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CONNOLLY SUTHERS LAWYERS LEGAL ALERT BOATING - ACCIDENTS WILL HAPPEN

The law in Queensland as it applies to recreational or private use boat owners

The Queensland Government passed the Transport Operations (Marine Safety) Act 1994 and regulations as the laws in this State governing recreational or private use of what are described as 'ships'.

Is your boat a ship?

The term Ship includes boats or other vessels whatever their size, however propelled [motor or sail] whether on land or in water [the sea or a lake] and includes its equipment. We will refer to ships as 'boats' in this note. So if you have a 'tinny' it is a boat for the purposes of these laws. The same applies to all motor boats or yachts irrespective of whether they are permanently moored in fresh or sea water or moved about on trailers.

Who is responsible?

A person having command or control of a boat is defined as its Master. The Master does not have to be the owner of the boat. You lend your boat to a mate and he becomes the Master.

The owner of a ship operates a ship if the owner is in control of it or permits someone else to operate the ship. So by lending your 'tinny' to a mate you are still seen in the eyes of the law as 'operating' your boat even though it is not in your control. This is important given your obligation to keep the boat in a good and safe condition.

The owner and master of a boat must not operate the boat unless it is safe.

What must you do to see that your boat is 'safe'?

There are two important features governing the safe operation of a boat.

Firstly, to be safe, your boat and its accessories must be in a good and seaworthy condition and you must carry onboard safety equipment designed to minimise damage to persons and property in the event of accidents.

Secondly, and just as importantly, you must make sure that when you are using the boat you comply with rules of usage much the same as you do when you drive your car on public roads. You will have studied and become familiar with these at the time you sat for your recreational boat owners licence. As you will know you are required to have a licence to operate a boat.

You are obliged to comply with all safety standards adopted by the regulations to the Act.

You should visit the web site for Marine Safety Queensland (MSQ) for full details of the standards that may apply to your boat : www.msg.qld.gov.au

What happens if you do not operate a boat safely ?

You could be fined up to \$50,000 or imprisoned for up to a year.

If you operate your boat when it is not safe and a 'marine incident' occurs involving death or grievous bodily harm to a person, the owner and master commit an indictable offence and are liable to a maximum penalty of \$500,000 or imprisonment for 2 years.

What is a marine incident?

Broadly speaking, if you and your boat are involved in a collision, stranding, grounding or an event occurs where someone goes overboard, dies, is injured or if you abandon your boat you will have been involved in what is described as a marine incident in the Act.

What should I do when a marine incident occurs?

The first thing to do is to look to the safety and protection of all persons on board and where necessary seek assistance from others. Worry about their property and your boat last. If another boat is involved you must render assistance. You are obliged at law to render assistance to others in distress at sea and can be fined for any failure to do so.

You are obliged to report a marine incident to a marine inspector within 48 hours of its occurrence. Substantial fines may apply for non-compliance. MSQ may decide to investigate a marine incident.

Marine incident investigations and marine inspectors

If a marine incident occurs you may be interviewed by a marine inspector appointed by MSQ. Marine inspectors must have an identity badge and should show them to you upon request.

You are obliged to identify yourself to a marine inspector and can be fined for not doing so.

You are not obliged to make admissions or give a statement admitting to the commission of an offence.

What should you do if you are asked questions about a marine incident by a marine inspector?

Provide the inspector with your name and address (if requested) after inspecting the inspector's identification badge.

If you consider that the incident is serious you should advise the inspector that you will complete a marine incident report as required and would like to seek legal advice before providing any formal statements about the incident. Decline to answer questions about those issues until you have obtained legal advice.

Need more information?

Please call us if you require more information about boating law in Queensland.

www.connollysuthers.com.au