



# Submission

## Impounding Act 1993 Review

**ISSUE:** Impounding Act 1993 (NSW)

**SUBJECT:** Review of the Act

### **INTRODUCTION:**

In July 2016, the Impounding Act 1993 was amended by the Impounding Amendment (Unattended Boat Trailers) Act 2015 to allow councils and impounding authorities to 'opt in' to take impounding action against boat trailers parked for more than 28 days. The intention was to enable councils to manage boat trailer parking on residential streets and encourage the use of off-street storage.

28 June 2021 – BIA became aware The Office of Local Government (OLG) was conducting an Impounding Act Review workshop the next day. This alert was raised by a recreational fishing group in NSW as part of the BIA network.

The Review website is at <https://www.olg.nsw.gov.au/councils/policy-and-legislation/acts-and-regulations/current-act-and-regulatory-reviews/>

There was no mention of the review on the State Government Have Your Say website <https://www.nsw.gov.au/have-your-say>

29 June 2021 – BIA attended an OLG Impounding Act Review Workshop via Zoom. At this session, stakeholders became aware the deadline for final comments was the end of that week ie., 2 July. The Zoom session allowed attendance but the format inhibited meaningful consultation.

2 July 2021 – was the original deadline for comment but this was amended due to concerns of the short notice raised at the 29 June workshop. OLG revised the deadline by one week due to stakeholder concerns.

9 July 2021 – Revised feedback deadline on the Review. Feedback is to go to:

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

For further information, contact the Policy Team at the Office of Local Government on Tel: 02 4428 4172 or email to [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).



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## **BACKGROUND:**

The Boating Industry Association Ltd (BIA) is the peak body in Australia that represents the interests of recreational and light commercial boating. BIA is an advocate for boaters and the boating lifestyle and supports safe, responsible, and enjoyable boating.

The boating economy generates significant social benefits through employment, much of which is supported by family businesses. In 2020 the industry reported a turnover of \$7.95 billion, directly employed more than 25,320 people with more than 10,000 contractors. Seventy-five per cent are in small businesses, employing local workers and supporting local communities.

In NSW it is estimated that more than 2 million people go recreational boating each year and that almost 1 in 5 households have a boat or watercraft.

Boating is also a significant contributor to the economy that spans metropolitan, rural and regional Australia.

## **SUMBISSION**

This submission responds to a Discussion Paper and Workshop Options Paper with the latter being made available on 28 June to attendees of a Workshop scheduled for 29 June.

### **Discussion Paper**

When looking at the Review Discussion Paper<sup>1</sup>, it is noted the work was to include seven guiding principles and two of these were; i) the 'need should be established' and ii) the 'impact should be understood, considering costs/ benefits of options (including non-regulatory options)'.

Re., these two key principles: The BIA is concerned that there is an apparent lack of consideration of relevant and appropriate long-term data to support the need and to inform deliberations:

- BIA is not aware of any relevant and appropriate data, and analysis of same, provided by OLG to stakeholders as part of this review;
- BIA is not aware of any information to effectively understand the impacts and or the costs/ benefits on this matter that have been provided by OLG to stakeholders as part of this review;
- BIA is concerned there is a less than appropriate level of consideration of non-regulatory options provided by OLG to stakeholders as part of this review.



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BIA is also concerned with a supporting principle of the Discussion paper and that is to 'integrate the Act with other legislation to delivery community priorities'. For example, BIA is concerned that there appears to have been insufficient liaison with Transport for NSW (TfNSW) especially as that department not only administers the registration of boats and trailers, but it also has a project underway to respond to the challenge of derelict or abandoned vessels; and furthermore, TfNSW has a program dedicated to supporting infrastructure solutions to boat access and storage. That latter work has included investigating solutions to trailer boat parking in metropolitan areas, which would appear to be the crux of your department's concern.

BIA is further concerned that this process runs the risk of applying the local views of what could be considered predominantly metropolitan councils to boat/trailer parking, which would be applied statewide where logic would suggest the pressures in metropolitan locales are not necessarily directly transferable to wider regional and rural LGA areas.

Furthermore, it is unclear how this review is considering caravans and if not, why is a registered boat/ trailer different to a registered caravan? And whilst a caravan or boat/trailer may present issues if left on a narrow, crowded residential street in a metropolitan area, how can those same vehicles be considered to present the same issues in a regional or rural residential area?

Regarding the Discussion Paper question of 'Should the Act continue to focus on process, or should it be based around the outcome of promoting safety and amenity in public spaces', the BIA believe that the Act should not purely focus on process and that it should be based around a boarder outcome which is public good; that should include a balanced approach across social, economic, environmental and cultural benefits.

A balanced approach would ensure the Act and its subordinate legislation delivers better outcomes and would ensure, for example: the views of metropolitan councils do not impose red tape and additional burdens on people in regional or rural LGA; that solutions are sought before red tape; that a comprehensive, sustained and funded education and behaviour change campaign is deployed prior to more laws and penalties; that government departments like OLG and TfNSW work closer together eg., trailer boat storage and abandoned boat solutions; and that long-term relevant data and objective analysis informs strategy/ policy/ legislative actions.

The Discussion Paper also refers to the State Government support for green spaces. The BIA submits that governments must value 'blue space' as well as 'green space'. We recommend adopting an overall 'green/blue' approach under the Act so that we work to build



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not just Green Spaces, which gives a sense that they are land based and independent from one another, but to consider a "Green Blue Grid" where the aim is to connect, integrate, enable and care for these natural spaces irrespective of whether they are on dry or over wet lands. Afterall, some of our most treasured green spaces connect with our blue space – which should be no less valued.

An integrated approach for the Green Blue would further support the balanced bottom line of social, economic, environmental and cultural benefits.

### **Boating is a way of life**

Boating is also a way of life for many Australian families. The vast majority of which occurs in family runabouts and small sail or paddle craft (much of which is trailable).

More than 85 per cent of the population live within 50km of the coast. People of all ages, gender and ability can participate in boating across paddle, sail and power for leisure and sport.

Because boating supports COVID Safe and provides people with access to some of the best waterways in the world right here in Australia, it is no wonder business is booming on many fronts as public interest is growing, as is participation.

Boating has proven to be a standout choice in leisure activity through the pandemic. The combination of no international travel, the staycation phenomenon, flexible work practices and the need to be COVID Safe have seen interest in getting out the water ramp up significantly. A boat is like an island where you choose where to go, when and who with, and its supports compliance with social distancing.

Not only that but it is good for your body and mind. Work in social science has shown that on a boat, feel-good hormones like dopamine, serotonin, oxytocin go up, while stress (cortisol) goes down.

There are proven mental and physical health benefits to getting out on the water. So, moves by OLG to increase the burden on the boating public should be cognizant of the social benefits of the activity.

### **Options Paper**

As for the Options Paper, BIA would submit the following:

### Theme 1 – Reshape the Act to focus on outcomes the community expects

When reviewing legislative tools, the BIA strongly supports the following:

1. consideration of relevant and appropriate long-term data to support the need;
  - on this matter, the review process lacks sufficient, relevant and appropriate data to inform the need and/ or to inform deliberations by all
  - appropriate data would also help in determining the scale of the issue of ‘abandoned’ boats on trailers; and scale is important, because the poor decision/ behaviour of such a minority (eg., unregistered and abandoned) should not negatively impact the behaviour of responsible boat owners (eg., those with registered boats on registered trailers that are not abandoned).
    - At this point it is important to note the BIA is not defending the behaviour of people who abandon unregistered vessels/ trailers in public spaces. However, data could help in an education campaign and in multi-agency discussions on the issue of end-of-life vessels and how best to dispose of, repurpose or recycle same.
2. consideration of stakeholder impacts (eg., including economic and social);
  - on this matter, the department appears to have not identified a target list of key stakeholders to engage early in this work. For example, BIA regularly works with a variety of NSW State Government departments in a positive and collaborative manner and is easily identified with a simple search as a leading not-for-profit association representing the interests of boating and yet BIA was not aware of the Review Workshop until the day prior and were left with a matter of days for formulate this submission. Furthermore, the review does not (as at 8 July 2021) appear on the State Government’s Have Your Say website.
  - The BIA is therefore concerned that the OLG has not considered and appropriate representation of key non-government stakeholders and impacts upon them, including both economic and social.
  - There are a number of key boating stakeholder representative groups that work directly with the NSW Government and would be easy to detect and engage with on this subject. Such groups exist in support of TfNSW and range from the Recreational Vessel Advisory Group though to the Minister’s Maritime Advisory Council. A simple environmental scan in at the outset of this review would have identified such groups which exist to help inform and guide



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government policy, strategy and programs relating to the boating public in NSW. It appears, these groups have not been engaged.

- As an example of one solution that seems to be lacking robust consideration: why can't a responsible person be able to apply for and secure a permit to park their registered boat on a registered trailer in front of their own residence where appropriate.
3. exploring alternatives to regulatory measures; and
- There appears to be little evidence of exploring alternatives to regulatory measures regarding boat trailers; for eg.,:
    - BIA is unaware of any sustained, appropriately funded, multi-channel and statewide education program of the last few years to address this issue and related behaviour change;
    - BIA is unaware of any evidence that OLG has worked with TfNSW to thoroughly explore and consider boat storage solutions or abandoned vessel solutions as part of this review. TfNSW for example funds its maritime program from the Waterways Fund. This is a hypothecated fund which derives its revenue from boating fees and charges; this fund exists to fund products and services that are ploughed back into the boating sector and one of those programs is informed by the Maritime Infrastructure Plan. This plan supports delivery of the Boating Now program which delivers millions of dollars in support for new and improved boating infrastructure across NSW. This work includes infrastructure to support access and storage.
    - The Federal Government is also ramping up support for managing waste and that could/ should include investigations into and or development of facilities to assist with the disposal/ recycling/ repurposing of end-of-life vessels and that includes fiberglass trailerable boats. Local governments should be involved in such discussions especially due to its network of waste disposal facilities.
4. consultation.
- BIA is concerned that:
    - it only learnt of the review and its deadline on the Monday prior to the Tuesday workshop of the week ending in the Friday deadline.



- the State Government's Have Your Say website had no mention of the Review (in July).
- There appears to be less than appropriate consultation with Transport for NSW which has a work program that includes related matters such as:
  - How to respond to the challenge of end-of-life vessels which includes those abandoned on trailers in streets and properties
  - How to support storage solutions for boats including those on trailers.
- The consultation process and feedback to date appears to show a strong representation of LGA. LGA certainly need to be heard, however, this will reflect one level of government informing another, with both inevitably prioritising their bureaucratic functional needs.

### **Theme 2 – Move some key provisions from the Act to subordinate laws**

The Act should be modernised to support less red tape, support education before regulation and should be based around a boarder outcome which is public good; that should include a balanced approach to social, economic, environmental and cultural benefits.

### **Theme 3 – Offences and penalties**

This should only be addressed after the matters raised under Theme 1 have been appropriately addressed.

### **Theme 4 – Modernise and clarify key regulatory processes and definitions**

This should only be addressed after the matters raised under Theme 1 have been appropriately addressed. However, there would appear to be a clear need to review and improve definitions such as 'unattended' and 'abandoned', and this is another case of a need for OLG to liaise with TfNSW which has a current and active project to deal with end-of-life vessels which include unattended and abandoned vessels. Collaboration in this would be an obvious benefit for the agencies and the public. As one example, a registered boat/trailer in front of a residential premises should not be considered either unattended or abandoned. That same vessel left for weeks in a street, near a boat ramp, no where near the owner's residence could, however, be considered unattended but not necessarily abandoned. These definitions need work, and that work should be informed by a robust multi-agency and stakeholder consultative approach.



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## Theme 5 – Align Act with other laws

This should only be addressed after the matters raised under Theme 1 have been appropriately addressed.

## CONCLUSION

The BIA believes the issue of boat/trailer parking would benefit from additional consultation to ensure gaps in the current consultative process are addressed to deliver the best possible outcome for the State. The BIA would welcome direct engagement with the OLG on this subject. That includes any collaborations between OLG and TfNSW or other appropriate government agencies that may add value to the public good relating to this matter of public policy.

Please do not hesitate to contact Mr Neil Patchett, Co General Manager, BIA, on e. [neil@bia.org.au](mailto:neil@bia.org.au) or m. 0418 279 465 whenever necessary.

*Issue date: 8 July 2021*

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<sup>i</sup> <https://www.olg.nsw.gov.au/wp-content/uploads/OLG-Review-of-the-Impounding-Act-1993-Discussion-Paper-December-2019.pdf>