

Proposed *Marine Safety Regulations 2011* Overview

Introduction

For the past several years the Department of Transport (DOT) has been modernising and strengthening Victoria's marine safety laws.

In 2010 the *Marine Safety Act* was introduced – the most significant reform in the regulation of recreational and commercial boating in 20 years.

In 2011 DOT is working on details of this reform, which will be contained in the *Marine Safety Regulations*.

Objectives of the proposed regulations

The objectives of the proposed Marine Safety Regulations are the same as those specified in section 14 of the Marine Safety Act.

These are to promote—

- the safety of marine operations; and
- the effective management of safety risks in marine operations and in the marine operating environment; and
- continuous improvement in marine safety management; and
- public confidence in the safety of marine operations; and
- involvement of relevant stakeholders in marine safety; and
- a culture of safety among all participants in the marine operating environment.

Each specific set of regulations also has its own purpose and objectives.

Regulatory Impact Statement

A full Regulatory Impact Statement (RIS) has been prepared, which specifies in detail the nature and extent of the specific problems the proposed regulations are intended to address. There is also a specification of the objectives for each regulation, or set of regulations.

For further information

The RIS, the draft regulations and other supporting documentation can be viewed and downloaded at: transport.vic.gov.au/legislation

Details of proposed regulatory changes

The proposed Marine Safety Regulations are organised in parts that align with the order of Chapters in the Marine Safety Act. The sequence of matters dealt with in this summary also aligns with this order.

A large proportion of the proposed regulations re-enact requirements presently prescribed in either the Marine Act 1988 or the Marine Regulations 2009. For the purpose of brevity, this overview highlights and describes proposed changes to regulatory requirements.

The main changes from the existing regulations are summarised in the sections that follow.

Registration of vessels (Chapter 4)

Persons who apply to have a vessel registered, or apply to transfer registration of a vessel, will be required to have registration details verified by an "accredited person". This will progressively improve the accuracy and integrity of the vessel registration system so that it can be more effectively used for compliance and enforcement activities.

Dealers, manufacturers and other industry members will be accredited and will verify the details of the vessels that they sell. In time, it is also foreseen that verification of registration details will also be made possible at Vicroads processing offices (for a fee).

All recreational vessels registered or re-registered will be required to have a Hull Identification Number (HIN), to enable boats to be tracked in order to deter or address boat theft and "re-birthing" which are considered by enforcement agencies to be at an all time high. Establishing this requirement aligns Victoria with most other States and Territories.



Those persons that own vessels that do not already have HINs affixed (some vessels manufactured pre-2002) will need to pay to have HINs affixed by persons authorised by the national boatcode company. In most cases the persons authorised to affix HINs are expected to be the same persons that will be accredited to verify registration details.

Analysis has revealed that significant cost savings can be made by reducing the frequency of registration renewal from annual to every 2, 3, 4 or 5 years instead. However: what is not known is the extent to which boat owners are willing to pay applicable fees years in advance. Comment is sought on this proposition. This reform can not be implemented in the short-term because significant system changes would be necessary. Accordingly, in the short term, the proposed regulations continue the requirement for registration to be renewed annually.

Vessel standards (Chapter 5)

Analysis has revealed that the safety benefits associated with establishing recreational vessel standards and a system of periodic safety checks do not outweigh the estimated costs. This result is the same for more targeted measures aimed at addressing, for example, the risks of fuel fires and explosions associated with inboard petrol engines in vessels over 15 years old.

Accordingly, it is not proposed to make regulations that establish recreational vessel standards. Such a reform, should it ever be justified, is better handled at the national level, so that there is no risk of creating impediments to achieving economies of scale in manufacturing of boats.

Conditions of registration are proposed to be used to make it an offence to cause or allow a vessel to be operated if it has not been maintained sufficiently, for example, making sure it is watertight, has no fuel leaks, steering system works, etc. It is already an offence under the Marine Safety Act 2010 to knowingly operate an "unsafe" vessel. The proposed regulations will: (a) codify some of the circumstances when the condition of a vessel makes it unsafe; and (b) enable these requirements to be more readily enforced through use of infringement notices. There are no new obligations (and therefore, no new costs and benefits), but the efficacy of enforcement effort applied can be expected to improve.

Licences for masters of recreational vessels (Chapter 6)

Marine licences are proposed to last for a period of 5 years before needing to be renewed. At present, licence holders can renew for a period of 1, 3 or 5 years. Limiting choice to 5 years is proposed because this would generate significant administrative and compliance cost savings in aggregate, due to the elimination of 450,000 transactions over the 10 years

the proposed regulations would be in effect. The benefit of these cost savings is estimated to in excess of \$15m in present value terms over the 10 year period.

Prescribed conditions of general marine licences are proposed to limit the capacity for licensed masters to supervise the operation of other persons. A licensed master may only supervise the operation of unlicensed persons if the licence holder is: (a) over 18 years of age (and therefore subject to the normal criminal justice system); and (b) is on board the vessel and in a position to take immediate control of the vessel. This is a new regulation. Its effect is merely to codify what is meant by "supervision".

Analysis indicated that the continuation of the existing PWC endorsement can be justified if it is reasonable to believe that a 3.3% to 4.1% reduction in injury incidents is being achieved by having the endorsement in place. In other words, is it reasonable to believe that PWC users would have been involved in at least 4% more incidents if they had not been forced to obtain the knowledge based endorsement before doing so.

Based on analysis of safety data and risks, the establishment of a number of licence endorsement requirements may be warranted. For example, endorsements may be required to engage in towed water sports. However, even if the case can be made for new endorsements it is not feasible to implement new endorsements in the short term (prior to 2011/12 boating season) due to the time required to put in place new training syllabus and testing procedures as well as ensuring that the training infrastructure and administrative systems that are necessary are in place.

For these reasons, consideration of the merits of endorsement options is not included in the RIS. Instead the report: Options Paper for Marine Licensing in Victoria has been released for public consultation at the same time as the RIS. The purpose of this report is to canvass specific options for prescribed types of tests and training as well as options for licence endorsements. Included in this report is DOT's analysis of the merits of each option.

Certification of commercial vessels (Chapter 7)

The new commercial certification requirements included in the Act necessitate new regulations about: the information that needs to be provided when applying; and information that needs to be included in the certificates etc. These regulations are largely of a procedural nature and do not have significant cost impacts.

Prescribed conditions are proposed to be used to apply a required on towage service providers to consult with operational partners about the criteria and operational procedures used to assign vessels

to support ship movements. This regulation has been prepared in response to concerns about the fragmentation of service delivery within ports.

Consultation in February 2011 indicated that the transferability of the safe operation certificates is a matter of concern. Commercial vessel owners sought assurance that they could sell their business as a “going concern” with the appropriate certificates. The proposed regulations do not presently enable this but subject to a change being made to the Marine Safety Act regulations are proposed to be made to allow certificates to be transferred when there is no change to business activities and systems. However, if the scope and nature of business activities change, new owners will need to seek a variation of certification.

Certificates of competency (Chapter 8)

There is not proposed to be any changes to certificate of competency requirements. Commercial vessels will continue to be required to have masters and crew that are certified in accordance with Part D of the National Standard for Commercial Vessels.

However, reforms are being proposed at the national level and Chapter 8 of the RIS provides a summary of these plus indications about this may affect certified masters and crew operating in Victoria.

Operation of vessels (Chapter 9)

Regulations requiring passengers to disembark from a vessel when refuelling at a pier, wharf or jetty are proposed to be extended so passengers can only board the vessel after the engine has been restarted. This recognises that the main risk of fire and explosion is during the restarting of the engine. There are tangible benefits associated with making this change, for example, adherence to this practice would have avoided the fatalities at Pier 35 in 2008. The additional costs involved have been estimated to be low.

The proposed regulations enable specific requirements in the Prevention of Collisions Convention (“COLREGs”) to be enforced through use of infringement notices. For example, the requirement to have and use navigation lights. This change will provide the means for addressing unsafe practices such as persons fishing in shipping channels at night without using navigation lights.

Safety equipment for recreational vessels (Chapter 10 and 11)

Regulations currently require the wearing of Personal Flotation Devices (PFDs) at times of heightened risk. The definition of “heightened risk” has been refined in the proposed regulations to enable this requirement to be enforced using infringement notices. This is critical in achieving higher PFD wear rates on vessels greater than 4.8 metres in length. The change also harmonises Victoria with the definition of heightened risk in NSW.

The proposed regulations provide people with flexibility to use modern equivalents as substitutes for safety equipment requirements specified in the past. Specifically, laser flares and hand held strobe lights can be used as substitutes for red flares and a GPS unit can be used as a substitute for a compass.

The RIS also seeks comment on the merits of requiring all recreation vessels operating more than 2 NM offshore to have a VHF radio, instead of continuing to accept 27MHz radios as a “marine radio”.

Compliance and enforcement (Chapter 12)

It is proposed to enable a number of additional offences to be enforced through the use of infringement offences. It is also proposed to increase some of the penalties that are applicable when infringement notices are issued. For example, it is proposed to increase the penalties applicable to causing or allowing the operation of an unregistered vessel from 1.2 to 5 penalty units. This is a significant change that is aimed at addressing a deliberate level of non-compliance with the most basic of requirements (i.e. unregistered vessels and unlicensed operators).

However, in most cases, penalties will remain the same or only small increases will be made – for example, penalties for safe distances, speed restrictions and safe navigation offences will increase from 1.6 penalty units to 2 penalty units.

Waterway management (Chapter 13)

The time period the Safety Director has to oppose or require amendment to exemptions and exclusion zones being proposed by port of waterway managers (for the purpose of facilitating events or works) will be specified in the proposed regulations as being 10 business days. This will provide certainty to event organisers or managers of projects (involving works on, over or under state waters) about the time that needs to be set aside to get exemptions and/or establish exclusion zones for the purpose of managing traffic around events and works.

Standards for pilotage service providers (Chapter 14)

Prescriptive fatigue management requirements that currently apply to pilotage service providers will be replaced by a requirement to have a fatigue management program that satisfies the pilotage service providers duty to ensure safety, so far as is reasonably practicable. Towage service providers are also required to have a drug and alcohol management policy.

These arrangements provide flexibility to vary from maximum hours and minimum breaks specified in the international convention for Standards of Training, Certification and Watchkeeping for Seafarers 1978 without removing the "safety net" function the convention serves i.e. it will continue to serve as the point of reference against which fatigue management programs will be assessed. Pilotage service providers will also be required to have a documented drug and alcohol management policy.

Accreditation of person providing quasi-regulatory services (Chapter 15)

The proposed regulations enable persons to be accredited by the Safety Director to fulfil certain quasi-regulatory functions, for example (a) to act as a training service provider and administer marine licence tests; (b) to verify vessel registration details; or (c) to assess compliance with vessel standards or vessel maintenance requirements. Accredited persons are needed to support the operations of TSV by providing services of this type because it is not economic for TSV to retain sufficient capabilities in these areas on an on-going basis.

Prescribed Fees (Chapter 16)

Fees will remain unchanged from the current levels specified in the Marine Regulations 2009. However, fees are required to be reviewed in 2012, as indicated in the proposed expiry regulation. A separate set of proposed fee regulations and a separate fee RIS will be released in 2012 for public consultation. Chapter 16 provides an overview of the aggregate costs of marine safety regulation and the revenues that are generated by fees. Some comments are made about the level of cost recovery that is achieved.

Have your say!

Feedback is sought on the merit of the proposed regulations. That is:

- › Do you support the proposed regulations?
- › If not, why?
- › What alternative (if any) would you propose?

Requests for feedback

The RIS also contains specific requests for feedback, particularly throughout the Executive Summary.

These questions deal with specific issues raised by the proposed new regulations. Please review and provide feedback on these questions as you review the RIS.

Submissions

Submissions are required to be made in writing and can be emailed to:

- › marinesafetyregulations@transport.vic.gov.au

or posted to:

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DOT Legal
GPO Box 2797
Melbourne VIC 3001
Australia

Submissions are open until **11 October 2011**.

Telephone enquiries **(03) 9655 6601**.

For further information visit:
transport.vic.gov.au/legislation

Please note that all submissions will be treated as public information unless you request otherwise. Submissions will be published on the Department of Transport website unless you clearly indicate that you would like all or part of your submission not to be published.

Any content considered to be defamatory, vilifying or otherwise inappropriate will not be published.

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