An Act to promote safety in boating; to amend the Local Government Act, 1934-1974; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Boating Act, 1974*.

Commencement

2. (1) Subject to subsection (3) of this section, this Act shall come into operation on a day to be fixed by proclamation.

(2) Notwithstanding the provisions of subsection (1) of this section the Governor may, in the proclamation made for the purposes of that subsection, suspend the operation of any specified provisions of this Act until a subsequent date fixed in the proclamation or until a date to be fixed by subsequent proclamation.

(3) This Act shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in this State.

Arrangement

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—REGISTRATION OF MOTOR BOATS

PART III—LICENSING OF OPERATORS OF MOTOR BOATS

PART IV—GENERAL PROVISIONS.

Amendment of s. 667 of Local Government Act

4. (1) Section 667 of the *Local Government Act, 1934-1974*, is amended by striking out paragraph (29a) thereof.

(2) The *Local Government Act, 1934-1974*, as amended by this section, may be cited as the *Local Government Act, 1934-1974*.

Interpretation

5. In this Act, unless the contrary intention appears—

"boat" means any vessel that is used, or is capable of being used, as a means of transportation on water but does not include any such vessel used and operated solely for—

- (a) the transportation for monetary or other consideration of passengers, livestock or goods;

or

3.

(b) other commercial purposes:

"motor boat" means any boat that is, or is to be, propelled by an internal combustion engine, an electrical engine, or other similar device, (whether or not that engine or device is the principal means of propulsion); and a motor boat is "under power" when it is being propelled, wholly or to some extent by that engine or device:

"operator" in relation to a boat means a person who exercises control over the course or direction of a boat, or over the means of propulsion of a boat, while the boat is under way; and the verb "to operate" in relation to a boat has a corresponding meaning:

"owner" in respect of a boat, includes a part owner of the boat, and a person who has for the time being the possession and use of the boat, but does not include a person who has a conditional or unconditional right to take possession of the boat under a hire-purchase agreement, bill of sale, or other similar instrument, but has not yet exercised that right:

"potential speed" in relation to a motor boat means the maximum speed of which the boat is capable—

(a) when moving through the water under its own power without assistance or hindrance from tide, current or wind;

and

(b) when carrying only a licensed operator and without any other load:

"registered", in relation to a motor boat, means registered under this Act, and "unregistered" has a corresponding meaning:

"speed" means speed with reference to a stationary horizontal plane (as distinct from speed through water which may itself be in motion):

"the Director" means the Director of Marine and Harbors:

"the Minister" means the Minister of Marine:

"unlicensed person" means a person who does not hold a licence or permit under Part III:

"vessel" includes any ship, boat or vessel of any description, used in navigation and includes—

(a) a hovercraft or other air cushion vehicle;

or

(b) any other vehicle supported or propelled by pneumatic force:

"waters under the control of the Minister" means any inland or coastal waters within the limits of the jurisdiction of the Minister pursuant to the *Harbors Act, 1936*, as amended, and any other waters for the time being declared by proclamation under this Act to be waters under the control of the Minister for the purposes of this Act.

Note: For definition of divisional penalties see Appendix 2.

Crown to be bound

6. This Act binds the Crown.

Delegation

7. (1) The Minister may delegate any of the Minister's powers under this Act to the Director.

(2) The Director—

(a) may delegate to a licensee under Part IIIA the power to issue temporary motor boat operator's licences to operators of motor boats taken on hire from that licensee;

(ab) may delegate to a person who carries on a business of selling motor boats—

(i) the power to issue permits in respect of boats sold by the person authorizing operation of the boats pending their registration;

and

(ii) the power to assign registration numbers to those boats;

and

(b) may delegate any power of the Director (other than a power delegated to the Director by the Minister) to the holder of any Public Service office or position.

(3) A delegation under this section—

(a) must be in writing;

(b) may be subject to such conditions as the delegator thinks fit;

(c) if made to the holder of a Public Service office or position, empowers any person for the time being holding or acting in that office or position to exercise the delegated powers;

(d) is revocable at will;

and

(e) does not prevent the delegator from acting personally in any matter.

Waters under the control of the Minister

8. (1) The Governor may, by proclamation, declare any waters described in the proclamation to be waters under the control of the Minister for the purposes of this Act.

5.

(2) A proclamation may be made in respect of any waters notwithstanding that the whole or any part of the waters subject to the proclamation lie more than three nautical miles beyond the boundaries of the State.

(3) The Governor may, by subsequent proclamation, revoke, amend or vary any proclamation under this section.

Licences for aquatic activities

9.

* * * * *

(4) The Director may grant to any person or body of persons a licence entitling that person or body of persons to the right to use, in accordance with the terms and conditions of the licence, any waters under the control of the Minister and specified in the licence for the purpose of any aquatic sport or activity at such times as are specified in the licence.

(5) Where any such licence is issued the Director may require the licensee to erect and maintain, in accordance with his direction, notices informing the public of the area of waters to which the licence relates and of the times at which the licensee is entitled to the use of those waters in accordance with the licence.

(6) If the licensee fails to comply with a requirement under subsection (5) of this section the licence shall be invalid.

(7) A person who, without the consent of the licensee or the authority of the Director, intrudes into waters at a time when the licensee has, pursuant to the licence, the exclusive use of those waters is guilty of an offence.

Penalty: Division 11 fine.

(8) The Director may revoke a licence under this section upon breach by the licensee of any term or condition of the licence.

Regattas, etc.

10. (1) The Director may, by instrument in writing, upon receipt of an application by any person or body of persons, grant an exemption to the participants, and any person or class of persons performing incidental or ancillary functions, in any regatta, race, contest or other activity, likely to involve the operation of boats in contravention of this Act, from all or any of the provisions of this Act.

(2) The Director shall have an absolute discretion to grant or refuse an exemption under this section as he thinks fit in the public interest.

(3) The exemption may be granted for such period or periods as the Director thinks fit, and specifies in the instrument.

(4) An exemption may be granted subject to such conditions and limitations as the Director thinks fit and specifies in the instrument.

6.

(5) Where any condition or limitation upon which an exemption under this section was granted, is contravened, the person by whom that contravention was committed shall be guilty of an offence.

(6) The Director may, at any time, cancel an exemption under this section.

PART II

REGISTRATION OF MOTOR BOATS

Boats to which this Part applies

11. (1) The provisions of this Part are in addition to the requirements of any other Act or law relating to the registration of boats.

(2) This Part applies to a motor boat other than one that is exempt from the provisions of this Part.

(3) The Governor may, by proclamation, exempt a specified motor boat or motor boats of a specified class from the provisions of this Part.

(4) An exemption under subsection (3) may be conditional or unconditional.

(5) The Governor may, by proclamation, vary or revoke a proclamation under this section.

Motor boats must be registered

12. (1) A person who operates an unregistered motor boat under power on waters controlled by the Minister is guilty of an offence.

Penalty: Division 9 fine.

(2) It is a defence to a prosecution for an offence against subsection (1) for the defendant to prove that, at the time of the alleged offence, due application for registration had been made but the defendant had not been notified of the outcome of the application.

Applications for registration

13. An application for registration of a motor boat—

(a) must be made by a person who is of or above the age of 16 years;

(b) must be in writing in the form approved, and contain the particulars required, by the Director;

(c) must, unless exempted by the regulations, be accompanied by the prescribed fee;

and

(d) must be lodged with the Director.

Registration

14. (1) The Director may refuse to register a motor boat if satisfied—

(a) that the boat does not comply with the prescribed standards of design or construction, or does not carry the prescribed equipment;

or

(b) that the boat is unseaworthy.

8.

(2) The Director may, pending determination of an application for registration, issue a permit authorizing operation of the boat for a period, not exceeding two weeks, specified in the permit.

(3) A permit may be subject to such conditions as the Director thinks fit and specifies in the permit.

(4) While a permit under subsection (2) is in force, the boat will be taken to be registered.

(5) If the Director refuses an application for registration, the Director—

(a) will refund the registration fee, or a due proportion of it;

and

(b) may cancel any permit issued under subsection (2).

(6) The Director must, if a permit holder so requests, cancel the permit and refund the registration fee, or a due proportion of it, and may deduct from that amount the prescribed cancellation fee.

(7) The amount to be paid to a person pursuant to subsection (5) or (6) may be rounded to the nearest dollar.

(8) Subject to subsection (9), registration will be for a period of 12 months, commencing—

(a) if registration is granted while a permit is in force—on the date of issue of the permit;

(b) if registration is granted before the expiry of a previous registration period—on that expiry;

or

(c) in any other case—on the grant of registration.

(9) The Director may, on the application of a person who owns more than one motor boat, fix a common expiry date in respect of the registration of those boats and, for that purpose, may fix registration periods of such length, and adjust registration fees, as may be necessary.

(10) The Director must keep a register of boats registered under this Part, containing registration numbers and such other information as the Director determines.

Registration labels and numbers

15. (1) On registering a motor boat the Director will assign a registration number to the boat (if a number has not already been assigned) and will issue to its owner a certificate of registration and a registration label.

(2) The Director may at any time assign a new registration number in substitution for a number previously assigned and, on doing so, must issue a new certificate of registration.

Duty to carry registration numbers and labels

16. (1) A person who operates a registered motor boat under power on waters controlled by the Minister is guilty of an offence if—

(a) a registration label has been issued but is not affixed to the boat in the prescribed manner and place;

or

(b) a registration number has been assigned but—

(i) is not displayed on the boat in the prescribed manner and place;

or

(ii) is obscured or is not fully legible in daylight.

Penalty: Division 9 fine.

(2) It is a defence to a prosecution for an offence against subsection (1)(a) or (b)(i) for the defendant to prove that, at the time of the alleged offence, the defendant had not had a reasonable opportunity to affix or display the registration label or number in the prescribed manner or place.

(3) It is a defence to a prosecution for an offence against subsection (1)(b)(ii) for the defendant to prove that all reasonably practicable steps had been taken to prevent the registration number from being obscured or to ensure that it was fully legible in daylight.

(4) If a person operates a motor boat under power on waters controlled by the Minister while displaying—

(a) a registration number assigned or a registration label issued under this Act to some other boat;

or

(b) a number that is not, but could be mistaken for, a registration number assigned under this Act,

that person is guilty of an offence.

Penalty: Division 9 fine.

Transfer of registration

16a. (1) Where ownership of a registered motor boat is transferred, the transferee must within 14 days of the transfer, or within such longer period as the Director may allow, apply for registration of the boat in his or her name.

Penalty: Division 9 fine.

10.

(2) An application for transfer of registration must—

(a) be in writing in the form approved, and contain the particulars required, by the Director;

(b) be accompanied by the prescribed fee;

and

(c) be lodged with the Director.

(3) On due application for transfer being made, the Director must register the motor boat in the name of the applicant.

Cancellation of registration

16b. (1) The Director may cancel the registration of a motor boat if satisfied that the registration was improperly obtained.

(2) The registered owner of a boat may at any time apply to the Director for cancellation of registration.

(3) An application for cancellation of registration must—

(a) be in writing in the form approved, and contain the particulars required, by the Director;

(b) be accompanied by the registration label (if still in the applicant's possession);

and

(c) be lodged with the Director.

(4) Subject to subsection (5), the Director must, on due application under this section, cancel the registration of a boat.

(5) If the registration label has not been surrendered to the Director, the Director must not cancel registration unless satisfied, by such evidence as the Director may require, that the label has been lost, stolen or destroyed, whether while affixed to the boat or not.

(6) On cancellation of registration under subsection (4) the Director—

(a) will refund a due proportion of the registration fee;

and

(b) may deduct from the amount to be refunded the prescribed cancellation fee.

11.

(7) Any amount to be paid pursuant to subsection (6) may be rounded to the nearest dollar.

(8) On cancellation of registration under subsection (1), the owner of the boat must return the registration label to the Director.

Penalty: Division 10 fine.

PART III

LICENSING OF OPERATORS OF MOTOR BOATS

Application for licence

17. (1) An application for a licence to operate a motor boat—

- (a) must be in writing and signed by the applicant;
 - (b) must be in such form and contain such particulars as are required by the Director;
- and
- (c) must be accompanied by the prescribed fee.

(2) An application for a licence under this Part shall not be made by a person under the age of sixteen years.

Examinations

18. (1) An applicant for a licence under this Part must, unless exempted from examination under subsection (2) of this section, pass to the satisfaction of the Director such oral, written, or practical examinations as may be required of him by the Director.

(2) The Director may, by instrument in writing, exempt any person or class of persons from examination under this section.

(3) The Director may cause examinations of applicants for licences under this Part to be held at such times and places as he thinks fit.

(4) The examinations shall be conducted by persons duly authorized by the Minister.

Grant of licence

19. (1) Where an applicant for a licence has passed the requisite examination, or has been exempted from examination, the Director shall issue or cause to be issued in the name of that person a licence to operate a motor boat.

(2) Subject to subsection (2a), a licence granted pursuant to subsection (1) of this section shall date from the day on which the applicant became entitled to the issue of the licence and shall, subject to cancellation or suspension under this Act, continue in operation without renewal.

(2a) The Director may issue an operator of a motor boat hired from a licensee under Part IIIA with a temporary licence for such period, not exceeding 60 days, as the Director thinks fit.

(3) A licence shall not be transferable.

(3a) A licence may be subject to such conditions as the Director specifies in the licence.

(3b) A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Penalty: Division 9 fine.

(4) The holder of a licence may, at any time, surrender the licence.

(5) Where the holder of a licence under this Part becomes subject to any physical or mental disability that may impair his capacity to operate or control a motor boat he shall notify the Director of that fact.

(6) A person who fails to comply with subsection (5) is guilty of an offence.

Penalty: Division 10 fine.

(7) The Director may, at any time, by notice in writing served personally or by post upon the holder of a licence under this Part require him to submit to an examination of his capacity and competence to operate and control a motor boat.

(8) If the holder of a licence fails to comply with a requirement under subsection (7) of this section, or, upon examination, fails to satisfy the Director of his capacity and competence to operate and control a motor boat the Director may cancel the licence.

Register of licensed operators

20. (1) The Director shall cause to be kept a register of licensed operators.

(2) The name and address of every person licensed under this Part shall be entered in the register.

(3) The register shall be in such form and contain such further particulars as the Director thinks fit.

Cancellation or suspension of licence

21. Where the holder of a licence under this Part is convicted of an offence under this Act, or any other offence that in the opinion of the court shows him to be unfit to drive a motor boat, the court may by order—

(a) cancel or suspend the licence;

and

(b) disqualify the convicted person from holding or obtaining a licence for a period specified in the order, or until further order.

Special permits

22. (1) The Director may issue to a person between the age of twelve years and sixteen years a special permit under the terms of which he may, subject to such conditions as the Director thinks fit to include in the permit, operate—

(a) a motor boat the potential speed of which does not exceed 18 kilometres per hour;

or

(b) a motor boat the potential speed of which exceeds 18 kilometres per hour while accompanied by a person who is licensed under this Part.

14.

(2) The Director may at any time revoke a special permit issued under this section.

Unlawful operation of motor boats

23. (1) An unlicensed person who operates a motor boat under power on waters under the control of the Minister is guilty of an offence.

Penalty: Division 9 fine.

(2) A person who permits an unlicensed person to operate a motor boat under power on waters under the control of the Minister is guilty of an offence.

Penalty: Division 9 fine.

(3) No offence is committed under this section by a person who operates, or permits another person to operate, a motor boat without a licence or permit under this Part—

(a) if—

(i) the boat is not operated at a speed in excess of 18 kilometres per hour;

(ii) the operator is above the age of twelve years;

and

(iii) a licensed person is in charge of the boat;

or

(b) if the motor boat is exempted from the provisions of this Part by proclamation.

(4) The Governor may, by proclamation, exempt any motor boat, or class of motor boats, from the provisions of this Part, and may, by subsequent proclamation, revoke, amend or vary any such proclamation.

(5) An exemption may be granted under subsection (4) of this section upon conditions stipulated in the proclamation.

PART IIIA

LICENSING OF PERSONS WHO CARRY ON A BUSINESS OF
HIRING OUT BOATS

Unlawful hiring out of boats

23a. A person who carries on a business of hiring out boats of a prescribed class without being licensed to do so under this Part is guilty of an offence.

Penalty: Division 9 fine.

Application for licence

23b. (1) An application for a licence under this Part must—

(a) be in writing in the form approved, and contain the particulars required, by the Director;

and

(b) be lodged with the Director.

(2) The Director may, before granting a licence under this Part, require that all or any of the boats to be hired out in pursuance of the licence be made available for inspection, in or out of the water.

(3) A prescribed fee is payable by an applicant in respect of the inspection of a boat under this section.

(4) Subject to subsection (5), the Director must not grant an application for a licence under this Part unless satisfied—

(a) that the applicant is of or over 18 years of age and is a fit and proper person to hold a licence under this Part;

and

(b) that the boats to be hired out in pursuance of the licence comply with prescribed requirements as to design, construction and safety.

(5) The Director may grant a licence notwithstanding that a boat to be hired out in pursuance of the licence does not comply with the prescribed requirements, provided that—

(a) operation of the boat would not, in the opinion of the Director, present a risk to the safety of any person;

and

(b) the licence is made subject to conditions designed to ensure compliance with the prescribed requirements within a period specified in the licence.

(6) A licence under this Part may be subject to such conditions as the Director specifies in the licence.

(7) The Director may, by notice in writing to the holder of a licence under this Part, vary or revoke any condition of the licence.

(8) The holder of a licence under this Part who contravenes, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: Division 9 fine.

Duration of licence

23c. A licence under this Part is, subject to this Act, effective for a period of one year.

Transfer of licence

23d. (1) A licence under this Part may, with the approval of the Director, be transferred.

(2) An approval may be given under subsection (1) on such conditions as the Director thinks fit.

Cancellation of licence

23e. (1) The Director may cancel a licence under this Part—

(a) if satisfied that the licence was improperly obtained;

(b) if the holder of the licence is found guilty of an offence against this Act;

or

(c) if the holder of the licence contravenes, or fails to comply with, a condition of the licence.

(2) If a licence is cancelled pursuant to this section the holder of the licence must, on being notified of the cancellation, return the licence to the Director.

Penalty: Division 10 fine.

PART IV

GENERAL PROVISIONS

DIVISION I—BOATING OFFENCES

Boating accidents

24. (1) Where, on waters under the control of the Minister, a boat is involved in an accident in which a person is killed or injured or a boat or other property is lost, destroyed or damaged, the operator of the boat and of any other boat in the vicinity must, so far as is possible without seriously endangering any boat or person, render any person affected by the accident such assistance as is practicable for the purposes of averting or minimizing any danger arising from the accident.

(2) The operator of each boat involved in such an accident must give written notice of his or her name and address and, if requested, the name of the owner of the boat—

- (a) to the operator of each other boat involved in the accident;
 - (b) to the owner of any other property lost, destroyed or damaged in the accident;
- and
- (c) to each person injured in the accident.

Penalty: Division 9 fine.

(3) The operator of each boat involved in such an accident must, as soon as practicable after the accident, give the following information to a member of the police force at or near the site of the accident or at a police station in the vicinity of the accident:

- (a) the time and place of the accident;
 - (b) the circumstances of the accident;
 - (c) the name and address (if known) of each person killed or injured in the accident;
- and
- (d) the name and address (if known) of each witness to the accident.

Penalty: Division 9 fine.

(4) Subsection (3) does not oblige an operator to give any information that would tend to incriminate the operator or any other person of an offence.

(5) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that the only damage resulting from the accident was damage to a boat or other property and that a fair estimate of the cost of making good the damage was \$100 or less.

Unseaworthy boats

25. (1) A member of the Police Force, or a person duly authorized for the purpose by the Minister, may order that a boat which is being operated in waters under the control of the Minister which he considers unseaworthy or overloaded be not operated in those waters.

(2) An order may be given under this section orally, or by notice in writing served personally or by post upon the owner or operator of the boat, or affixed to the boat.

(3) The owner of a boat in respect of whom an order has been made under subsection (1) of this section may by notice in writing addressed to the Minister appeal against the order.

(4) The Minister shall give proper consideration to any such appeal, and may vary or revoke the order.

(5) The operation of an order under this section shall not be suspended by an appeal.

(6) Where a boat is operated in contravention of an order under this section, the person by whom the boat is so operated is guilty of an offence.

Penalty: Division 9 fine.

* * * * *

Boat to be operated with due care, etc.

26. (1) A person who, upon waters under the control of the Minister—

(a) operates a boat recklessly or without due care or consideration for the safety of other persons;

or

(b) rides upon, or otherwise uses, any water skis, surf board, or other device in a reckless manner or without due care, or while being towed by a boat, behaves in a reckless manner or without due care,

is guilty of an offence.

Penalty: Division 9 fine.

(2) A person who operates a boat in waters under the control of the Minister at a speed or in a manner dangerous to any person, or likely to cause injury to property is guilty of an offence.

Penalty: Division 8 fine.

(3) A person who, on waters under the control of the Minister, operates or attempts to operate a boat, rides upon or otherwise uses any water skis, surf board or other device or is towed by a boat—

(a) while under the influence of intoxicating liquor or a drug to such an extent that the use of any mental or physical faculty is lost or appreciably impaired;

or

(b) while there is present in his or her blood the prescribed concentration of alcohol,

is guilty of an offence.

Penalty: Division 8 fine.

(4) For the purposes of subsection (3), "prescribed concentration of alcohol" means a concentration of .08 grams or more of alcohol in 100 millilitres of blood.

(5) Where a member of the police force believes on reasonable grounds that a person has committed an offence against subsection (1), (2) or (3)(a), that member of the police force may, subject to subsection (6), require the person to submit to an alcotest or breath analysis, or both.

(6) An alcotest or breath analysis must be performed within two hours after the occurrence of the event giving rise to the belief referred to in subsection (5).

Equipment

27. (1) A boat shall not be operated in waters under the control of the Minister unless it carries the prescribed equipment.

(2) A person who operates a boat in contravention of this section is guilty of an offence.

Penalty: Division 9 fine.

Wrecks and abandoned boats

28. (1) Where a person discovers a boat that has been wrecked or abandoned, and takes possession thereof, he shall, as soon as practicable, report the fact of the discovery and the position of the boat to the Director or a member of the Police Force.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: Division 11 fine.

(3) Where the owner of a wrecked or abandoned boat has not been found after proper inquiry, the Director may, by instrument under his hand, declare that the boat is forfeited to the Crown and upon the making of such a declaration the boat shall be so forfeited.

(4) The Director may sell, dispose of, or otherwise deal with, a wrecked or abandoned boat forfeited to the Crown under the provisions of this section.

(5) The Director may, without further appropriation, pay to any person who has salvaged a wrecked or abandoned boat any moneys, realized upon the sale of the boat, that in the opinion of the Director represent the reasonable cost of salvage operations.

Disclosure of name and address of operator

29. (1) A person who is the owner, or has the actual control for the time being of the boat, must, immediately on the request of a member of the Police Force, or an officer authorized in writing by the Minister, disclose the name and address of any person whom he believes to have been the operator of the boat at any time specified in the request.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: Division 9 fine.

Management of boat

30. (1) A person who, in waters under the control of the Minister—

- (a) operates a boat;
- (b) rides upon water skis, a surf board, or other similar device, or causes any water skis, surf board or other similar device to be towed or propelled;

or

- (c) is towed by a boat, or causes any person to be towed by a boat,

at a speed exceeding 8 kilometres per hour within 30 metres—

- (d) of any person swimming or bathing;
- (e) of any vessel or buoy on which is displayed an authorized flag indicating "diver below";

or

- (f) of any vessel,

is guilty of an offence.

Penalty: Division 9 fine.

(2) The provisions of subsection (1) of this section shall not apply—

- (a) in an area set apart pursuant to the provisions of this Act for water ski-ing or other similar activity;
- (b) where compliance with those provisions is not practicable or would endanger any person or property;
- (c) where compliance with those provisions would be contrary to any other Act, regulation, or rule;

or

- (d) in circumstances in which the regulations provide that the provisions of that subsection shall not apply.

DIVISION II—PROVISIONS RELATING TO BREATH ANALYSIS, ETC.

Interpretation

30a. In this Act—

"alcotest" means a test by means of an apparatus of a kind approved by the Governor for the purposes of the *Road Traffic Act, 1961*, by the presence of alcohol in the blood of a person who exhales into the apparatus is indicated:

"analyst" means a person who is an analyst for the purposes of the *Road Traffic Act, 1961*:

"breath analysing instrument" means an apparatus of a kind approved by the Governor as a breath analysing instrument for the purposes of the *Road Traffic Act, 1961*:

"breath analysis" means an analysis of breath by a breath analysing instrument.

Presumption of blood alcohol level

30b. If it is established that there was present in the blood of a person charged with an offence against section 26(3)(b) the prescribed concentration of alcohol at any time within two hours after that offence is alleged to have been committed, it will be presumed, unless the court before which the person is charged draws, from the evidence before it, a reasonable inference to the contrary, that the prescribed concentration of alcohol was present in the blood of the person at the time the offence is alleged to have been committed.

Contracts of insurance

30c. (1) A person who is convicted of an offence against section 26(3)(b) is not, by reason only of the conviction and any consequent penalty, to be taken, for the purposes of any law, or of any contract, agreement, policy of insurance or other document, to have been under the influence of, or in any way affected by, intoxicating liquor, or incapable of operating, or of exercising effective control of, a boat, at the time of the commission of that offence.

(2) The provisions of subsection (1) have effect notwithstanding any law, or any covenant, term, condition or provision of, or contained in, any contract, agreement, policy of insurance or other document, and a covenant, term, condition or provision purporting to exclude, limit, modify or restrict the operation of that subsection is void.

(3) Any covenant, term, condition or provision contained in a contract, policy of insurance or other document purporting to exclude or limit the liability of an insurer in the event of the operator of a boat being convicted of an offence against section 26(3)(b) is void.

Compliance with directions of police

30d. (1) A person required under this Act to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of a member of the police force in relation to the requirement and, in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted, in accordance with the directions of a member of the police force.

Penalty: Division 8 fine but not less than the maximum of a division 9 fine.

(2) It is a defence to a prosecution under subsection (1)—

(a) that the requirement or direction to which the prosecution relates was not lawfully made;

or

(b) that there was, in the circumstances of the case, good cause for the refusal or failure of the defendant to comply with the requirement or direction.

(3) No person is entitled to refuse or fail to comply with a requirement or direction under this section on the ground that, by complying with that requirement or direction, he or she would, or might, furnish evidence that could be used against himself or herself.

Right of person to request blood test

30e. (1) A person required in accordance with this Act to submit to a breath analysis may request of a member of the police force that a sample of his or her blood be taken by a medical practitioner.

(2) Where a request is made by a person under subsection (1), a member of the police force must do all things reasonably necessary to facilitate the taking of a sample of the person's blood—

(a) by a medical practitioner nominated by the person;

or

(b) if—

(i) it becomes apparent to the member of the police force that there is no reasonable likelihood that a medical practitioner nominated by the person will be available to take the sample within one hour of the time of the request at some place not more than ten kilometres distant from the place of the request;

or

(ii) the person does not nominate a particular medical practitioner,

by any medical practitioner who is available to take the sample.

(3) The taking of a sample of blood pursuant to this section—

(a) must be carried out by the medical practitioner in the presence of a member of the police force;

and

(b) must be at the expense of the person from whom the sample is taken.

(4) A sample of blood taken by a medical practitioner in accordance with a request under subsection (1) must be divided by that practitioner into two approximately equal parts and placed in sealed containers of which—

(a) one must be handed to the member of the police force present at the taking of the sample;

and

(b) one must be retained by the medical practitioner and dealt with in accordance with the directions of the person from whom it was taken.

(5) Nothing in this section absolves a person from the obligation imposed by section 30d(1).

Evidence, etc.

30f. (1) Without affecting the admissibility of evidence that might be given otherwise than in pursuance of this section, evidence may be given, in any proceedings for an offence against section 26(3), of the concentration of alcohol indicated as being present in the blood of the defendant by a breath analysing instrument operated by a person authorized to operate the instrument by the Commissioner of Police and, where the requirements and procedures in relation to breath analysing instruments and breath analysis under this Act, including subsections (3) and (4), and under any other Act or regulations have been complied with, it will be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the defendant at the time of the analysis and throughout the period of two hours immediately preceding the analysis.

(2) In any proceedings for an offence against section 26(3), no evidence can be adduced in rebuttal of the presumption created by subsection (1) except evidence of the concentration of alcohol in the blood of the defendant as indicated by analysis of a sample of blood taken and dealt with in accordance with section 30e.

(3) As soon as practicable after a person has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the person whose breath has been analysed a statement in writing specifying—

(a) the concentration of alcohol indicated by the analysis to be present in the blood expressed in grams in 100 millilitres of blood;

and

(b) the date and time of the analysis.

(4) Where a person has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that person by the breath analysing instrument is the prescribed concentration of alcohol, the person operating the instrument must forthwith—

(a) inform that person of the right pursuant to section 30e to have a sample of blood taken by a medical practitioner;

and

- (b) warn that person that, if he or she does not exercise that right, it may be conclusively presumed for the purposes of proceedings for an offence against section 26(3) that the concentration of alcohol in the blood during the period of two hours preceding the analysis was the concentration as indicated by the breath analysing instrument.

(5) In proceedings for an offence against section 26(3), a certificate—

- (a) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorized by the Commissioner of Police to operate breath analysing instruments;

or

- (b) purporting to be signed by a person authorized under subsection (1) and to certify that—

- (i) the apparatus used by the authorized person was a breath analysing instrument within the meaning of this Act;
- (ii) the breath analysing instrument was in proper order and was properly operated;

and

- (iii) in relation to the breath analysing instrument, the provisions of this Act and of any other Act or regulations with respect to breath analysing instruments were complied with,

is, in the absence of proof to the contrary, proof of the matters so certified.

(6) A certificate purporting to be signed by a member of the police force and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act, 1961*, for the purpose of performing alcoltests is, in the absence of proof to the contrary, proof of the matter so certified.

(7) A certificate purporting to be signed by a member of the police force and to certify that a person named in the certificate submitted to an alcoltest on a specified day and at a specified time and that the alcoltest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matters so certified.

(8) Subject to subsection (10), in proceedings for an offence against section 26(3), a certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.

(9) Subject to subsection (10), in proceedings for an offence against section 26(3), a certificate purporting to be signed by a person authorized under subsection (1) and to certify that—

- (a) a sample of the breath of a person named in the certificate was furnished for analysis in a breath analysing instrument;

25.

- (b) a concentration of alcohol expressed in grams in 100 millilitres was indicated by that breath analysing instrument as being present in the blood of that person on the day and at the time stated in the certificate;
 - (c) a statement in writing required by subsection (3) was delivered in accordance with that subsection;
- and
- (d) the person named in the certificate was informed and warned of the matters referred to in subsection (4) in accordance with that subsection,

is, in the absence of proof to the contrary, proof of the matters so certified.

(10) A certificate referred to in subsection (8) or (9) cannot be received as evidence in proceedings for an offence against section 26(3)—

- (a) unless a copy of the certificate proposed to be put in evidence at the trial of a person for the offence has, not less than seven days before the commencement of the trial, been served on that person;
- (b) if the person on whom a copy of the certificate has been served under paragraph (a), has, not less than two days before the commencement of the trial, served written notice on the complainant requiring the attendance at the trial of the person by whom the certificate was signed;

or

- (c) if the court, in its discretion, requires the person by whom the certificate was signed to attend at the trial.

DIVISION III—MISCELLANEOUS

Powers of police officer or authorized officer

31. (1) A member of the police force, or a person authorized in writing by the Minister, may, for any purpose connected with the administration or enforcement of this Act, exercise any of the following powers—

- (a) he may direct a person who is operating a boat—
 - (i) to manoeuvre the boat in a specified manner;
- or
- (ii) to stop the boat and secure it in a specified manner;
- (b) he may board a boat—
 - (i) for the purpose of determining whether a registration label is affixed to the boat in accordance with this Act;

- (ii) for the purpose of inspecting the boat to determine whether it is seaworthy or whether, in the case of a boat of a class prescribed for the purposes of Part IIIA, it complies with the prescribed requirements as to design, construction or safety;
 - or
 - (iii) for the purpose of investigating an offence that he reasonably suspects to have been committed by a person on board the boat;
- (c) he may require the operator of a motor boat to produce his licence or permit, within forty-eight hours, or some specified longer period, for inspection—
- (i) by a member of the police force at a police station in South Australia nominated by the operator of the motor boat, or if the operator fails to nominate a police station after being invited to do so, at a police station nominated by the member of the police force or authorized person;
 - or
 - (ii) by a nominated person at a place agreed upon by the operator of the motor boat and the member of the police force or authorized person;
- (ca) he may require a person apparently carrying on a business of hiring out boats of a class prescribed for the purposes of Part IIIA to produce his or her licence under that Part;
- (d) he may require any person—
- (i) whom he reasonably suspects of having committed an offence against this Act;
 - or
 - (ii) who is, in his opinion, in a position to give evidence relating to the commission of an offence,
- to state his name and address.

(2) A person who—

- (a) fails to obey a direction or requirement under subsection (1) of this section;
- (b) hinders a member of the police force or an authorized person acting in the exercise of powers conferred by subsection (1) of this section;

or

(c) when required to state his name and address, states a false name or address,
is guilty of an offence.

Penalty: Division 9 fine.

(3) Where a person is charged with an offence consisting of a failure to obey a direction given under paragraph (a) of subsection (1) of this section, it shall be a defence to prove that compliance with the direction would have endangered life or property.

Powers of arrest

32. (1) A person authorized in writing by the Minister may arrest any person whom he reasonably suspects to have committed an offence against section 26 of this Act, and convey him to a police station for the purpose of charging him with the commission of that offence.

(2) Before, or as soon as practicable after, arresting a person under this section, the person authorized to make the arrest must display to the person whom he proposes to arrest, or has arrested, the written authority in pursuance of which he purports to make the arrest.

(3) A person who resists arrest under this section or escapes or attempts to escape from custody after being arrested but before a charge is laid against him is guilty of an offence.

Penalty: Division 9 fine.

False information

33. A person who in any application for registration or a licence under this Act furnishes any information that is false or misleading in a material particular is guilty of an offence.

Penalty: Division 9 fine.

Proceedings

34. (1) The offences constituted by this Act are summary offences.

(2) Proceedings for an offence may be brought at any time within 12 months after the date of the alleged commission of the offence.

* * * * *

Expiation of offences

35a. (1) If the Director believes on reasonable grounds that a person has committed an offence to which this section applies, he may give that person a written notice to the effect that the offence may be expiated by payment to the Minister of an amount specified in the notice (being an amount fixed by regulation) before any day, or within any period, specified in the notice.

(2) A notice under subsection (1) of this section may be given to the person believed to have committed the offence—

(a) personally;

or

(b) by post.

(3) Where an offence is expiated in accordance with the terms of a notice under subsection (1) of this section, the person alleged to have committed the offence shall not be prosecuted in any court for that offence.

(4) The expiation of an offence under this section shall not be regarded in any legal proceedings as—

(a) an admission of guilt by the person who expiated the offence;

or

(b) evidence of any act or omission, that constitutes an element of the offence, on the part of the person who expiated the offence.

(5) In this section—

"offence to which this section applies" means an offence under this Act declared by regulation to be an offence to which this section applies.

Evidentiary provisions

36. In any proceedings for an offence under this Act—

(aa) an apparently genuine certificate, purporting to be signed by the Minister or the Director (as the case requires), containing particulars of a delegation under this Act is, in the absence of proof to the contrary, proof of those particulars;

(a) an allegation in the complaint that any specified waters are waters under the control of the Minister shall be deemed to be proved in the absence of proof to the contrary;

(b) an apparently genuine document purporting to be under the hand of the Director certifying that a motor boat referred to in the certificate was or was not registered under this Act on a date referred to therein shall be accepted as proof of the matter so certified in the absence of proof to the contrary;

(c) an apparently genuine document purporting to be under the hand of the Director certifying that a motor boat referred to therein was on a specified date registered in the name of any person shall be accepted, in the absence of proof to the contrary, as proof of the fact that that person was the owner of that motor boat on the specified date;

(d) an apparently genuine document purporting to be under the hand of the director certifying that a person named therein was, or was not, licensed under this Act on a specified date shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified;

(e) an allegation in the complaint that the engine of a motor boat referred to in the complaint is or is not capable of developing more than a certain horsepower, specified in the complaint, shall be deemed to be proved in the absence of proof to the contrary;

- (f) an allegation in the complaint that a place referred to in the complaint is within a zone or other area to which a specified regulation applies shall be deemed to be proved in the absence of proof to the contrary;
- (g) an allegation in the complaint that a specified boat was, on a specified date, a boat operated pursuant to a licence under Part IIIA, will, in the absence of proof to the contrary, be taken to be proved;
- (h) an apparently genuine certificate purporting to be signed by the Director stating that a specified person had not, on or before a specified date, lodged with, served on or otherwise delivered to the Director a specified application, notice or other document is, in the absence of proof to the contrary, proof of that statement.

Fees

37. (1) All fees recovered under the provisions of this Act shall be paid into a separate fund which shall be applied in defraying the cost of the administration of this Act.

(2) Before registration fees in respect of motor boats are prescribed by regulation the Minister shall submit to the Governor an estimate of the expenditure to be incurred in the administration of this Act, and of the number of registration fees he expects to be paid or recovered pursuant to the provisions of this Act.

(3) In making regulations prescribing registration fees in respect of motor boats the Governor shall have regard to the estimates submitted pursuant to subsection (2) of this section, and the fees prescribed shall not exceed such amounts as will, in the opinion of the Governor, result in sufficient revenue to meet that expenditure.

* * * * *

Regulations

38. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and without limiting the generality of the foregoing, those regulations may—

- (a) prescribe rules to be observed by persons operating or in charge of boats, or any class of boats, or by passengers in any boats or class of boats;
- (b) require the owner or operator of any boat to prevent or restrict the discharge or escape of oil, tar, spirit or any deleterious or offensive matter from the boat;
- (c) prohibit the throwing of litter or waste matter from any boat;
- (d) require that all boats carry receptacles for litter;
- (e) prohibit or restrict the emission of smoke or vapour from any boat;
- (f) prescribe speed limits to be observed by the operators of motor boats or of boats of any other specified class;

- (g) require equipment prescribed in the regulations to be installed in, or carried upon boats, or any class of boats, for the safe navigation of the boats, the safety of the occupants of the boats, the prevention of fire or the suppression of noise or any other nuisance;
 - (h) regulate, restrict or prohibit water skiing, surf board riding, or other aquatic activity, and make any provision that may conduce to the safety of participants in any of those activities;
 - (i) prescribe, and provide for the recovery of, fees for the purposes of this Act;
 - (j) prescribe the manner in which registration labels and identification marks or numbers are to be exhibited upon motor boats;
 - (k) empower the Minister to grant exemptions, subject to such conditions as he may think fit, from any provisions of this Act in relation to any boats, or class of boats, or the operators of any boats, or class of boats;
 - (l) prescribe fines, not exceeding a division 10 fine, for contravention of the regulations.
- (2) Any regulation under this Act may be of general or limited application according to—
- (a) the class of persons or boats;
 - (b) the portion of the waters under the control of the Minister;
 - (c) the zone established under this section;
 - (d) the particular circumstances;
- or
- (e) any other specified factor,

to which the regulation is expressed to apply.

(2a) The Minister may, for the purposes of the regulations, establish zones, or cause zones to be established, by marking out portions of the waters under the control of the Minister by markers or buoys, or in any other prescribed manner.

(3) Any by-laws made pursuant to paragraph (29a) of section 667 of the *Local Government Act, 1934-1974*, and in force immediately before the commencement of this Act, shall remain in force in all respects as if they were regulations made pursuant to the provisions of this section, and may be altered or revoked by regulation under this section.

(4) The regulations may refer to or, by reference, incorporate (with or without modifications) any code or standard published by a specified authority and a code or standard so referred to or incorporated has effect, as amended from time to time by the publishing authority, as if it were a regulation made under this Act.

(5) Where a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations;

and

(b) in any legal proceedings, evidence of the contents of the code or standard may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code or standard.

APPENDIX 1

Legislative History

Section 5:	definition of "boat" substituted by 108, 1978, s. 3 definition of "registered" inserted by 94, 1988, s. 3(a) definition of "unlicensed person" inserted by 94, 1988, s. 3(b)
Section 7:	substituted by 94, 1988, s. 4
Section 7(2):	amended by 83, 1990, s. 2
Section 9(1) - (3):	repealed by 22, 1980, s. 3
Section 9(7):	substituted by 94, 1988, s. 5
	Part II comprising ss. 11 - 16 and heading amended by 78, 1975, s. 3; 108, 1978, ss. 4 - 6; repealed and ss. 11 - 16b and heading inserted in its place by 94, 1988, s. 6
Section 16a(1):	amended by 83, 1990, s. 3
Section 19(2):	amended by 94, 1988, s. 7(a)
Section 19(2a):	inserted by 94, 1988, s. 7(b)
Section 19(3a) and (3b):	inserted by 94, 1988, s. 7(c)
Section 19(6):	substituted by 94, 1988, s. 7(d)
Section 23(1) and (2):	substituted by 94, 1988, s. 8
Section 23(3):	substituted by 108, 1978, s. 7
Section 23(4) and (5):	inserted by 108, 1978, s. 7
	Part IIIA comprising ss. 23a - 23e and heading inserted by 94, 1988, s. 9
Heading preceding section 24:	inserted by 94, 1988, s. 10
Section 24:	substituted by 94, 1988, s. 11
Section 25(6):	amended by 94, 1988, s. 12
Section 25(7) and (8):	repealed by 108, 1978, s. 8
Section 26(1):	amended by 94, 1988, s. 13(a)
Section 26(2):	amended by 94, 1988, s. 13(b)
Section 26(3):	substituted by 94, 1988, s. 13(c)
Section 26(4) - (6):	inserted by 94, 1988, s. 13(c)
Section 27(2):	amended by 94, 1988, s. 14
Section 28(2):	substituted by 94, 1988, s. 15
Section 29(1):	amended by 94, 1988, s. 16(a)
Section 29(2):	substituted by 94, 1988, s. 16(b)
Section 30(1):	amended by 94, 1988, s. 17
	Division II of Part IV comprising ss. 30a - 30f and heading inserted by 94, 1988, s. 18
Section 30a:	definition of "alcotest" amended by 83, 1990, s. 4
Section 30f(2):	amended by 83, 1990, s. 5
Heading preceding section 31:	inserted by 94, 1988, s. 19
Section 31:	substituted by 108, 1978, s. 9
Section 31(1):	amended by 94, 1988, s. 20(a), (b)
Section 31(2):	amended by 94, 1988, s. 20(c)
Section 32(1):	amended by 108, 1978, s. 10
Section 32(3):	amended by 94, 1988, s. 21
Section 33:	amended by 94, 1988, s. 22
Section 34:	substituted by 94, 1988, s. 23
Section 35:	repealed by 94, 1988, s. 24
Section 35a:	inserted by 108, 1978, s. 11
Section 36:	amended by 22, 1980, s. 4; 94, 1988, s. 25
Section 37(4):	repealed by 94, 1988, s. 26
Section 38(1):	amended by 94, 1988, s. 27(a)
Section 38(2):	substituted by 22, 1980, s. 5; 94, 1988, s. 27(b)
Section 38(2a):	inserted by 22, 1980, s. 5

Section 38(4) and (5):

inserted by 94, 1988, s. 27(c)

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.