

Drinking and Yachting.

Recently there has been significant discussion in the yachting community about the law in relation to consuming alcohol whilst operating a vessel. The vast majority of people understand and readily accept that if you are under way and you are the operator of a vessel and over the limit then you are liable for prosecution. No real debate there at all.

Where the law gets really interesting is when we start to consider your liability as a skipper when you may be over the limit but safely connected to planet earth.

At this stage I should indicate that the basis for this examination is the law as it is written in Queensland. However, most traffic type legislation has been harmonised over recent years (fancy public service term for made pretty much the same). Also I should issue a very strong warning – I am not a solicitor or any other form of legal practitioner. I do not hold out the content of this article as any form of legal advice. I am however a citizen who should be able to have an understanding of the laws that apply to me.

A very short review of a couple of the provisions of the law is relevant here. The issues connected with being under the influence of liquor or a drug and or “being over the limit” are contained in the Transport Operations Road Use Management Act.

Section 79 of that Act is mentioned in part below (the full extent of the act and section is available on the internet at www.legislation.qld.gov.au and from that home page follow the links to the Transport Operations (Road Use Management) Act. In the excerpt below I have taken out the references to trams, trains and vehicles to make it a little easy to follow. So another disclaimer, if you want the exact text of the legislation you need to go to the government web site.

Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath

- (1) Any person who whilst under the influence of liquor or a drug—(a) drives a vessel; or (b) attempts to put in motion a vessel; or (c) is in charge of vessel;*
- (2) Any person who, while the person is over the general alcohol limit but is not over the high alcohol limit— (a) drives vessel; or (b) attempts to put in motion a vessel; or (c) is in charge of a vessel;*
- (11) Subsections (1) to (2J) apply to and with respect to any person—*
 - (e) who drives or is in charge of or attempts to put in motion a vessel that is being used, or is apparently about to be used, in navigation.*

What the guts of section 79 means is that if you drive a vessel over the limit – you’re in trouble. What it also means is that if you are in charge of a vessel over the limit then you are in trouble.

The key concern here is what constitutes being “in charge of a vessel that is being used or apparently about to be used in navigation”. It is on this point that the law is very confusing, those that administer it are confused, and we the poor public are left scratching our head.

The popular view espoused by the authorities is that you are caught by this section in the following circumstances (text taken from Maritime Safety Queensland web site):

Skippers of recreational boats should also be aware that, when their boat is anchored, it may still be considered to be used for navigation, and the blood alcohol limit applies. The limit does not change unless the boat is securely moored in a marina, to a jetty or wharf or on a swing mooring.

So the advice (not law) is that if you are anchored you must stay below the limit, but if you are in a berth, tied to a wharf or on a swing mooring you are okay. The theory behind that is that you may have to shift your vessel if it is at anchor whereas the other circumstances would not require you to be in a position to move your vessel.

Whilst that is what the authorities say – it isn’t what is written in the law. It is simply their interpretation of the law, an interpretation that is not binding on the courts. In researching this article the only case law I could find on what amounts to being in charge of vessel being used or apparently about to be used in navigation, is a case from 1878. Yep that’s right it seems that the current interpretation relies on a case decided before my Great Grandfather was born. To put it into context that was before Australia existed as a country, it was the year the world’s first telephone exchange was established, the year that electricity was reticulated to households. The Statue of Liberty was years away from being in New York. Cars did not exist and Marconi was some way off inventing wireless. Never the less it appears that an obscure decision of an obscure court is what the authorities continue to rely on.

For those who are interested the relevant case citation is *Hayn v Culliford* (1878) 3 CPD 410 at 417 where the court held that a ship need not be in a state of motion to be in a state of navigation. It is interesting to note that this case doesn’t appear to mention being anchored or not, what it does appear to say is that if a vessel is under way – it need not be making way to be navigating.

Having said that, the definition of navigation in contemporary literature, for example the Macquarie dictionary, is “the act or practice of passing on water”. So on the one hand a centuries old case suggests that a vessel need not be moving to be navigating and on the other the contemporary view is that navigation involves motion.

When one reflects on the 1878 case and the dictionary definition one is struck by the thought that what both definitions really say is that if you are under way then you are navigating – irrespective of whether or not you are making way. It would appear to

me that this is a much more sensible basis upon which we should consider the application of the drink driving (navigating) laws.

Conversations with Police and Transport department officers indicates that both organisation believe that being anchored renders you liable but interestingly, there is a Crown Law advice to these organisations which indicates that being on a mooring could also render you liable.

So in summary: the law about being over the limit is related to the following concept:

IN CHARGE OF A VESSELL BEING USED, OR IS APPARENTLY ABOUT TO BE USED, IN NAVIGATION

There is no statutory definition of what the term – used in navigation – means, so we have advice from Qld Transport, differing advice from Crown Law, and reference to centuries old cases. Further, it gets very confusing when talking to officers of both organisations, as they quote randomly from a range of other provisions, e.g. USL codes and the like. The reality of criminal law is that the prosecution must prove each and every element of any offence beyond reasonable doubt.

I really think the time has come to make this law clear. What the law should say is that a vessel underway is captured in regard these laws. That would appear to be more sensible than the current dog's breakfast. I mean the really scary thing is – if you accept the Transport Queensland view that being used in navigation means being anchored, then someone who is on moored vessel and organising an anchor system on deck could theoretically be held to be apparently about to be used in navigation.

Two final things:

Firstly the powers that police have to enforce these laws are very wide. Section 80 of the Transport Operations Road Use Management Act provides that if a police officer even suspects, on reasonable grounds, that a person was within the last preceding 2 hours—driving or in charge of or attempting to put in motion a vessel being used or apparently about to be used in navigation; they (the police) may require a person to supply a specimen of breath. So you are cruising up the coast – your vessel is anchored in Airlie Beach, you are ashore at the sailing club and you are having a big night, according to the current Qld Transport interpretation you are still covered by the legislation. To take this to the extreme, your vessel is anchored in the Brisbane River, and you are sitting on a plane 30,000 feet in the sky – best not to have a drink, cause you are still in charge.

And secondly; please do not interpret this discussion to mean that in any way shape or form I condone the unsafe operation of vessels. I don't. I simply hate badly written and interpreted laws that cast too wide a net.