



Submission:

2023 Review of the Marine Safety Regulation (2016)

ISSUE: Better Regulation

SUBJECT: 2023 Review of the Marine Safety Regulation (2016)

INTRODUCTION: Transport for NSW is reviewing the Marine Safety Regulation (2016) and inviting submissions.

Transport is responsible for overseeing regulatory frameworks including the *Marine Safety Act 1998* (MSA) and the Marine Safety Regulation 2016 (MSR).

The MSR covers the safe operation of ports and other waterways, the responsible operation of all vessels, the protection of safety and amenity of waterway users, and provides an effective framework for the enforcement of marine legislation and managing investigations.

A comprehensive review of the MSR is being undertaken and the Marine Safety Regulation 2016 Discussion Paper has been developed. This discussion paper identifies proposals to improve the regulation and ensure it is meeting the objectives of the MSA. The proposals presented in the paper are intended to gather feedback and do not yet represent formal views of the NSW Government.

Written submissions can be uploaded at https://www.haveyoursay.nsw.gov.au/marine-safety-regulation?preview=true&tool=survey_tool&tool_id=upload-a-submission#tool_tab

On 20 January 2023, Transport for NSW advised the deadline for submission had been extended to 27 January 2023.

Submission

The Boating Industry Association Ltd (BIA) is the peak industry body in Australia that represents the interests of boating which includes designers, manufacturers, importers, brokers, insurers, retailers, charters, yacht and boat clubs, marinas, events, surveyors and trades from boat builders to riggers, and more. BIA is an advocate for boaters and the boating lifestyle and supports safe, responsible, and enjoyable boating.

The boating economy generates significant benefits through employment. Last year (2021) the industry reported national turnover of \$9.55 billion, directly employed more



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than 26,000 people with more than 8000 contractors. In NSW, the figures were \$2.83bn turnover, 8120 direct employment, 700+ active boating industry business, 542,000 boat licence holders and 241,000 registered boats.

Seventy-five per cent are in small family businesses, employing local workers and supporting local communities.

With more than 85 per cent of the population living within 50km of the coast, it is little wonder that almost 1 in 5 households in NSW have a boat or watercraft. People of all ages, gender and ability can participate in boating across paddle, sail and power for leisure and sport.

The BIA commends TfNSW for supporting this opportunity to provide a submission on this subject.

Question 1: *What aspects of the current MSR do you believe could be improved?*

Answer (A): In general, the regulator should in the process of conducting this review, and its questions, adopt the Better Regulation Principles and Legislative Change Framework outlined under:

The Better Regulation Principles

Principle 1: The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

Principle 2: The objective of government action should be clear.

Principle 3: The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

Principle 4: government action should be effective and proportional.

Principle 5: Consultation with business, and the community, should inform regulatory development.

Principle 6: The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.

Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.

A Legislative Change Framework

The approach should ensure that any amendments are supported by applying the following approach to new or amended legislation:

- relevant and appropriate long-term data
- application of objective analysis
- a clearly defined public benefit
- a clearly defined need
- only after consideration of:
 - stakeholder impacts such as economic, environmental, cultural and social implications
 - alternatives to legislative measures such as education and, where appropriate, compliance
- Consultation

Question 2: *Will the proposal at 5.1.1 simplify requirements for keeping all parts of the body securely and within a vessel when underway? Proposal: Replace the current list at clause 8 of the MSR with a general requirement that the operator should not get underway until all passengers are "secure and within the vessel", and a requirement on passengers to remain "securely and within the vessel".*

A: Yes however this should not apply to sailing vessels in competition, practice or training where a person extending over the side is part of the normal operation and safe righting moment action by the crew. This should also not apply to boats engaged in fishing while underway, paddle and tow sports where there is a requirement for a person to be undertaking activities that extend outside the confines of the vessel.

Question 3: *Do you have any comments on introducing a requirement for major vessel modifications to be physically inspected by a qualified person for compliance with the ABP? Proposal: Require visual inspection by a qualified person if major modifications are made to a vessel to ensure compliance with the ABP and corresponding Australian Standard, regarding maximum power capacity for vessels with an inboard or sterndrive installation, before a new ABP is issued.*

A: We support robust audit and compliance measures of the ABP on all vessels that require this plate to ensure ongoing integrity of this program which supports Safe Vessels. We recommend as a preliminary step in establishing such a requirement the following actions:

- 1) A national register of vessels and ABP compliance specifications is implemented
- 2) The scope of the ABP is extended to cover second-hand vessels
- 3) A definition of “Major Vessel Modification” is agreed, taking guidance from AMSA and international regulatory programs, such as EU RCD.

We recommend the regulator supports amendments that ensure only competent and qualified persons are able to fit an ABP. When it comes to modifications, there must be an assessment, including relevant testing (including on-water) by a competent and qualified person relevant to the scope of the modification.

The scope of modifications to be considered should include all aspects addressed by the ABP: this would include where ever there is a significant modification to the hull, deck, superstructure affecting stability; a change in engine mass affecting loading and stability;

powering affecting performance and handling; and design changes affecting number of persons that can be safely accommodated and therefore load capacity.

Question 4: *To what degree do you support introducing exemptions, when under an aquatic licence, for:*

- *power vessels to carry a lifejacket if safety craft are in attendance;*
- *distance-off requirements; and*
- *licence requirements for participants under 12 years old?*

A: Re power vessels to carry a lifejacket if safety craft are in attendance ... this is not supported as described. It is not clear why a person or persons in a powerboat operating in an event do not wear a lifejacket; we could reconsider if we better understood what risk mitigation measures were in place to ensure safety outcomes are not degraded.

Re distance-off requirements ... this is supported on condition that appropriate risk mitigation measures are put in place to ensure safety outcomes are not degraded.

Re., licence requirements for participants under 12 years old ... this is supported on condition that appropriate risk mitigation measures (eg., training, courses etc) are put in place to ensure safety outcomes are not degraded.

Furthermore, re Aquatic License – events. Races held under an aquatic license should not operate in a 4knot / safety zone. For example, the marshalling of sailing races inside the 4knot zone inside Middle Harbour is problematic. This race preparation interferes with all other recreational users of such a tightly enclosed waterway.

Question 5: *Do you support the proposed clarification of provisions in the MSR relating to removal of obstructions to navigation, under 5.1.4? Proposal: Update provisions to help identify the ownership of an unregistered vessel that has no master on board and*

broaden the definition of an obstruction to navigation to include objects likely to be a danger to navigation or to port facilities, or harmful to the environment.

A: Yes

Question 6: *Do you support improving the safety of young PWC drivers and better waterway amenity through improvements to the regulatory framework for young and inexperienced PWC drivers?*

A: Yes noting the earlier comments regarding the Better Regulation Principles. Furthermore, we would like to see the data that motivates the regulator about inexperienced PWC drivers. We believe the most effective way to improve safety would be through increased awareness.

Question 7: *Do you support extending restrictions currently imposed on under-16-year-old PWC drivers to drivers aged 16-18?*

A: No, we support increased educational efforts to 'future riders' of under 16 and only extend restrictions if there is appropriate, long-term robust data to support it and if the Better Regulation Principles and Legislative Change Framework are met. Furthermore, the restrictions should not be about access to vessel type, but rather horsepower.

Question 8: *Do you support introducing a 12-month provisional licence for inexperienced PWC drivers, with an option of moving directly to a full licence by completing a practical training course through a registered training organisation (RTO)?*

A: Not supported as described unless there is advice on how a P Plate would be displayed, how it would be policed and if there is appropriate, long-term robust data to support it and if the Better Regulation Principles and Legislative Change Framework are met.

Question 9: *Do you have any further comments on options to address the issues under 5.1.5?*

A: Previously there was a clause that exempted students from the restriction related to travelling at 10 knots or more. This exemption should be reinstated to enable students without a licence to travel in excess of 10 knots when engaged in a formal RTO course, with an RTO provider supervising onboard. This would enable a person to experience and learn the demands of handling a powerboat at 10 knots or more, ie., planning, under an approved trainer.

Question 10: *Do you support mandating kill switches for PWC?*

A: Yes, if you mean the wearing of them. Noting kill switches are already provided by the manufacturers.

Question 11: *Do you support mandating the carriage of GPS equipment when boating in open waters?*

A: Yes, when 2 nautical miles or more from shore; eg., a boat sailing, cruising or fishing 'offshore' present a significantly elevated risk profile than, for eg., a runabout fishing just off an entrance to harbour, bay or estuary. We are concerned this law would deliver a cost impost to a significant proportion of people who venture offshore but remain close inshore. We would recommend education before regulation in this matter to those navigation inside the 2 nautical mile limit.

Question 12: *Do you support designated offshore anchorages to help reduce the impact and spatial footprint of anchoring on the seabed?*

A: Yes, when determined and described in collaboration with the appropriate environmental authority from either state and or federal governments.



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Question 13: *Do you support the prohibition of kitesurfing and sailboarding in all shipping channels?*

A: No. We do however support appropriate education. Not all shipping channels are busy all the time and an experienced, capable and responsible person should be able to cross such a channel when and if it is safe to do so.

Question 14: *Do you support the prohibition of paddlecraft in all shipping channels?*

A: No. We do however support appropriate education; for example, why should a responsible paddler not be able to cross Sydney Harbour from Rose Bay to Clifton Gardens when, in the majority of the time, there are no trading vessels transiting through?

Question 15: *Do you support the proposed automatic cancellation of a marine pilot licence when a pilot is no longer employed by a licensed NSW service provider?*

A: No.

Question 16: *Do you have any comments on the proposed changes to exemptions from compulsory pilotage?*

A: Change should be in accordance with Better Regulation Principles and Legislative Change Framework

Question 17: *Do you support the introduction of a COLK equivalent framework for recreational vessels over 30 metres?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 18: *What other features should be considered to support an improved safety framework?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 19: *Do you support the duty harbour master being able to issue a verbal instruction to a vessel to allow for the embarking and disembarking of a pilot inside port limits on a case-by-case basis?*

A: Neutral

Question 20: *Do you support a regulatory requirement for removal of sea cables once disused?*

A: Yes on condition that removal does not cause excessive damage to the marine ecosystem compared with leaving it.

Question 21: *Do you support the proposal to move the disturbance of the seabed provisions from the Ports and Administration Regulation 2021 to the MSR?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 22: *Do you support including a reference in the MSR to an application process for disturbance of the seabed?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 23: *Do you support mandatory requirements in the MSR to obtain the harbour master's approval to obstruct air space above navigable waters?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met

Question 24: *Do you support the proposal under 5.3.1 to introduce a Waterway Activity Licence? Proposal: Introduce a new marine safety licence for commercial activities, a Waterway Activity Licence.*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 25: *Are there any other considerations around introducing a new marine safety licence for ongoing commercial activities on NSW waterways, under 5.3.1?*

A: Only if the Better Regulation Principles and Legislative Change Framework are met.

Question 26: *What implications would there be for you and your business in introducing the proposed framework under 5.3.1?*

A: Lack of certainty of the consequences. The regulator must consult further on this matter with stakeholders impacted prior to progressing further.

Question 27: *Are there any other considerations around introducing a cost-recovery mechanism for the existing practice of audit and accreditation of ATPs by Transport?*

Proposal: *Introduce an hourly fee for the existing practice of auditing and accrediting ATPs relating to theory and practical courses for NSW marine safety licences, set at a reasonable rate consistent with existing administrative fees.*

A: We do not support the proposal as described which is to apply cost recovery principles for safety work. Furthermore, there needs to be more certainty of implications of this proposal in view of the Federal Government via AMSA, and its parent Department, desire to apply more stringent cost recovery principles to the operation of vessels operating under the National Law. And only if the Better Regulation Principles and Legislative Change Framework are met.

Question 28: *Do the current definitions under 5.3.3 support effective regulation of safety for vessels?*

A: the current definitions contain a degree of ambiguity. We would encourage improved definitions designed through engagement and consultation with key stakeholders

Question 29: *Do you believe the vessel definitions in the MSR need to be changed?*

A: Yes, they should be reviewed and consider how to better capture paddle, power and sail and consider if SUP should be included. While also dealing with innovation and emerging craft.

Question 30: *Do you believe there is a need for improved consistency relating to vessel definitions across State and Commonwealth legislation?*

A: Yes but not if it is a case of adoption for the sake of it. And only if the Better Regulation Principles and Framework for Legislative Change are met.

Q31: *Do you believe the definition of seagoing ship should be amended to be consistent with MO 505?*

A: Yes.

Q32: *Do you agree with the proposal to add a rowing shell definition in the MSR?*

A: Yes.

Q33: *Do you believe the proposed paddlecraft definition is suitable? Note: This definition would exclude craft used by Surf Life Saving New South Wales or professional lifeguards for the purpose of undertaking rescues or surf rescue training or patrolling. The proposal is to include a new paddlecraft definition as below:*



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A paddlecraft is one that is propelled by paddle or otherwise by the movement of the person operating the craft, but does not include such a craft that is or may be propelled by mechanical power.

A: Supported but SLS 'spec skis' (aka surf ski) not used in Club events or Club endorsed training should be required to comply with lifejacket wear requirements. A general exemption for SLSA surf ski over kayaks is not a good outcome, especially as surf ski paddling has a large percentage of beginner and non SLS paddlers where overestimating ability may be a significant issue now and into the future. There must be a better definition of SLS surf ski and non-wearing should be limited to SLS competition and or endorsed training (where in both situations there is some form of watchkeeping).

Furthermore, we are concerned this would capture SUP and that such craft are currently not showing up as being of significance involvement in any drownings or reported near drownings in NSW. We would welcome data to the contrary.

Q34: *Do you believe the proposed PWC definition is suitable? Proposal: Amend the PWC definition to:*

Personal watercraft means a power-driven vessel that is designed to be operated by a person standing, crouching, kneeling, or sitting astride the hull of the vessel, rather than within the confines of it.

Note: a personal watercraft does not cease to be a personal watercraft if it is modified from its original production, unless approved by Transport for NSW.

A: Yes, however, there should be consistency with ISO in the definition of PWC eg., ISO 13590: 2022 (global standard, referenced in ABP) is given as:

personal watercraft

watercraft intended for sports and leisure purposes, of less than 4 m in hull length, which uses a propulsion engine having a water jet pump as its primary source of propulsion and is designed to be operated by a person or persons sitting, standing, or kneeling on, rather than within the confines of a hull

We would ask the regulator to consider the issue of how to treat a PWC that is 'docked' into a larger vessel and thereby provides the power to operate that larger vessel.



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Q 35: *Do you support inclusion of open area of a vessel in the definitions section of the MSR? Proposal: Add open area of a recreational vessel definition as:*

- *all deck areas including coach roofs, superstructures, open flying bridges, trampolines and nets, excluding areas within rigid deck house, a rigid cabin, a rigid half cabin or a securely enclosed under deck space;*
- *vessels without a deck, the whole vessel excluding areas with a rigid cabin or a securely enclosed space;*
- *for kayaks or canoes, the open area is the whole vessel.*

A: Yes. However, how does the use of the term 'kayaks or canoes' align with the previous move to modify the definition of 'paddle craft'?

Q36: *Do you support inclusion of novel craft in the definitions section of the MSR?*

A new definition could capture relevant elements of the AMSA 'Novel' vessel types detailed in the current policy statement on novel vessels. This refers to novel vessel types as:*

- *submarines;*
- *passenger-carrying submersibles;*
- *dynamically supported vessels (including fully foil-born, and vessels that are partially foil supported);*
- *wing-in-ground effect (WIG) vessels;*

- *autonomous vessels greater than twelve metres in length, or those intending to carry people;*
- *vessels with alternative fuel technologies including hydrogen, ammonia, and gas-fuelled engines;*
- *vessels with electric propulsion and installed battery power exceeding 30kWh.*

A: Yes with the following amendments: the regulator should use the term 'recreational submarines' as a submarine is literally not novel; dynamically supported vessels using foils are literally not novel and a more appropriate title than Novel should be applied; electric powered vessels are not novel now and will certainly not be novel in the term of this regulation update; we suggest a Title such as Special Type Vessels together with a definition.



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Q37: *Do you support the inclusion of a water taxi definition in the MSR?*

A: Yes

Q38: *Do you support this proposal to replace the word 'place' in relation to restrictions on time at anchor and adjust from calendar year to 12-month period?*

A: Yes

Q 39: *Do you support one speed limit for vessels over 30 metres in the Port of Sydney (retain 8 knot Sydney Cove and 15 knot transit zone)?*

A: Yes

Q 40: *Do you support introducing an obligation on the owner of a PWC to ensure it is not operated by a person unless that person holds a valid licence?*

A: Yes

Q 41: *Do you support the expansion of MSR subclause 78(1) for suspension or cancellation of a marine safety licence to include official cautions issued to persons under 18 years of age?*

A: Yes

Q 42: *Do you support the requirement for reporting accidents where there is damage to property being lowered to \$500?*

A: Yes, on condition this does not duplicate the process administered under the International Yacht Racing Rules as applied by Australian Sailing for damage in sailboat racing and that the minimum is set a \$1000. A figure of \$500 will capture minor incidents were an operator bumps a jetty causing minor damage their own boat which can easily cost that amount to fix ... something that is low risk and not uncommon.



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Q 43: *Do you support the creation of a provision to enable a notice to be published to call for the owner of a vessel where ownership is uncertain?*

A: Not supported as the regulator already has numerous means by which to attempt to contact an owner through channels such as: phone, email and mailing address. We think this sufficient and that publishing a notice in a local paper is: costly; not guaranteed to deliver a better result.

Q 44: *Do you have any additional feedback on any other issues with the MSR you would like to raise? To help understand your feedback please refer to the specific area of the MSR you are providing feedback on.*

A: Yes, the MSR should support Responsible Boat Ownership. We believe Transport should develop a Responsible Boat Ownership campaign in collaboration with BIA and other key stakeholder including, but not contingent upon ARBSC/ ANZSBEG, and deliver it through a sustain and funded program over a minimum of 5 years. This would be subject to annual review and refinement to keep it relevant and appropriate. Ideally, such a campaign would run for such time as it takes to be able to measure a significant and sustained improvement in behaviour or vessel owners.

BIA is aware the Maritime Safety Queensland has already begun to adopt the theme of Responsible Boat Ownership as part of its countermeasures to what that State Government has dubbed the “War on Wrecks”. This approach should be adopted by NSW.

The BIA calls for an education program that supports the following:

The solution should involve a multifaceted approach and apply the principles of waste hierarchy which is the method the EU incorporates into ship recycling.

Waste hierarchy

- 1) prevention/ waste minimisation;
- 2) preparing for re-use/ reuse;
- 3) recycling (recovery of materials)
- 4) other recovery, eg., energy recovery
- 5) disposal by landfill (to be minimised)

With reference to the waste hierarchy levels:

1) Prevention/ waste minimisation:

Prevention is a priority and must include education. That should be built around the theme of 'Responsible Boat Ownership'. This should involve a coordinated, sustained and funded education program to cover promotion of the following:

- sustainable design and manufacturing
- recycling capability
- boat buyer's guide to help ensure people buy a vessel suited to their budget, area of use and ability (the latter includes repair and maintenance realities)
 - needs to provide information tailored to 'new' and also 'used' boat buyers
- owner's guide to help people care for and maintain their vessel
- alternatives to ownership which can be boat share, charter, hire etc and peer-to-peer boating experience.
- boat owner's disposal guide esp., on approach to or arrival at ELV such as:
 - reuse, recycle and disposal
- a collaborative, multi-jurisdiction approach
 - esp., to deal with cross border issues
- led by regulators (eg., Australian Recreational Boating Safety Committee – ARBSC – where TfNSW is a leading contributor)
- supported by stakeholders (eg., Australia and New Zealand Safe Boating Education Group – also where TfNSW is a leading contributor - and manufacturers)
- apply an evidence-based approach
- aimed at specific demographics through lifecycle of the boat
 - eg., age-specific communications to specific geographical areas
- apply contemporary communications tools and channels
- apply plain English appropriate to the demographics
- with a medium to long term lifespan (eg., 5-10 years with review and reset every year to accommodate fine tuning)
- be monitored and reported upon (eg. to ARBSC).
- appropriate regulatory consequence
- appropriate compliance.



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- Furthermore, TfNSW should rethink the way it manages moorings. For example, it would seem less than ideal that highly trained and experienced Boating Safety Officers spend significant time managing mooring fields and allocations of moorings. Such officers would be more effective on the water performing safety and compliance duties where the public risk is greater. The issue of mooring management could be approached as follows:
 - Administrative staff provide the customer liaison rather than boating safety officers;
 - Innovative digital solution using perhaps a smart phone app such as Deckee to assign, record and track mooring licensees; and
 - Consider allocating a greater number of moorings to the management of commercial marinas who would not only ease the administrative burden on public servants but would apply a more commercial approach to mooring management and customer service delivery.

Q 45: *Do you support changes to section 15A including to allow an authorised officer to issue a direction to cease operation of a vessel for a period of seven days, including to a minor? **Proposal:** Amend section 15A of the MSA to add that a direction may remain in force for seven days. It is proposed that an authorised officer could issue a direction to any person, including a person under 18 years of age, to cease operation of a vessel for a period of seven days.*

A: Not supported as is. We are not convinced this power to impact on the liberty of a person is supported by appropriate long-term, robust and relevant data. We would welcome receiving such data or similar evidence to prove such an increase in compliance powers, which may be delivered without objectivity, are appropriate.

Q 46: *Do you support amendments to subsection 74(2A) to allow the harbour master to exercise discretion and authorise a pilot to embark or disembark outside pilot boarding grounds due to exceptional circumstances?*

A: Yes.



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Q 47: *Do you support granting Port Authority or harbour master the authority under the MSA to be able to declare anchorages outside port areas?*

A: Yes on condition that these powers have an assurance mechanism which ensures the relevant state or federal environmental authority approves/ supports/ permits such action to ensure appropriate checks and balances are in place to minimise damage to sensitive native marine habitat (eg., seagrasses and or reefs etc).

In conclusion, BIA appreciates this opportunity for feedback and the support Transport for NSW delivers for consultation.

Please do not hesitate to contact Mr Neil Patchett, General Manager, e. neil@bia.org.au or m. 0418 279 465 on this matter.

Issue date: 27 January 2023