

Mick Gentleman MLA



Member for Brindabella
Manager of Government Business
Minister for Police and Emergency Services
Minister for the Environment and Heritage
Minister for Planning and Land Management
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Mrs Giulia Jones
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety – Legislative Scrutiny Committee (the Committee) Report No.12 (the Report) which was released on 21 November 2017. Specifically, this letter addresses comments made by the Committee on the *Lakes Amendment Bill 2017* (the Bill).

Right to Freedom of Movement (Section 13, Human Rights Act 2004 (HRA))

The approach taken in the human rights section of the explanatory statement (commencing on page 9) was to group similar offences and human rights together to deliver a consolidated analysis of impacts. The analysis on page 10 of the explanatory statement deals generally with sections 47C, 47D and 47E of the Bill.

To address the Committee's comments requesting a justification for any limitation, the explanatory statement will be revised to provide a more detailed justification for the limitation imposed by the safety directions powers (sections 47C, 47D and 47E) on the right to freedom of movement. This will use the framework set out in s 28 of the HRA.

To summarise, the safety directions powers in sections 47C, 47D and 47E are important powers to ensure that authorised inspectors can ensure the safety of persons in lake areas. While these powers may impact on the right to freedom of movement in some circumstances, it is considered that the public safety outcomes justify the limitation on freedom of movement. As noted by the Committee, the particular sections limit the use of the directions powers to specified circumstances to ensure that directions are issued for defined safety purposes, and are not arbitrarily issued.

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Right to Privacy and Reputation (Section 12 HRA)

As noted by the Committee, the explanatory statement provides a detailed analysis of how provisions of the Bill interact with the right to privacy and reputation.

To address the Committee's comments requesting a justification for any limitation, the explanatory statement will be revised to provide a justification for the limitation imposed by the highlighted sections (sections 50Q and 50Z) on the right to privacy and reputation. This will use the framework set out in s 28 of the HRA.

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

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

Any limitation on the right to privacy and reputation by the obligation in section 50Q is justified in order to achieve public safety outcomes through holding masters to a higher standard of care and responsibility and to support a potential future safety investigation.

In relation to section 50X, the ability for a safety investigator to issue a notice requiring a person to give information, produce a document or answer questions is a necessary power to support safety investigations and the overarching public safety goals of the Act. Under section 50X, the circumstances in which a notice can be issued are limited to where the safety investigator reasonably believes that the person holds relevant information for a safety investigation.

Under section 50T, safety investigations are an important mechanism to investigate boating accidents or other matters that affect safety on the lake and to make recommendations to prevent similar accidents or safety incidents from happening again. The power to require a person to produce information is an important supporting power to the ability to conduct fully-informed and worthwhile safety investigations that lead to recommendations that further promote public safety on lakes. Any limitation on an individual's right to privacy and reputation is justified in the pursuit of improved public safety outcomes.

It is important to note that the requirements of sections 50Q and 50X are also supported by section 53 of the Bill which contains important protections against self-incrimination. This is discussed in detail in the explanatory statement.

Displacement of Section 47 of the Legislation Act 2001

I note the Committee's concerns in relation to making standards incorporated by reference into legislation available to the public. As noted in the explanatory statement and observed by the Committee, standards are available at the National Library. To further assist with public access, I have asked the Environment, Planning and Sustainable Development Directorate to make any standards referred to in the legislation available to the public to view at the Directorate's offices upon request. Members of the public will be given viewing access to a hard copy version of the relevant standard at the Directorate's Dickson offices. This information will also be included in the explanatory statement to the Bill.

A revised explanatory statement addressing the matters listed above will be tabled in the Assembly prior to the debate of the Bill.

I thank the Committee for its considered comments, and for the matters raised for the attention of the Assembly.

Yours sincerely

Mick Gentleman MLA
Minister for the Environment and Heritage