

## ATTACHMENT

### BETTER REGULATION STATEMENT IN RELATION TO THE PROPOSED MARINE SAFETY (GENERAL) REGULATION 2009

#### ***Is the measure "significant" and therefore required to have a Better Regulation Statement?***

The proposed measure is "significant", being a consolidation and updating of four current Regulations which are to be repealed – the *Navigation (Collision) Regulations – NSW*, the *Boating (Safety Equipment) Regulations – NSW*, the *Water Traffic Regulations – NSW* and the *Marine Safety Regulation 2008*.

#### ***Compliance with the Better Regulation Principles***

##### ***1 The need for government action should be established***

Government action is required because three of the four current Regulations mentioned above are made under Acts that are to be repealed by the *Marine Safety Act 1998*. The proposed Regulation will provide a consolidation and updating of the regulations applicable to navigation generally and recreational boating in New South Wales.

##### ***2 The objective of government action should be clear***

The objective of government action is to consolidate and update the existing Regulations.

##### ***3 The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options***

A non-regulatory option is not appropriate.

The Regulatory Impact Statement addressed these issues.

##### ***4 Government action should be effective and proportional***

The proposed Regulation will be effective in providing a consolidated and updated Regulation for general navigation and recreational boating matters in New South Wales.

The proposed Regulation is a proportional response to the need to update the marine legislation. The Regulatory Impact Statement addresses this issue.

## **5 Consultation with business and the community should inform regulatory development**

The proposed Regulation affects all navigation through general navigation rules such as the *International Regulations for Preventing Collisions at Sea* and speed limits but is also directed at recreational boating licences, operating rules and safety equipment.

A Regulatory Impact Statement and Draft Regulation were published in August 2008 and comment was invited by notices published as follows:

- *The Sydney Morning Herald* (18 August 2008)
- *NSW Government Gazette* (20 August 2008 – Special Supplement)
- *The Daily Telegraph* (22 August 2008)
- *The Daily Telegraph* (27 August 2008 - New South Wales Government Noticeboard)
- *NSW Maritime website* (19 August 2008 and remaining during the consultation period)

There was also a direct mail out to members of the Maritime Ministerial Advisory Committee and other interested parties.

A total of 34 responses were received. These responses were considered in the review of the proposed Regulation and a number of changes made as a result.

There was also direct consultation with the Harbour Masters for Sydney and Newcastle in relation to speed limits.

A Table setting out the changes made as a result of consultation is attached.

## **6 The simplification, repeal, reform or consolidation of existing regulation should be considered**

The *Marine Safety (General) Regulation 2009* represents a significant step in the simplification of the marine legislation. The *Marine Safety (General) Regulation 2009*:

- \* simplifies existing regulation by following the "Marine Safety Licence" provisions of the *Marine Safety Act 1998* to provide generic provisions for licences which were formally treated separately,
- \* enables the repeal of four Regulations and consolidation of provisions currently found in those Regulations:
  - *Water Traffic Regulations – N.S.W.*,
  - *Boating (Safety Equipment) Regulation – N.S.W.*,
  - *Navigation (Collison) Regulations 1983*,
  - *Marine Safety Regulation 2008*.
- \* will result in reform of a significant part of the marine legislation applying to recreational boating in particular as well as navigation rules applicable to all vessels.

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

The *Marine Safety Act 1998* is to be reviewed pursuant to Section 144 of that Act "to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives" as soon as practicable after 5 years of the date of assent of the *Marine Safety Amendment Act 2008* (1 July 2008). A report on the review is required to be tabled in each House of Parliament within 12 months of the end of the 5 year period. It is envisaged that this review will necessitate some review of the *Marine Safety (General) Regulation 2009*. The Regulation will also be the subject of review after 5 years under the staged repeal process of the *Subordinate Legislation Act 1989*.

## Marine Safety (General) Regulation 2009

Clause number in Consultation Draft	Material changes following public consultation	New Clause number
Clause 3 Definitions	Definition of Personal Watercraft changed to retain the current definition.	Clause 3
Clause 8 Requirement to keep all parts of the body within a vessel when underway	Definition of "making way" moved to this Clause from definitions clause.	Clause 8(6)
Clause 11 Requirements in relation to engine power rating	Terms expanded to cover situation where there is no manufacturer's power rating.	Clause 11
Clause 14 Exemptions from notices prohibiting or regulating operation of vessels	Revised to exempt non-power driven vessels from speed limits imposed by notices	Clause 14(2)
Clause 17 Restrictions on obstructing vessels	Revised to cover ferries on passenger services	Clause 17(d)
Not in consultation draft	<p>Inclusion of speed limits for vessels over 30 metres in certain areas of Sydney Harbour to replace existing Speed Limit Notifications under the <i>Maritime Services Act 1935</i> that are not suitable for display of notices due to the area covered and limited type of vessel affected.</p> <p>Exemptions provided for Police and Maritime vessels and vessels and ferries.</p>	Clauses 23 - 26
Clause 25 Restrictions in or near swimming areas	Prohibition of vessels being within 60 metres of swimming area unless permitted by a notice modified to apply to power-driven vessels only.	Clause 29(2)

## Marine Safety (General) Regulation 2009

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Clause 25 Restrictions in or near swimming areas	Prohibition of vessels being within 60 metres of swimming area unless permitted by a notice modified so that the prohibition does not apply to vessels operated by local councils, surf Life Saving NSW Inc or professional lifeguards for rescues, training or patrols.	Clause 29(4)
Clause 28 Towing by remote-control vessel prohibited	Need for the provision questioned. Omitted.	No clause.
Clause 40 application of this Part (re Australian builders Plate)	Subclause (1) list of vessels excepted from the Part. Surveyed commercial vessels moved from Clause 43(1) & (2). Vessels used only for racing in organised events moved from Clause 43(6). This results in vessels with the specified status being exempt rather than having a "defence".	Clause 43(1)(n) & (o).
Clause 42 Vessels for sale required to have builders plate	Subclause 42(2) providing that "this clause does not apply to the sale of a vessel for the purposes of re-sale" omitted.	Clause 45.
Clause 56 Cheating or forgery in relation to marine safety licences	Subclause (2) modified to clarify conduct constituting offences.	Clause 60(2)(a)-(d)
Clause 57 Vessels exempt from registration	Subclause (1) modified to clarify classes of vessel exempt from registration.	Clause 61(1)
Clause 70 Additional requirements for applications (for Aquatic Licences)	Paragraph 70(1)(c) requirement to specify any public baths or public reserve that adjoins navigable waters to be used for aquatic activity - omitted.	Clause 74(1)
Clause 72 Certain vessels exempt from requirements relating to boat driving licences	Reference to "the provisions of Division 5 of Part 5 of the Act" changed to "section 63 of the Act".	Clause 76(1)

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Clause 72 Certain vessels exempt from requirements relating to boat driving licences	Subclause (2) added to provide exemption from boat driving licence requirement for visitors from overseas on similar basis to interstate visitors.	Clause 76(2)
Clause 72 Certain vessels exempt from requirements relating to boat driving licences	Subclause (3) added to negate Subclause (1) exemption from licence requirement if a person holds a boat driving licence that is suspended or cancelled and the person is disqualified from applying for another such licence.	Clause 76(3)
Clause 74 Conditions of boat driving licences	Subclause (2) condition requiring notification to Maritime Authority within 14 days of becoming aware of any circumstance, condition or injury that might cast doubt on the holder's fitness to operate a vessel as authorised by the licence changed to a condition that the holder not operate a vessel in such circumstances.	Clause 79(2)
Clause 76 Drivers of certain vessels to be licenced	<p>Clause 76(1) automatic disqualification of persons from holding boat driving licences as a result of driving Personal Watercraft unlicensed replaced with a discretionary disqualification power in new clause 80.</p> <p>Clause 76(2) automatic disqualification for 2 offences by holder of boat driving licence replaced with discretionary disqualification provision with 2 year limit for an offence in Clause 56.</p>	<p>Clause 80 Disqualification of certain persons from holding boat driving licences.</p> <p>Clause 56 Disqualification of person from holding or obtaining marine safety licence.</p>

## Marine Safety (General) Regulation 2009

Clause number in Consultation Draft	Material changes following public consultation	New Clause number
Clause 79 Meaning of "lifejacket" and "appropriate lifejacket"	Subclause (4) added to provide a general requirement that inflatable lifejackets be less than 12 months old or properly serviced – replaces requirement in consultation draft Clause 80(6) but not applicable generally to all lifejacket requirements.	Clause 83(4)
Clause 81 Circumstances in which lifejacket must be worn on canoe or kayak	Changed to allow persons to use vessels of the type mentioned within 400 metres of shore in daylight etc without lifejackets – as was the case under the previous Regulations.	Clause 85
Clause 84 Lifejacket requirements for windsurfers	Changed to allow persons to engage in windsurfing within 400 metres of shore without lifejackets – as was the case under the previous Regulations.	Clause 88
Clause 92 Report of certain accidents	Reporting requirements have had added accidents resulting in damage, or risk of damage, to the environment.	Clause 96
Clause 93 Exemption on safety grounds	Exemption from provisions of the Regulation extended to vessels displaying an emergency patrol signal (e.g. Police Force or Maritime Authority vessels) or is under blue lights as an accredited rescue unit (within the meaning of the <i>State Emergency and Rescue Management Act 1989</i> )	Clause 97(2)
Clause 94 Exemptions by Maritime Authority	Power extended to the Maritime Authority to exempt vessels from compliance with a notice under Section 11 of the Act.	Clause 98(2)
Schedule 5 Minimum safety equipment to be carried on recreational vessels	Use of "Lifejacket" and Type 1, Type 2 & Type 3 changed to "Appropriate Lifejackets" to utilise the defined term.	Schedule 5.

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<p>Schedule 5 Minimum safety equipment to be carried on recreational vessels</p> <p>Part 2 Modified requirements for specified vessels</p> <p>Clause 4 Modified safety equipment requirements for personal watercraft, canoes and kayaks on open waters.</p>	<p>Requirement to carry distress signals removed. Now not required to carry safety equipment. Qualified by not covering Outrigger Canoes (Clause 7).</p>	<p>Schedule 5, Part 2, Clause 4.</p>