

# Department of Transport

## Regulatory Impact Statement for the Proposed Marine Regulations 2009



October 2009



## Abbreviations

AMSA	Australian Maritime Safety Authority
BIA	Business Impact Assessment
CoS	Certificate of Survey
CoC	Certificate of Competency
DoT	Department of Transport
EPIRB	Emergency Position Indicating Radio Beacons
MSV	Marine Safety Victoria
NM	Nautical Mile
PFD	Personal Flotation Device
PwC	PricewaterhouseCoopers
RIS	Regulatory Impact Statement
USL	Uniform Shipping Law Code
VAED	Victorian Admitted Episodes Database

## Disclaimer

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PwC have based this report on information received or obtained from Marine Safety Victoria (MSV) and DoT, on the basis that such information is accurate and, where it is represented by DoT as such, complete. The information contained in this report has not been subject to an Audit and should not be relied upon by third parties.



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# Executive Summary

## Background

The Marine Regulations 1999 are due to sunset in December 2009 and to ensure ongoing obligations in relation to marine safety, it is proposed that new Regulations be made.

Three key factors that influence the scale and scope of the new Marine Regulations are:

- all Australian governments have agreed to progressively implement a new National Standard for Commercial Vessels (NSCV). The new regulations that are proposed give effect to the national agreement to which Victoria is a signatory
- the Victorian Government is concurrently undertaking a comprehensive review of all of Victoria's marine laws with the view to implementing a new Marine Safety Act in 2010
- COAG has determined that by 2014, responsibility for the regulation of commercial intrastate vessels will transfer from the state marine safety regulators (e.g. MSV) to the Australian Maritime Safety Authority (AMSA), which is a Commonwealth Government agency.

Both the current Victorian legislative review and the transfer of responsibility from the state to the Commonwealth will have implications for Victorian marine safety laws in the medium term. The precise nature of future changes has yet to be determined.

In this light, the government proposes to roll over the current Regulations, with only minor changes, for a period of three years. This will allow for due consideration of wider legislative and regulatory changes. It also avoids any unnecessary additional transitional costs for industry and recreational boat users and reduces the possibility for confusion flowing from a series of regulatory changes now and in the medium term future.

## Proposal

The proposed Marine Regulations 2009 (proposed Regulations) will be the same as the current regulations although some minor changes are recommended. Those changes relate to:

- adding a requirement to register emergency positioning devices with the Australian Maritime Safety Authority.
- replacing the Uniform Shipping Laws Code with the new National Standard for Commercial Vessels
- updating standards on the type of Personal Flotation Devices (PFD) that can be carried on commercial and recreational vessels.

## Impacts

Using a base case of allowing the current regulations to sunset, the compliance and administrative costs associated with renewing the current Regulations (without change) are estimated to be approximately \$30.0 million per year or \$87.1 million as a three year net present value. These costs relate to:

- the costs of complying with construction, operation and safety equipment requirements of commercial and recreational vessels

- administrative costs of demonstrating compliance
- the fees and time associated with registering vessels
- the fees and time associated with obtaining relevant licences to operate vessels.

The additional costs associated with two of the proposed changes to the current regulations are minimal. One change updates the regulations to grant wider consumer choice (as in the case of standards relating to PFDs) which is not likely to impose any additional costs. The second change reflects clarification as to what is required to ensure safety equipment is operational and allows for quick resolution of false alarms (as in the case of emergency positioning devices). It is estimated that the initial one-off cost imposed on industry by the requirement to register an emergency beacon (EPIRB) will be \$9,653 with an on-going cost of \$241 (the three year NPV equals \$10,112) based on an assumption of 5 minutes to complete the form. As forms can take longer for different individuals to complete an estimate of 30 minutes has also been included which would result in the initial one off cost of \$57,920 with an on-going annual cost of \$1,448 (the three year NPV equals \$60,670).

In relation to the incorporation of the National Standards for Commercial Vessels (which replaces the Uniform Shipping Laws Code) the only change of significance for Victoria relates to the requirement in Part E of the National Standards for commercial vessel owners to develop and implement a Safety Management System for their operations. To the extent that this imposes a new cost on commercial vessel operators in Victoria it is estimated that this cost could total \$1.2 million as a one off initial impost. This cost however, is an upper-bound estimate and assumes no operator is currently complying with this obligation. This cost is taken from the 2004 national RIS on the National Standards for Commercial Vessels (Part E Operational Requirements) and adjusted for CPI. The cost estimates are based on Victoria's experience in developing safety cases and the estimated number of recreational vessels introduced into Victoria per annum. The 2004 RIS states that there will also be on-going costs to implement the requirements in the plan such as training, drills and information preparation. The RIS concludes that this is not expected to impose a cost over and above requirements vessel owners and operators should already be complying with as they are included in other parts of the National Standard. These additional costs were not calculated in the 2004 national RIS.

In the 2004 RIS it was concluded that the benefits of this requirement will outweigh the costs and as this national RIS was assessed as compliant by the then Office of Regulation Review (now the Office of Best Practice Regulation) no further work relating to this requirement has been undertaken in this RIS.

In contrast to the cost estimates it is quite difficult to estimate the expected benefits associated with the remaking of the current Regulations. The reason for this is that it is not possible to observe the number of deaths or injuries that would occur in the absence of regulations given regulations have always been in place. One way to consider the relative merits of the proposed regulations is to estimate the number of deaths or injuries that society would have to avoid to allow for a net benefit from remaking regulations – in effect this is the break-even point.

The proposed Regulations could result in a net benefit if sufficient lives were saved and incidents (involving injury and property damage) were avoided. While any number of combinations could result in the necessary saving the following is an example of the quantum of savings required. Based on an estimate for the value of statistical life of \$3.74 million, it would be necessary to save approximately 4 lives per year (an increase to 13 from the current average of 9.6<sup>1</sup>), avoid 415 recreational vessel incidents (an increase to 1,570 from the 1,091 incidents that occurred in 2007/08), and avoid 53 commercial vessel incidents (an increase to 200 from the 139 incidents that occurred in 2007/08).

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<sup>1</sup> This is the average fatalities per annum between 1989/90 and 2007/08

While it is difficult to know with certainty whether this level of deaths and incidents would be avoided, the size of the commercial and recreational sector (in excess of 300,000 registered individuals) would suggest that it would not be unreasonable to expect savings of this magnitude. Advice from MSV indicated that in their view this was a reasonable expectation and based on the 1999 Regulatory Impact Statement the number of lives lost in the early 1990s was on average around 13 deaths per year.

The proposed Regulations will impose the same level of fees as the current Regulations. These fees will be increased with CPI over the next three years in line with government protocol. Currently the total amount of fees collected is approximately \$19.9 million per annum although the full cost recovery amount is estimated to be \$24.3 million per annum.<sup>2</sup> Full cost recovery is not being proposed at this time as it is expected that fees will need to change in light of the current review. A full list of fee categories is set out in Appendix A.

### Enforcement

The Water Police and authorised officers employed by port management bodies, local port authorities and waterway managers are responsible for enforcing the current Regulations. This is not expected to change in the future (at least over the next three years) nor is it proposed to change the level of fines issued via infringement notices, infringement levels or enforcement effort. MSV advises that approximately \$1 million of MSV's budget is dedicated toward the costs of the Water Police.

### Further research

Over the next three years as part of the legislative reform process (which will include the making of regulations to replace the regulations that are the subject of this RIS) further research is being conducted in relation to the causes of deaths and accidents and the likely impact of changes to the scope and nature of regulatory interventions that are applied to the marine sector.

Options being considered as part of the legislative review include those articulated in the discussion paper *Improving Marine Safety in Victoria* which was released in July 2009. The options are summarised in section 5.1 of this RIS.

In support of the assessment of these options (and others), DOT and MSV will need to draw together all available data and collect new data. Such data and information is necessary to provide the most comprehensive and accurate basis on which to allow for costs and benefits of future options to be considered and weighed up.

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<sup>2</sup> Budget supplied by MSV for 2007/08



# 1 Introduction

## 1.1 Background

Regulation of marine safety provides for the safe operation of vessels, the safety of people on vessels, a coordinated response to marine pollution and the safe operation of ports and waterways.

The Marine Regulations 1999 (current Regulations) form part of the wider body of marine safety legislation and in December 2009 the current Regulations will sunset (that is, they will lapse). If new regulations are not made then this will undermine or remove laws relating to:

- vessel operation, construction and equipments
- crewing, certificates of competence (CoC), pilots' and harbour masters' licences
- registration and operator licences
- fees and infringements.

The current Regulations are focused on the safety of the marine industry and in particular minimising the number of incidents on Victorian waters. Incidents can result in vessel damage, property damage, human injury and even death. Although the current Regulations impose a cost on some operators, minimising incidents provides an economic benefit to the community by avoiding property damage, lost productivity and health costs.

## 1.2 The proposed amendments

Three key factors that influence the scale and scope of the new Marine Regulations are:

- all Australian governments have agreed to progressively implement a new National Standard for Commercial Vessels (NSCV). The new regulations that are proposed give effect to the national agreement to which Victoria is a signatory.
- the Victorian Government is concurrently undertaking a comprehensive review of all of Victoria's marine laws with the view to implementing a new Marine Safety Act in 2010
- COAH has determined that by 2014, responsibility for the regulation of commercial intrastate vessels will transfer from the state marine safety regulators (e.g. MSV) to the Australian Maritime Safety Authority (AMSA), which is a Commonwealth Government agency.

Both the current Victorian legislative review and the transfer of responsibility from the state to the Commonwealth will have implications for Victorian marine safety laws in the medium term. The precise nature of future changes has yet to be determined.

In this light, the government proposes to roll over the current Regulations, with only minor changes, for a period of three years. This will allow for due consideration of wider legislative and regulatory changes. It also avoids any unnecessary additional costs for industry and recreational boat users and reduces the possibility for confusion flowing from a series of regulatory changes now and in the medium term future.

The changes to the current Regulations that are proposed relate to the following.

- Change most references to Standards that presently refer to a date, to “as published etc from time to time” so that updated versions remain applicable.
- Adding a requirement of proof of Australian Maritime Safety Authority (AMSA) registration to the existing provisions on emergency positioning devices.
- Replacing sections of an old national standard (the Uniform Shipping Law Code or USL) with new relevant parts of the new National Standard for Commercial Vessels as anticipated by industry (national RIS already completed).
- Fixing a number of minor drafting errors.
- Removing several now-redundant provisions.
- Including procedures for applying to the magistrates’ court for extensions of time in the regulations (such procedures being required in the Marine Act 1988).

### 1.3 Purpose of the Regulatory Impact Statement

Although the proposed Regulations are substantially a re-make of the current Regulations and are intended as a temporary measure to ensure ongoing regulatory coverage of the marine industry, a Regulatory Impact Statement (RIS) must be prepared and issued for public comment. This RIS must consider the impacts of the proposed Regulations from a base case of allowing the current Regulations to sunset, that is a zero or ‘no regulation’ base case.

This RIS aims to provide an assessment of the impacts of the proposed Regulations and the range of alternatives has been focused so as to reduce the number of potential changes ahead of the wider marine safety legislative review.

This RIS sets out the potential issues that will arise in the absence of regulation, it discusses the proposed changes to the regulation (which are minor in nature and impact), outlines the objectives of the proposed Regulations, discusses the effect of the proposed Regulations and quantifies (where possible) the costs and benefits of the proposed Regulations on industry.

### 1.4 Structure of the RIS

The RIS is structured to address all relevant issues and satisfy the requirements set out in the Victorian Guide to Regulation. This document is structured in the following manner:

- Chapter 2: Provides an overview of the marine industry and its size
- Chapter 3: Discusses the likely problems that will be experienced in the marine industry in the absence of regulation
- Chapter 4: Outlines the objectives of the proposed Regulations
- Chapter 5: Outlines possible alternatives to the proposed Regulations
- Chapter 6: Presents the costs and benefits of each alternative
- Chapter 7: Discusses the likely impact of the proposed Regulations on competition in the industry and small businesses

- Chapter 8: Sets out the preferred option.

## 2 Industry background

### 2.1 Components and size of the marine industry

The marine industry is an important element of the Victorian economy, contributing an estimated \$4.5 billion per annum to Gross State Product and employing more than 7,000 people in manufacturing, wholesaling and retailing. Victoria has approximately 1,200 kilometres of ocean coastline and 2,100 square kilometres of inland and enclosed waters that are regulated.<sup>3</sup>

Vessels and users of the marine industry are split into three categories which are governed by different licensing and regulatory requirements. These three categories are:

- commercial
- hire and drive (which is usually included in the definition of a commercial vessel)
- recreational.

The legislative and regulatory framework is set up to provide for the safe and efficient operation of vessels in state waters. State waters are currently defined in the Act to mean:

- a territorial sea adjacent to the state
- the sea on which the landward side of the territorial sea adjacent to the State that is not within the limits of the state
- waters within the limits of the state.

Presently the Territorial Sea defined in the Act is 12 nautical miles (NM) off the coast. However, Commonwealth Legislation restricts Victorian waters to 3 NM. Also included under the control of Marine Safety Victoria are approximately 70,000 waterways. Of these approximately 8,000 are considered to be of significant importance. Of these 8,000, MSV has appointed waterway managers for 160. The default waterway manager for the other 7840 waterways is MSV.

Some of the major assets under the oversight of MSV include ports and channels, rivers, bays and estuaries, lagoons and lakes.

To achieve the purpose of the Marine Act, mainly: 'to provide for the safe and efficient operation of vessels in state waters', the responsibilities of Marine Safety Victoria include:

- general regulation of Victorian-based:
  - trading ships that are not on overseas or interstate voyages
  - non overseas fishing vessels
  - inland waterway vessels
  - 'pleasure crafts'

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<sup>3</sup> Information collected and supplied by DoT> DoT has collected this information for the legislative review currently being undertaken

- waterway and sea management generally (State waters extend out to 3 nautical miles offshore due to the effect of Commonwealth Legislation )
- over sighting the safety of waters managed by port management bodies
- giving effect to national and international marine safety law
- marine pollution response

The sections that follow explain each sector of the industry in Victoria. This information will assist in understanding the potential issues facing the industry and the difficulty in regulating and minimising incidents in the industry.

### 2.1.1 *Commercial vessel*

The term 'commercial vessel' can be defined as a vessel that engages in activities aimed at procuring payment and producing profit from tasks undertaken on the vessel. 'Commercial' relates to either a trading, fishing or hire and drive vessel.

A trading vessel is used or intended to be used for, or in connections with any business or commercial activity and includes (but is not limited to) a vessel used or intended to be used wholly or principally for:

- carrying passengers or cargo for hire or reward
- providing services to vessels and shipping, whether for reward or otherwise, but does not include a government vessel or a shipping vessel.

The definition of a trading vessel does not include a fishing vessel or a government vessel. Instead a fishing vessel is a vessel used or intended to be used for catching fish, whales, seals or other living resources of the sea or seabed for profit or reward and includes any such vessel in the course of construction, but excludes any vessel engaged in the harvesting or transport of algae or aquatic plants, or that is primarily a carrier or mother vessel.

A hire and drive vessel means a vessel (other than a recreational vessel) that is or is intended to be let for hire or reward or for any other consideration, and includes a vessel provided at a holiday establishment or hotel for the use of tenants or guests.

All commercial vessels are required to hold a Certificate of Survey (CoS) issued by Marine Safety Victoria. The total number of active domestic commercial vessels as at December 2008 was 1,398. A further 215 were under construction or in initial survey.

Table 2.1: Commercial vessels in Victoria

Category	Number of vessels in category
Active commercial vessels	1,398
Under construction	182
Initial survey	33
Total	1,613

MSV predict that between 80 and 100 initial surveys will be conducted each year. This indicates that the industry is growing and emphasises the importance of safety in the industry. Applicants must pay several fees when undertaken an initial survey. The first fee paid is the application fee for all new vessel surveys and plan approvals (\$18) followed by an actual survey fee which is based on vessel size and varies between approximately \$36 and \$77. Having an existing boat surveyed is more expensive costing up to \$670. Fees are also paid for additional visits for survey staff, plan alterations and inspection fees. A total of \$419,221 was collected by MSV for survey fees in 2007/08.

Under the current regulatory arrangements commercial vessels are categorised in regards to their size and area of operation. Each of these categories has a set of rules that govern activities in Victorian waters. These classifications are established in the Uniform Shipping Laws Code which sets the commercial vessel classifications and operational areas nationally. Currently the four classes of commercial vessels are:

- Class 1: Trading vessels carrying more than 12 passengers
- Class 2: Trading vessels carrying up to 12 passengers
- Class 3: Fishing vessels
- Class 1F and now Class 4: Hire and drive vessels

Vessel classifications relating to their area of allowable operation are:

- A: Unlimited area of operation
- B: Off shore operations to 200 NM off the coast
- C: Restricted offshore operations within a range of 30 NM from sheltered water or a safe haven
- D: Operations within declared partially smooth waters
- E: Operations within declared smooth waters (includes inland waters).

In order to operate a commercial vessel on Victorian waters, owners are required to obtain a CoS which is issued by the Director of Marine Safety. It is issued to vessels which comply with the requirements of the Act and the Regulations. Vessels must have a valid CoS to operate legally in Victoria. A CoS issued for a vessel indicates that the vessel meets the minimum standards including:

- the design of the vessel
- the construction of the vessel
- the equipment that the vessel is required to carry

- the operation of the vessel.

To ensure that commercial vessels operating on Victorian waters are safe an annual survey regime has been implemented. The survey regime entails an inspector checking vessel design, construction, equipment and crewing. If there is a gap between the minimum mandatory safety requirements set out in the current Regulations and the state of the commercial vessel being surveyed, parties exercising control over the safety of a vessel have a responsibility to bridge this safety gap by immediately managing risk.

Hire and drive vessels are a subset of commercial vessels and make up a significant proportion of vessel numbers. Total hire and drive vessels operating in Victorian waters as of 2007/08 was 408, which represents 27% of total commercial vessels.

### 2.1.2 *Recreational Vessels*

A recreational vessel is defined as a vessel used or intended to be used for recreational activities on Victorian waters and not to be used for hire or reward. A recreational vessel is something that is used or is capable of being used in water however propelled or moved. Examples of recreational vessels are powered boats, personal watercraft, yachts, kayaks and canoes.

All recreational boats that are operated in Victorian waters, with an engine used (or capable of being used) for propulsion, must be registered and in a seaworthy condition. There is no recreational boat inspection to determine that the boat is seaworthy however registration is required to be renewed every 12 months and a signed declaration that the vessel is seaworthy is required. Recreational boat registration is done through VicRoads and the information is passed onto MSV.

Renewing a recreational vessel registration is as simple as renewing a car registration and requires the applicant to pay a fee. Registration fees for individuals registering a vessel less than four meters in length costs \$33.90 and vessels larger than four meters costs \$70.70. These costs are incurred on an annual basis. In 2007/08 there were 167,072 new or renewed registrations for recreational vessels.

MSV have forecast that the number of recreational vessels will increase by approximately 2.5% per year (based on growth over previous years). This represents an increase of close to 4,000 boats next year and increasing in the years following. The growing number of recreational vessels highlights the importance of maintaining a safe marine environment as more individuals are exposed to Victorian waters.

### 2.1.3 *Participants in the marine sector*

Licences are required to operate commercial, hire and drive and recreational vessels in Victoria. The number of licences issued provides an indication of the number of Victorians involved in marine activities.

To operate a recreational vessel a licence can be obtained from VicRoads, or from an approved training provider.

There are approximately 300,000 boat licenses on issue in Victoria. About 30,000 new boat operator licences are issued annually. Licences can be issued for periods of 1, 3 or 5 years.

As stated in the discussion paper *Improving Marine Safety in Victoria* which was released in July 2009 (the discussion paper), it can reasonably be expected that hundreds of thousands of others participate in marine activities. However, there is no reliable data available to indicate the total percentage of Victorians involved in using vessels on state waters on an annual basis.

Approximately 167,000 boat operator licences were issued or renewed in 2007/08. Of these approximately 44,000 were personal watercraft endorsements and 5,600 were restricted licences issued to 12-16 year olds.

The large number of licences issued annually suggests the involvement in recreational boating is growing rapidly.

For commercial crewing or commercial licenses, individuals must obtain a Certificate of Competency (CoC) and provide evidence of ability and qualifications to Marine Safety Victoria. There are a range of certificates of competencies available to operators of commercial vessels which reflect the different operational tasks required to be undertaken on a vessel (such as coxswain to Master, engineer to deckhand). These are awarded to individuals when they demonstrate that they have acquired the skills, knowledge and training required to undertake the tasks of each level of qualification required when working on a commercial vessel.

The following CoC are available in Victoria:

- Master Class 3
- Master Class 4
- Master Class 5
- Mate 4
- Coxswain
- Skipper 1
- Skipper 2
- Skipper 3
- Engineer Class 3
- MED 1
- MED 2
- MED 3

Certificates are required before individuals operate or are employed on commercial vessels for certain jobs.

As outlined in the discussion paper, at present there are approximately 10,000 commercially qualified persons in Victoria. Around 250 new certificates of competency are expected to be issued in the 2009/10 financial year.

There has always been regulatory delineation between commercial and recreational operators in the marine environment. This reflects tradition, practice in other jurisdictions, and risk.

Recreational usage has been seen, and is still seen by the overwhelming majority of stakeholders, as an area where the principle of voluntarily assumed risk holds sway. In this regard it is seen as more analogous to activities such as hiking, mountain climbing or skiing than it is to 'recreational' use of motor vehicles.



The commercial sector on the other hand is seen as generating risks for a wider number of people who do not or cannot assume responsibility for those risks. This can range from employees on board, to paying passengers, to parties and businesses affected directly by the impact of for example a large trading vessel sinking.

#### 2.1.4 Summary

Information collected by MSV indicates the marine industry is growing with a forecast growth in recreational vessels of 2.5%<sup>4</sup>, with approximately 100 initial surveys, 30,000 new recreational vessel licences and 250 new certificates of competency issued every year.

With demonstrated growth in the industry it is important that safety standards are maintained to ensure protection of marine users. Regulations are in place to ensure this safety and to minimise the number of incidents that occur.

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<sup>4</sup> Forecast growth has been indicated by MSV. This estimate is included in the industry discussion paper on possible legislative changes.

## 3 Nature and extent of problem

Marine safety incidents involving commercial and recreational vessels can result in lives being lost, people being injured, or property being damaged.

It would be preferable to consider the extent of these 'incidents' from a zero regulation perspective. That is, how many people have died or injuries or accidents have occurred in the absence of regulation. Unfortunately, this is not possible and the best available data on marine safety incidents is the data over the life of the current Regulations. By considering the extent of the problem even with the current Regulations it is possible to infer that without new Regulations safety and incident data would be worse.

### 3.1 Nature and extent of problems in the industry

The report 'Marine Safety in Victoria, July 2006 to June 2007', compiled and released by MSV provides a snap shot of incidents that have occurred in the marine industry since 1999/00.<sup>5</sup> The key statistics highlight that even with the current Regulations safety issues are present in the industry and of considerable concern.

#### 3.1.1 Commercial vessel incidents

Incidents involving commercial vessels range from unwanted contact and property damage to hospitalisation of operators or crew members. Incident severity is reported in two categories.

- response only incidents which typically only involve property damage and rescue
- serious incidents which involve major damage, hospitalisation and death.

There were a total of 139 marine incidents (response only and serious) involving commercial vessels recorded over the 12 month period July 2007 to June 2008, 15 more than reported in 2006/07, but 58 more than was reported in 2005/06. This represents a 71% increase in commercial incidents over a two year period. MSV advise that this increase was due to an improvement in the reporting of incidents rather than a spike in non-compliance or risky behaviour. The general increase in incidents is reflective of a growing industry and with more commercial vessels operating in the future it is likely that there will be an increase in incidents.

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<sup>5</sup> MSV and Monash University Accident research Centre 2009, Marine Safety in Victoria: July 2007 to June 2008, Published by Marine Safety Victoria, 121 Exhibition Street, Melbourne Victoria 3000.

Table 3.1: Commercial vessels incidents by year

Year	Incidents
1999/00	21
2000/01	34
2001/02	32
2002/03	58
2003/04	50
2004/05	52
2005/06	81
2006/07	124
2007/08	139

While it would be useful to discuss these numbers in relative terms, only total incidents have been included. Specific trip data and vessel usage data is not available for the preparation of this RIS, and to ensure a degree of comparability with data on recreational vessels, only total incident numbers have been included. All information on incidents therefore represents the total over the course of a year.

#### ***Response only incidents (49 in total)***

In general, response only incidents are not major and do not involve danger to life but rather disabled vessels or persons in trouble (without injury or death). This is different from previous years when non-marine incident and false alarm incidents were also included in response only incidents. It is also likely that not all response only incidents are recorded as some incidents may not require assistance and are solved by owners or operators.

There were 49 commercial 'response only' incidents reported in 2007/08, 15 more than in 2006/07 and all involved only one vessel. MSV advises that this increase is due to better reporting of incidents.

#### ***Serious incidents (90 in total)***

There were 90 commercial incidents categorised as 'serious incidents' recorded in 2007/08, the same number that was reported in 2006/07. This however represented a 67% increase in the number of 'serious incidents' from 2005/06.

Incident severity is captured by two variables: incident severity and injury status. These variables are impacted by the type of incident that occurred. Major causes of incidents that occurred in 2007/08 were close quarters (52%), grounding (13%) and collisions (12%). These results were similar to the previous years where almost two-thirds of the 'serious incidents' reported in 2006/07 did not result in any personal or property damage. Almost another third of the incidents resulted in damage to property only. Close quarters, collisions and grounding were the leading causes of 'serious incidents' in 2006/07.

There were no recorded fatalities in 2007/08 as in 2006/07. Four serious injuries were reported compared to two in 2006/07. Serious injuries are still under-reported when frequencies are compared with commercial boating hospital admissions recorded on the Victorian Admitted Episodes Dataset (VAED), as many injurious incidents are not reported to Water Police.

Ten of the commercial incidents recorded in the MSV database system in 2007/08 resulted in injuries (four serious and six minor). Hospital admission data for these injuries is not yet available. This is reasonably consistent with the previous year where five of the commercial incidents reported on the database in 2006/07 resulted in injury. Hospital based surveillance datasets recorded 17 hospital-treated

commercial boating injury cases over the 12 month period July 2006 to June 2007 (four admissions and 13 emergency department presentations).

Interestingly, the four hospitalisations recorded were all male adults between 25 and 50. Injuries occurred on a merchant vessel, a powered watercraft and two were injured on unspecified vessels.

12 of the 13 persons presented to the emergency department for commercial boating injuries were male. Injuries included hand complaints, falls onboard or being knocked over. The most common injury was open wounds sustained onboard.

It was reported in the National Approach to Maritime Safety Reform that the cost of an injury at work is \$237,000. This is a combination of all injuries that result in a range of outcomes from returning to work within five days to not being able to return to work. If this cost is attributable to all serious injuries it is a significant cost to the state. This is the cost estimate and methodology used in the national Marine RIS. To maintain consistency with national estimates on commercial vessel incidents, this cost of injury has been used in the impact analysis.

### 3.1.2 Hire and drive vessel incidents

There were eight marine incidents involving a hire and drive vessel recorded for the 12 month period July 2007 to June 2008. This was an increase from two cases in 2005/06 and is larger than annual frequency in the previous four years.

Table 3.2: Hire and drive vessel incidents by year

Year	Incidents
1999/00	14
2000/01	8
2001/02	2
2002/03	3
2003/04	3
2004/05	1
2005/06	5
2006/07	2
2007/08	8

For six of the incidents there was no damage to property. One incident resulted in damage to the vessel and the final incidents there was damage to third party property.

Most years are quite consistent with only 1999/00 having more than ten incidents. MSV have indicated that this is most likely due to a good summer season, a factor which encourages greater participation in recreational boating in a given year. MSV have also suggested that during later years there may be elements of good luck, lower participation due to bad weather and possible fluctuations in operator numbers.

### 3.1.3 Recreational vessel incidents

There were 1,091 marine incidents involving recreational vessels recorded for the 12 month period July 2007 to June 2008. The sharp increase observed in recreational vessel incidents in 2005/06 (161) is

sustained in the 2006/07 and 2007/08 years. It is reported by Marine Safety Victoria that this increase may be due to better reporting.

Table 3.3: Recreational vessel incidents by year

Year	Incidents
1999/00	768
2000/01	762
2001/02	774
2002/03	771
2003/04	756
2004/05	741
2005/06	902
2006/07	968
2007/08	1091

Similar to commercial vessels, incidents are split between response only and serious. 84% of recreational incidents (926) were response only incidents and 16% (165) were serious incidents.

As with commercial vessels, response only incidents cover disablement of vessel and person in trouble and exclude non-marine incident and false alarm. 96% of response only incidents did not result in any damage to property or person. Three percent resulted in property damage with only one injury case. This involved a man being pulled unconscious from the water and was only categorised as response only as he was no longer on a vessel. This was an improvement on 2006/07 when two individuals were injured and two died. Both fatal incidents involved ‘persons in trouble’; a boogie boarder and a scuba diver.

There were 165 cases categorised as ‘serious incidents’ recorded in 2007/2008. This represented a 26% increase in the number of ‘serious incidents’ in 2006/07. Despite the increase in frequency, the number of incidents is consistent with the number of ‘serious incidents’ in the 8 year period 1999/00 to 2006/07.

Over half (60%) of the serious incidents reported in 2007/08 resulted in personal or property damage compared with 47% percent in 2006/07. There were 16 fatal and serious incidents in 2007/08 compared with ten in 2006/07.

There were nine recorded fatalities (from seven fatal incidents) in the 2007/08, representing 0.9% of recreational vessel incidents reported. Eight of these were recorded as serious incidents with the other one ‘response only’ as they did not involve a vessel. Deaths were caused by drowning (3), impact injuries related to collisions (4) and burns (2).

Major causes of serious incidents were grounding, capsizing and collisions. These are relatively similar to results from the previous year although there has been a larger increase in collisions. As expected most recreational vessels involved in ‘serious incidents’ were mechanically powered, followed by sail powered and human powered.

Interestingly, 45% of recreational vessel occupants involved in serious incidents were recorded as wearing a personal floatation device (PFD), compared with 62% in 2006/07. This is a noticeable drop in individuals wearing a PFD and may have contributed to injuries or deaths.

MSV have advised that if there is reduced wearing of PFDs then it will be addressed through education campaigns. The level of infringements for failing to wear a PFD could be the result of many factors such as good weather increasing the number of boaters on the water, a reduction in wearing PFDs because

of very hot weather or just a general decline in people wearing them. This will need to be assessed in the legislative review as it is recognised that changing boater behaviour takes time and the reasons for the behavioural change need to be fully explored over upcoming boating seasons. In reality a person who chooses to wear a PFD one day may choose not to wear one in different conditions.

A RIS undertaken in 2005<sup>6</sup> concluded that there are net safety benefits associated with wearing a PFD including avoiding injury and death. Given the link between safety outcomes and PFD, the reduction in passengers wearing them is something that should be reviewed and addressed by DoT in the legislative review being undertaken.

One possible explanation for this drop is that in December 2005, MSV introduced the mandatory wearing of PFDs in certain circumstances and undertook an extensive media campaign to encourage PFD wearing, not only by those that were now required by law to wear PFDs but by others as well, as “good practice”. Observational studies indicated an increase of PFD wearing after the introduction of the requirement but it would not be unreasonable to expect that over time some boaters would revert back to previous practices of not wearing PFDs, particularly if they are only required to wear them in hazardous conditions.

To support this view, the MSV database reported three deaths in the 2006/07 year. Of these three deaths, none were wearing a PFD when pulled from the water.

Another source of information that has been used to understand the extent of marine accidents and incidents is hospital emergency department presentations and hospital admission data. This often does not match Marine Safety Victoria data as not all incidents are recorded by water police whilst individuals may still go to hospital. However, the strength of this data set is that it provides a more complete picture of the aggregate number of injuries being sustained while undertaking marine activities.

There were 223 hospital admissions and 679 emergency department presentations for boating related sport and recreational injuries recorded on the VAED and VEMD respectively, over the 12 month period July 2006 to June 2007. This represents a 5% decrease in the number of hospital treated injuries recorded on hospital databases in 2005/06. Broken down by severity, there was a 9% decrease in VAED cases (hospitalisation) and a 7% decrease in VEMD cases (ED presentations, non-admissions). This follows several years of increases (31% from 2004/05 to 2005/06 and 36% from 2003/04 to 2004/05).

Notwithstanding the slight decrease in total injuries between 2005/06 and 2006/07, the total increase over the 5 years preceding this indicates significant growth in the number and severity of injuries.

Information collected from individuals injured in a marine setting show distinctive trends including:

- males were grossly over-represented in both admissions and ED presentations (74% of all hospital admissions)
- young adults 15-29, closely followed by adults aged 30-44, were more likely than any other age groups to be admitted to hospitals and to present to the emergency department
- water skiing and other towed sports represented the greatest proportion of hospital related injuries
- major causes of injuries included falls, hits and being crushed
- the lower extremities were the most commonly injured body part.

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<sup>6</sup> Marine (Personal Floatation Devices and Other Safety Equipment Regulations 2005

MSV has not undertaken research on specific demographics of recreational vessel users.

An additional piece of safety equipment required on vessel is a EPIRB device. This device locates vessels in the event of an emergency. The (federal) Australian Maritime Safety Authority (AMSA) coordinates search and rescue operations which originate from the activation of EPIRB devices. The states have agreed at the Mutual Recognition Subcommittee of the National Marine Safety Committee to implement regulatory provisions to support the work of AMSA that include mandatory registration. Registration is considered essential as it enables AMSA to be able to quickly access contact details of the EPIRB owner and information about the vessel.

This enables AMSA to quickly verify the validity of the alert and respond accordingly. There is a high rate of false alarms caused by the accidental or intentional triggering of EPIRBs when there is no emergency. For example; there have been many instances where EPIRBs have been accidentally triggered when a vessel is being maintained and by having contact details AMSA is able to call the contact number and quickly determine that the vessels and potential passengers are in fact safe. This reduces the number of false call outs and saves resources, as personnel and aircraft or vessels are not unnecessarily deployed. Having access to vessel description details also assists personnel undertaking search and rescue operations.

AMSA has indicated that three false alarms leading to a search and rescue effort were recorded in Victoria in the twelve month preceding 1 September 2009. The cost of these rescue effort have been estimated by AMSA at \$10,000 each.

### 3.1.4 Infringements

The level of infringements provides some insight into the extent to which industry (commercial and recreational) complies with the regulations. While this is clearly influenced by the level of regulatory enforcement effort, the following table highlights that there is a degree of industry non-compliance and that it is not unreasonable to expect that safety outcomes are lower than this without regulations. Information presented in table 3.4 shows the types of infringements that occurred from July 2006 to 30 June 2008.

Table 3.4: Infringements in Victoria

Codes	Offence group	Offence type	Number	Fee units	Revenue
2251-2256	Registration offences	Operate unregistered vessel; failure to fix registration label or identification mark	507	0.8 – 1.2	\$59,840
2257-2262	Speeding/safe distances offences	Exceeding 5 knots near persons, vessels, waters edge	288	1.6	\$52,264
2264-2271	Operate in prohibited waters offences	Operate speed limit in contravention of notice; operate vessel in prohibited area	254	1.6	\$46,094
2273-2274	Water ski offences	Towing offences	37	1.2 – 1.6	\$5,308
2284-2317	Misc offences	Anchor vessels in channel or area which impedes traffic	133	1.2 – 2.0	\$18,737
2331-2336	Hire and drive offences	Failure to have equipment accessible and in good order	24	1.2 – 1.6	\$3,403

Codes	Offence group	Offence type	Number	Fee units	Revenue
2338-2339	Blood alcohol offences	Exceeding blood alcohol limits	6	3.0 – 4.2	\$2,586
2341-2346	General offences	Failure to carry certificate, licence or exemption while operating a vessel	146	0.8 – 5.0	\$18,408
5703-5713	Vessel operation offences	Operating without, in breach of or without being in possession of a relevant licence or certificate of survey	587	0.8 - 19	\$126,917
5752-5775	Operate without proper safety equipment	Failure to wear PFD; Operate vessel with flares, smoke signals, torches	1778	1.25	\$252,076
<b>Total</b>			<b>3760</b>		<b>\$585,633</b>

The greatest number of infringements over the last three years relates to vessels operating without proper safety equipment. Considering that three deaths occurred between July 2006 and June 2007 and none of the individuals were wearing personal floatation devices, ensuring safety equipment is kept onboard vessels would seem to be of value – as was shown in the 2005 RIS relating to PFDs.

A high number of infringements have also been issued for ‘operating without, or in breach of’ being in possession of a relevant licence or CoS and ‘registration offences’.

MSV data shows that machinery failure and electrical failure are major causes of commercial vessel and recreation vessel incident. During 2006/07, common causes of recreational vessel incidents were machinery (35%), electrical (18%) and vessel maintenance (16%). 10% of commercial vessel incidents in the same year were caused by material factors such as hull, electrical and machinery failure. These requirements are in place to ensure all vessels are seaworthy and that vessel operators maintain a certain level of safety. It is likely that vessels in breach of these requirements are more likely to be involved in an incident such as a collision or disablement of their vessel.

Other noticeable infringements are speeding and keep a safe distance and operating in prohibited waters. A proportion of incidents (commercial and recreational) were caused by speeding and being too close to other vessels. This highlights the need to control speeds to ensure minimal incidents.

MSV advises that the types of infringements issued change over time in light of changing boating behaviour and attitudes. MSV advises that in their view there is no link between poor behaviour in one area (resulting in an infringement) and safety outcomes in another area of boating. That is, just because a boater does not register their vessel does not mean that they are likely to have a poorly maintained vessel. They may in fact have a very well maintained vessel as they recognise the importance of good maintenance but just have not completed the registration process.

Anecdotal evidence from key stakeholders, including waterway and port managers, suggests there is non-compliance over and above rates reflected in infringement levels. MSV advises that the reason for this is the size of the marine environment, from relatively remote inland lakes and small estuaries through to the offshore environment, and the inability to ensure education/enforcement activity in all locations at all times. The wider legislative review is looking at options to reduce non-compliance, including the adoption of a common enforcement policy through to higher fines.



While MSV have not been able to separate out commercial and recreational infringement data, they advise that seaworthiness and related incidents are expected to be higher in the recreational sector given the size of the recreational sector and that the commercial sector has both commercial incentives (in that their business relies upon the effective and well-maintained vessel and equipment) and regulatory obligations (in that they face a higher level of regulation for vessel survey and higher certification requirements for individuals).

### 3.1.5 Summary

Over recent years (i.e. those years for which there is reliable data) there has been an increase in the number of incidents for both commercial and recreational vessels in the marine industry. The explanation for the increasing number of injuries arising in this context that is most commonly raised by stakeholders is that the increase in injuries is primarily due to increased congestion on waterways together with increasing problems of non-compliance with basic navigational rules. Based on stakeholder input and its own assessments, the Department of Transport believes that these factors constitute the primary causal factors in the observed increases in injuries, albeit that improved data capture is also likely to be a factor.

This suggests that individuals are not as focused on safety as the Regulations require, and as a result, safety outcomes are below that desired. Furthermore, safety outcomes could reasonably be expected to be higher in the absence of regulation, with the 1999 RIS highlighting that marine safety deaths were around 50% higher in years prior to the making of the current Regulations.

## 3.2 Regulation structure and past assessments

For information purposes and for historical context, the key findings of 1999 RIS for the current Regulations are summarised below.

### 3.2.1 Vessel operation, construction and equipment

Part 2 of the current Regulations focus on the operation, construction and equipment requirements for vessels in Victoria. These requirements impose costs on the industry by requiring owners and operators to adhere to certain standards. Requirements are imposed to ensure certain safety standards are met.

The RIS for the Marine Regulations 1999 argued that without these requirements the level of injury, loss of life and damage to vessels, marine infrastructure and the environment may increase. Furthermore, the RIS stated that the Regulations that prohibit dangerous activities are a common sense way of reducing these potential costs.

### 3.2.2 Crewing, certificates and licences

Part 3 of the regulations focus on ensuring owners and operators of vessels in Victoria are adequately qualified and skilled. This is aimed at maintaining a minimum safety standard of individuals operating vessels in Victoria.

Crewing refers to the number of crew and their level of competence required for the safe operation of the vessel. There have been crewing requirements in Victoria for commercial vessels other than fishing vessels for over 70 years. Crewing and competency requirements for fishing vessels have been in place for nearly 20 years.

The 1999 RIS argued that insufficient crew numbers and lack of competence puts passengers, crew, the vessel and cargo at risk. For example, for safety reasons a passenger ferry requires sufficient crew to

manage the safe evacuation of passengers in the event of an emergency. People exposed to the risk such as passengers and owners of cargo, are unlikely to be able to determine whether the vessel has enough crew of a certain standard to handle an emergency and follow appropriate procedures. Prescribing crew numbers is a practical way of overcoming this problem.

### *3.2.3 Registration of vessels*

As with motor vehicles, it is important to be able to identify individual marine vessels. Without a means of systematic identification of individual vessels it would be difficult to identify offenders and impose the appropriate penalties. Individual registration of vessels supports compliance activities and search and rescue through vessel identification. The identification needs to be displayed and the identification number recorded as this eases enforcement costs.

### *3.2.4 Alcohol and drug testing and other matters*

Marine safety is undermined if the use of alcohol and drugs are allowed to impair judgement and endanger operators and others. Those vessel operators under the influence of alcohol and drugs are engaging in unsafe practices on Victorian waters. It has been reported that alcohol was a major factor in several commercial and recreational vessel incidents.

### *3.2.5 Operator licences and personal watercraft endorsements*

Operator licenses are required in Victoria to ensure that qualified and identifiable individuals are in charge of vessels on Victorian waters. .

Operators of a personal watercraft are required to hold a recreational boat operator licence that also has a personal watercraft endorsement. This was deemed necessary due to the different operating capabilities of personal watercrafts and the higher risk they pose as they are more manoeuvrable at high speeds than typical powered vessels. The endorsement is obtained by further testing (competence, but not practical competence) at VicRoads (or from undertaking an approved training course).

Ensuring correct licensing and minimum personal watercraft competencies are in place aims to minimise the number of incidents, hospitalisations and deaths caused by incorrect operation of a vessel.

### *3.2.6 Fees*

Some fees in the current Regulations have been set to achieve cost recovery associated with regulating the industry, such as recreational licence issuing and registration. However some fees for commercial vessel survey do not cost recover.

### *3.2.7 Summary*

The introduction of the current Regulations in 1999 resulted in no significant jump in the number of incidents in the industry. It is likely that the increases in the number of incidents over recent years were the result of growth in commercial vessel use and growth in participation relating to recreational vessels as well as better reporting of incidents.

It is in the context of current safety outcomes that the nature and extent of the problem has been discussed – namely that safety outcomes are lower than what is desired. Without regulation it is reasonable to expect that safety incidents would be higher. How much higher is not possible to say, although as is discussed later it would not take a significant increase in incidents to justify the current Regulations.

## 4 Objectives of regulatory intervention

### 4.1 Objectives of the proposed Regulations

The overarching objective of the proposed Regulations is to ensure that safety is maintained and improved in Victoria's marine sector.

The Regulations aim to contribute to the overarching objective of maintaining safety in the marine industry by:

- providing for the registration and operation of vessels
- giving effect to certain international conventions relating to the operation of vessels
- providing for marine infringements
- prescribing penalties for offences
- providing for operator licences in respect of regulated recreational vessels
- providing for endorsements on operator licences in respect of personal watercraft
- providing for various other matters authorised or required to be prescribed for the purposes of the Act.

In relation to the setting of fees in the proposed Regulations, MSV advises that a contributing and important objective associated with remaking these Regulations is the desire to minimise the extent of the changes and transitional impacts on the sector. It is not therefore the objective of the proposed Regulations to fully recover all of the costs of regulating the industry. Increasing fees is seen by MSV as something that is highly contentious. In light of the current review the policy position advised by MSV is that they do not wish to change fees (in real terms) ahead of broader changes that could flow from the current analysis.

In the main, cost recovery is accepted as the appropriate policy although there is a need to balance this against MSV's commitment to the sector, a priority on safety, a strong ancillary purpose of encouraging participation by both recreational users and small business, and the desire to promote a co-operative and supportive industry and hence promote high levels of compliance.

### 4.2 Timeframe of the proposed Regulations

The review of the Marine Act is currently underway and it is envisaged that the new Marine Act will be implemented within three years.

It is therefore envisaged that the proposed Regulations are only in place for a three year period. Within this timeframe, new legislation and regulations will be developed, assessed and implemented.

## 5 Options that may achieve the objectives

Given current marine safety laws are being reviewed, this has meant that the scope of options in this RIS have been kept deliberately small. In this regard, the options considered are a base case of 'no regulations', implementing the current regulations as they are, and implementing the current regulations with proposed minor changes.

The reasons for the smaller than usual scope of options is three fold:

- First, the proposed Regulations are only being made for three years and therefore it was deemed that a proportionate approach would be appropriate for the RIS, hence a less than comprehensive assessment of options
- Second, and given the broader review which will require wider legislative changes, making substantive changes to the proposed Regulations at this point in time (when further changes are expected to be made to the regulatory regime in the near future) would likely result in high transitional costs for industry and that it is likely that this would outweigh the benefits or result in greater levels of non-compliance due either to misunderstandings or industry reluctance
- the COAG commitment to national marine safety legislation for the commercial sector has meant that any changes implemented by Victoria in this area might be contrary to the national approach – depending on what is proposed in the national approach.

### 5.1 Legislative Review

A comprehensive review of Victoria's transport industry has been underway since 2004. As part of this review, the legislative and regulatory frameworks governing the marine industry are being reviewed. This review is currently underway and on its completion will require a detailed assessment.

A discussion paper was released by the DoT in July 2009. It outlines the potential changes in legislation and supporting regulation that are under consideration. The submission period ended on the 21 September. The DOT is currently analysing submissions and undertaking follow up consultations. By the end of this year the DOT intends to make its recommendations to government.

The major driver behind the review is that the *Marine Act 1988* has remained largely unchanged since its enactment. The Act largely does not reflect modern thinking about how to regulate to achieve optimal safety outcomes. Since the enactment, there has been sustained growth in commercial and recreational vessel use on Victorian waterways. Increasingly, there are competing demands for the use of resources which are often incompatible with each other. This increased demand has generated new safety risks that need careful management. MSV believe that there is a clear need to increase awareness of new and emerging safety risks, and to promote and encourage increased levels of vigilance about marine safety.

The drivers of this review link directly with the objectives of the regulations to ensure safety in the marine industry. This relates to minimising marine incidents, hospitalisation and deaths.

Reforms under consideration, as presented in the discussion paper, have been summarised below.

#### 5.1.1 Recreational

Changes being proposed for recreational vessels include the following.

- Setting expectations in respect to safety performance by defining the responsibilities of recreational boaters and users in the form of a statutory duty of care.
- Improving the integrity of the vessel registration system by increasing the accuracy of information kept and by reducing the potential for the system to be exploited for criminal purposes.
- Improving the effectiveness of the licensing system for recreational boaters through a range of possible measures that could include:
  - introducing different types of licences and licence endorsements and incorporating skills based testing in addition to the current knowledge based testing
  - refining the scope of those who are required to obtain licences by potentially eliminating the need for licensing those operators that pose low risks (low powered vessels) and potentially imposing licensing requirements on those operating vessels that are potentially high risk but are currently not required to be licensed
  - revising the age limits and the range of unsupervised operations that are permitted by those persons holding 'restricted' licences.
- Reducing risks associated with operating recreational vessels in environments in which they are not fit for purpose via measures such as requiring designers, constructors, manufacturers and or dealers to provide information on the safety of vessels to operate in coastal waters and/or under what circumstances
- Introducing new measures to ensure the safety of vessels that pose a high risk if not satisfactorily maintained (e.g. vessels with inboard petrol engines). However, such measures need not be mandated by government. It is an option to rely on industry 'self-regulation'.
- Increasing the range of sanctions and other means available to address the behaviour of repeat offenders. This may include:
  - increasing fines
  - introducing a system for tracking repeat offenders
  - impounding vessels used for 'hoon' behaviour.
- Improving practical enforcement by introducing 'owner onus' for a limited group of offences where offending behaviour can be hard to address due to practical difficulties in indentifying operators or with opposing sanctions when operators are below a certain age.

The majority of proposed changes aim at modernising the requirements imposed on recreational boaters to ensure that the latest safety and marine technology is used. Information collection regarding licensing and registration will allow for a more targeted focus on safety activities and enforcement.

### 5.1.2 Commercial

Changes being proposed are intended to complement national harmonisation and associated changes in administrative arrangements. Changes proposed in the discussion paper for commercial vessels include the following.

- Setting expectations in respect to safety performance by defining the level of safety required to be achieved by commercial vessel owners and operators and others that form the 'chain of responsibility'.
- Improving the transparency of regulatory requirements imposed on commercial vessel owners and improving the focus of both regulator and the vessel owner on operational safety by establishing dual certification – one that attests to the safety of the vessel and another that attests to the competency and capacity of the owner to undertake its business activities safely. At present both vessel safety and operational safety (to the extent that there is regulation of operational safety) is regulated through CoS.
- Reducing regulatory burden by reducing the frequency by which 'low risk' vessels will be surveyed. Administrative costs will also be reduced by issuing certificates for a period of 5 years instead of 12 months.
- Addressing anomalies associated with the operation of hire and drive vessel *vis-à-vis* the operation of recreational vessels.

These changes aim at modernising and simplifying requirements imposed on industry. The national harmonisation will ensure requirements in Victoria are consistent with the rest of Australia. These changes will ensure safety outcomes whilst simplifying requirements.

### 5.1.3 General

General changes to the legislative and regulatory framework include the following.

- Improving the management of interfaces between commercial and recreational boating by:
  - explicitly setting appropriate requirements for identified categories of 'grey vessels'
  - either prohibiting the recreational use of commercial vessels and or by enabling recreational use of commercial vessels in certain circumstances (where the nature of use can be easily determined – which is a prerequisite for effective on-going enforcement of relevant commercial and or recreational standards and requirements).
- Improving the coordination and consistency of enforcement activities and sanctions by developing and implementing a state-wide compliance and enforcement strategy which covers the MSV and the activities of authorised officers employed by port management bodies, local port managers and waterways managers, and complements the independent enforcement policies of the water police.
- Improving the practical enforceability of rules governing navigation by reducing the fines applicable to individuals. Current fines are too high and consequently not enforced.
- Addressing the gap in sanctions between dangerous operations and manslaughter by extending the application of 'culpable driving' to operation of vessels.
- Improving the effectiveness of limitations and or prohibitions on drug and alcohol use:
  - by extending them to vessels that are stationary on the water where the vessel is likely to require operation in the near future
  - by making it an offence, when fulfilling a safety critical role, to be under the influence of drugs and/or alcohol.

#### 5.1.4 Regulatory roles and responsibilities

The discussion paper also presents possible governance changes which include:

- providing the Director of Marine Safety with a level of independence consistent with that provided to the Director, Public Transport Safety under the Transport Act 1983
- making MSV responsible for overseeing the activities of managers of state waters more explicit, including for example, MSV role in auditing (and monitoring compliance with) marine related aspects of port Safety and Environment Management Plans (SEMP) required under the Port Services Act 1995
- placing some 'checks and balances' on the use of regulatory discretions established in the Marine Act.

In terms of administrative structure (as opposed to legislative structure) the government is currently considering the merits of making MSV responsible for a state-wide compliance policy. This would give both impetus and statutory backing to efforts to coordinate and improve the non-legislative side of compliance and enforcement, in particular seeking to make such efforts more consistent across the state. The role and independence of the Victoria Police as the enforcement agency is not for review in this RIS and MSV has no jurisdiction to reconsider funding or policy priorities within Victoria police.

#### 5.1.5 Waterway management and regulation

Legislative proposals that could also impact the management of Victoria waters include:

- incentivise compliance with waterway management requirements by, for example, affording protection from civil liabilities to waterway managers which it can be demonstrated that a waterway manager complied with regulatory requirements
- matching the strength and extent of obligations on parties fulfilling waterway management functions to risk, by defining different levels that specific waterways can be declared to be, and applying a graduated set of requirements to each level
- being transparent about the fact that it is neither fiscally possible, nor warranted on safety grounds, to proactively manage risks at the vast majority of Victorian waterways that are essentially low use and low risk
- addressing an appropriate chain of responsibility between port management bodies and the providers of essential port services
- giving effect to the outcomes of the pilotage review that have been endorsed by the Government.

In relation to the pilotage review, generic suggestions such as making safety paramount in the new legislation, utilising safety duties and process regulation where appropriate, and taking steps to ensure the independence of the regulator have been incorporated into the general review and applied where appropriate.

Specific measures that it is anticipated will be included in the new regulatory framework include:

- making pilotage services undergo comprehensive and systematic risk assessments
- linking audits of safety management systems with ongoing permission from the regulator

- clarifying (as is the case in most advanced maritime jurisdictions) that the master remains responsible for a ship even when it is under pilotage
- maintaining a number of key aspects of the present regime (such as length of terms, appeal rights, and issuing of exemptions by the regulator) in the new framework.

The extent to which these changes need be reflected in legislation (or are better located in the underlying regulations or even policy), is still to be decided.

### 5.1.6 *Emergency and pollution response*

To ensure that MSV are being diligent about pollution and that all emergencies are dealt with appropriately changes have been proposed.

- Reinforcing MSV's responsibilities for pollution response and making it a general function of MSV to ensure the preparedness to address emergency situations in state waters.
- Clarifying MSV's role in providing and maintaining the infrastructure and on-going systems necessary to support radio communications for the purpose of emergency response and for search and rescue.

The discussion paper has recently been completed and circulated extensively for consultation. Formal public consultation ended on 21 September 2009 however follow-up consultation with key industry groups is continuing. Once feasible alternatives have been developed a detailed assessment will be undertaken to determine the most appropriate changes.

## 5.2 Proposed national system for commercial vessels

As discussed, CoAG has agreed on the establishment of a single national marine safety system for commercial vessels.

According to the national consultation RIS put out by AMSA, the proposed reform aims to enable the operation of an efficient national market through seamless transfer of labour and vessels between jurisdictions, and to deliver the consequent long term improvements to productivity and administrative efficiencies. The consultation RIS outlines that the national reform has the potential to deliver:

- reduced complexity for vessel owners, operators and suppliers on the requirements applying to design, construction, equipment, operation and qualifications across Australia
- reduced costs in the long term by national consistent administration of national safety regulations
- a national register of domestic commercial vessels linking ownership, operator and vessel details, incidents and inspections and survey history, to better provide nationally-accessible data to support improved compliance monitoring leading to improved safety levels and reduced costs for industry.

Detail on how the national system will work in practice is still being developed and when completed Victoria has agreed to incorporate these changes.

Given commercial vessel arrangements are expected to soon require a national assessment, and it is likely that requirements for commercial vessel owners and operators will soon be governed by a national legislative framework, additional options (other than remaking the current Regulations) have not been included in this RIS.



For information purposes only, it is worth noting that the results presented in the national consultation RIS were positive indicating a harmonised national legislative framework for commercial vessels is feasible.

Table 3.5: Summary of costs and benefits in the national RIS

<b>Benefits</b>	
Consistent application of national safety standards	\$55.51 million
Savings to industry and state/NT by removing the requirement for interstate re-certification of survey certificate	\$2.11 million
Savings to industry and state/NT by removing the requirement for re-survey on interstate transfers	\$3.95 million
Savings to industry and state/NT from removing requirement for interstate survey of new vessels during construction	\$1.59 million
Savings to industry from the introduction of a risk-based survey and compliance monitoring system	\$41.35 million
Administrative efficiency savings	\$37.77 million to \$57.26 million
<b>Total</b>	<b>\$142.28 million to \$161.77 million</b>
<b>Costs</b>	
Establishment of national regulator	\$13.04 million
Costs of bringing vessels into the national system	\$2.43 million
Establishment of national database	\$15.00 million
<b>Total</b>	<b>\$30.47 million</b>
<b>Total net benefits</b>	<b>\$111.81 million to \$131.30</b>

The national consultation RIS does not separate cost benefit results by jurisdictions. However, the analysis does provide evidence that a national system would be beneficial to the industry.

The Victorian Guide to Regulations states that, “*In determining whether a separate RIS might need to be undertaken in Victoria, consideration must be given to whether the regulations to be introduced in Victoria would have the same impacts as were identified in the COAG/national RIS (including the assessment of any fees), and the time that has lapsed since the national assessment was conducted.*”

Specific impacts on each state and territory were not included in the consultation RIS for the National Reform. Instead global estimates of the likely costs and benefits were set out in the national consultation RIS with the view of obtaining more specific details during consultation. It is expected that the results from that consultation will be incorporated into the national decision RIS due out at the end of 2009 along with consideration of jurisdiction specific impacts.

Still to be resolved will be a decision on whether or not jurisdictions or government (in general) will continue to subsidise marine safety through less than full cost recovery fees. This will be investigated further in the national consultation RIS.

On completion of the extensive review being undertaken on the Marine Act, it is expected that new legislation and regulations will be developed and implemented within three years. When developed, the

new legislation and regulations will be subject to a full assessment of the costs and benefits. As such, it is proposed that the sunseting regulations only be remade for three years.

Combined with the national harmonisation proposal for commercial vessels, the cost benefit assessment in this RIS is proportionate and aims at demonstrating the need for marine regulations to ensure safety in the industry without considering the multitude of alternatives proposed in the discussion paper.

In light of the current reviews being undertaken, and to ensure that there is not undue disruption to the industry in introducing changes now, when comprehensive changes are expected within three years, three broads regulatory alternatives are considered.

## 5.3 Options being considered

### 5.3.1 *Base case: Do nothing approach*

The Victorian Guide to Regulations states that for any sunseting regulations, a situation where no regulations exist must be used when comparing the different costs and benefits associated with alternative arrangements.

The base case or 'do nothing' approach will result in the regulations sunseting without any alternative regulatory requirements being implemented.

If the current Regulations did sunset no requirements would exists for the operation, construction of vessels or mandatory safety equipment. Individual operators or crew members would not be required to obtain certificates or licenses and owners would not be required to register their vessels.

Allowing the current Regulations to sunset would likely results in an increase in the number of 'response only' and 'serious' incidents for all categories of vessels in Victoria.

The rise in incidents would likely lead to an increase in costs associated with vessel damage, other property damage, injury, hospitalisation and marine deaths.

However, administrative and compliance costs associated with building and maintaining a vessel, ensuring registration and correct licensing and crewing would no longer be imposed.

Consideration should also be given to the potential market responses of not having regulations and the likely increase in marine incidents. Although exceptional difficult to predict market reactions, as some form of marine legislation or regulations has been in place for approximately 100 years, it is likely that incidents would increase as there may be older vessels not being maintained, speeding vessels and more drink drivers. Recreational participation may decrease as safety issues and concerns over safety increase. This may adversely impact recreational vessel businesses such as skiing and fishing which rely on the current marine environment.

Other potential market responses and implications on the industry may include:

- For commercial vessels, employee groups may become more influential pressuring owners and operators to provide specific safety equipment and safe operating environments. At this point in time it cannot be known how influential employer groups and unions would be without regulations and whether some owners and operators would continue to provide adequate protection for employees.
- In the absence of regulations commercial vessel owners and operators may be compelled to provide adequate safety equipment and ensure vessels are constructed to international

standards to ensure their own safety (this may be especially true for small commercial vessels where the owner also operates the vessel). Again it is not known whether all commercial vessel owners and operators would take this approach. Some may ensure their own safety without considering others by providing safety equipment for themselves but not crew members. In the absence of regulations commercial vessel operators would have a personal incentive to provide a safe environment but only up to a certain point possibly endangering employees.

- For recreational vessel operators there are personal incentives to ensure the safety of family and friends using the vessel. However, some individuals may misperceive their own ability to keep friends and family safe and may engage in dangerous behaviour such as speeding or drink driving. It is also likely that a small proportion of recreational vessel operators will not adequately consider externalities such as the safety of other vessel operators or the general public using the waterway. It is likely that a large proportion of recreational vessel owners would operate safely however there may also be a proportion that engages in dangerous behaviour.
- For both commercial and recreation vessels, there may be a greater decrease in the number of PFDs being worn. Although some safety conscious individuals would continue to wear PFDs and ensure that their crew wear PFDs, it is likely that some would choose not wear a PFD when required.
- Individuals may not purchase or activate EPIRBs, which are used in emergencies to locate disabled vessels and without the ability to track ownership there could be a higher number of false alarms than necessary.
- Reckless behaviours may increase such as speeding and drink driving increasingly the likelihood of marine incidents. This may in turn lead to a decrease in the number of recreational vessel participants.

### 5.3.2 Option one: Remake the existing regulations

Remaking the current Regulations as they are would impose a cost on the industry reflective of the cost currently imposed.

Benefits include avoiding marine incidents and avoiding the cost of property damage, injury, hospitalisation and death.

The Marine Regulations 1999 aimed to recover the costs of regulating the industry through fees. A summary of current fees are included in Appendix A.

Remaking the current Regulations as they are will not include up to date standards and definitions. Although this does not impose a cost on the industry updating the current Regulations ensures that there is consistency with industry practices and national standards.

### 5.3.3 Option two: Remake existing regulations with proposed changes

The proposed Regulations have only minimal changes when compared with the Marine Regulations 1999. Unless stated the costs and benefits outlined for the current Regulations are relevant for the proposed Regulations. It is predicted that there will be no additional costs imposed on the industry from the proposed changes. Essentially, changes are being made to ensure modern standards are referenced to maintain safety outcomes in the industry.

Proposed changes to the current Regulations are minimal. Therefore all of the costs are applicable to remaking the current Regulations with the proposed changes. The major proposed changes include:

- adding a requirement of proof of AMSA registration to existing provisions on emergency positioning devices.
- replacing an old standard (the USL code) with new relevant parts of the new National Standard for Commercial Vessels) as anticipated by industry (estimates are provided in the national RIS).
- Updated standards on the type of PFDs that can be carried on commercial and recreational vessels.

Currently operators are required to carry 406MHz EPIRBs. In order for them to be fully effective at assisting in a rescue operation the device needs to be registered with AMSA (who coordinate search and rescue activities resulting from EPIRB alerts). This is to ensure that they have up-to-date contact details in order to verify whether or not the distress call is legitimate, and to assist with prompt search and rescue if it is. The majority of distress calls received are false alerts, typically where the device has been activated by accident, and by having up-to-date contact details and details of the vessel to which the distress beacon is linked, enables verification of the legitimacy of the alert and also provides assistance to the searches as they have a better understanding of the type of vessel that they are looking for as well as other useful information that can assist with rescue.

AMSA estimates that there are currently 80,000 compliant 460 MHz EPIRBs being used in Australia but that approximately 30% (24,000) have not been registered. They unfortunately do not have statistics for Victoria.

As advised by MSV and outlined on the AMSA website, registering can be undertaken by mail/fax/online and takes approximately 5 minutes to complete the form. As forms can take longer for different individuals to complete an estimate of 30 minutes has also been included in the impact analysis in chapter 6. There is no fee to register a EPIRB and AMSA maintains a national database of all emergency beacons. Information required to register a EPIRB include:

- distress beacon details
- owner/operator details (name, address and phone number)
- supplier details
- contact details for emergencies
- Vessel details.

These changes are not likely to have an impact on costs imposed on the industry but will ensure national consistency in the industry and allow enforcement on modern standards.

The proposed approach for activation of EPIRBs forms part of the national system implemented across all jurisdictions. Monitoring EPIRB alerts is undertaken by AMSA and if a state-based system was developed, it would have to link to the national system as monitoring the satellite is not MSV's responsibility. Monitoring is undertaken centrally for consistency and efficiency purposes.

The alternative of refusing to implement the proposal that had been agreed to by the mutual recognition subcommittee has been considered and rejected because:

- this would leave the database, rescue efforts, and the problem of false alarms with a gap (being those vessels managed out of the Victorian jurisdiction)
- backtracking on agreement reached at this level would be embarrassing for the Victorian Government.

The objectives of the proposed Regulations remain the same with a strong focus on ensuring safety in the industry and minimising accidents and incidents. The benefit is therefore the avoided costs

associated with vessel damage, third party property damage, injury, hospitalisation, deaths and search and rescue efforts. Additional benefits include an increase in production through higher quality vessels and minimising insurance premiums for marine operators.

The proposed changes to the current Regulations are aimed at modernising the regulations to ensure that the optimum safety outcomes are achieved. An example of modernisation is changing PFD standards so that boaters can legally use the most modern, technologically advanced PFDs. Additional standards for PFDs will be accepted in Victoria to enable more consumer choice, in particular in respect of newer models such as high technology self-inflating models.

Victoria has agreed to participate in the national process to promote consumers' benefit and better national safety outcomes and consistency. This means that ideally boaters could use their PFDs in any jurisdiction and comply with the laws of that state (noting that not all states recognise the full list of PFD standards included in the nationally agreed National Standard for Recreational Boat Safety Equipment).

MSV has indicated this is unlikely to impose any additional costs on the industry compared with the current Regulations and is not expected to compromise safety outcomes. This is because industry will still be required to carry PFDs which comply with specific design standards. Potential benefits resulting from updating PFD standards may include allowing boaters greater choice between styles and the ability to use more technologically advanced PFDs which may be smaller and more comfortable, therefore more likely to be worn. These benefits are difficult to quantify but are discussed in chapter 6.

### 5.3.4 Potential fee options

DoT has indicated that partial cost recovery is the preferred method of setting fees. Currently fees collected total \$19.9 million whilst the MSV budget is \$24.3 million. It is believed that the regulation provide a social benefit by ensuring safety for all those who use waterways in Victoria. As such, it has been proposed by DoT that the fees be rolled over as they are for a three year period whilst a more detailed review can be undertaken. Additionally DoT and MSV have limited data on the number of participants in each of these fee categories. Therefore without further research it is not possible to analyse alternative fee options.

A high level calculation has been undertaken to estimate fee levels if full cost recovery was a priority. As detailed data is not available it is assumed that all fees increase by the same proportion to achieve full cost recovery. Current fees and fees to achieve full cost recovery are outlined in Appendix A.

If data was available, potential fee assessment may include:

- Full cost recovery: an across the board increase in all fees to cover all regulatory costs (has been undertaken and included in Appendix A)
- Full cost recovery: each fee category individually calculated to cover the cost of the specific administrative task
- Partially cost recovery; maintain current fee levels
- Recover full costs for some activities and partially recover costs for other activities based on which activities are the most likely to impact on safety in the marine industry.
- Include additional costs in full cost recovery such as all enforcement activities and court costs for those that are prosecuted
- Increase educational campaigns and increase fee levels to cover the cost of these campaigns.

At the moment it is not possible to calculate these fee options as data is not available. However, the future review will consider these options and determine the most appropriate manner in which to set fees.

### 5.3.5 *Other options not considered*

As part of the wider legislative review potential options that are likely to be considered (but not in this RIS) include:

- changing the standards for vessel operation, construction and equipment, or having no standards (which is effectively the base case), or changing how the standards are specified
- changing the way in which 'competence' is proven (i.e. whether it needs to be done through particular types of education or whether appropriate experience is sufficient), both in relation to commercial crewing and recreational licences and registration
- requiring less frequent renewal of certificates and licences, or no renewal (given that it was not a requirement before 1999).

## 6 Impact analysis – costs and benefits

A benefit cost analysis is undertaken to clarify and quantify the extent to which the industry is impacted by regulatory requirements. The cost benefit analysis will assess the impact of each of the feasible alternatives to assist in the decision making process regarding the most appropriate regulatory framework.

In each of the alternatives considered, participants in the marine industry are those to who costs are imposed and benefits accrue. Benefits also accrue to the general public through reductions in health issues.

It is important to consider the normal business operations when estimating costs and that only costs that are above 'business as usual' operations are imposed. The costs imposed on industry are presented annually in 2008/09 dollar and as a three year Net Present Value (NPV) using a real discount factor of 3.5%. A three year NPV was chosen to reflect the life of the proposed Regulations.

It should be noted that the benefits associated with marine regulations are difficult to quantify. This is because benefits are represented by avoided costs associated with marine incidents. As marine legislation and regulations has been in place since the Navigation Act of 1912, it is not possible to accurately estimate the increase in incidents that would occur if regulations were not in place.

As such, a break even analysis will be used to test the impacts to Victoria if there was an increase in incidents such as vessel damage, hospitalization and even deaths, and how likely this result is if the regulations are not remade. This increase may be a result of unlicensed drivers, unregistered boats, not having the required safety equipment on board (such as PFD), speeding or poorly constructed vessels.

Combined with expert opinion, results from the break even analysis will allow a conclusion to be made about the necessity of regulatory requirements in the marine industry.

Three feasible options are considered in this analysis. A large number of options are not considered as it is proposed that the current Regulations only be rolled over for a period of three years. Changes to current Regulations have been kept at a minimum to ensure there are not large transitional costs and industry participants are not confused by the potentially high number of changes over the course of three years.

However, changes to the regulatory frame in three years will require a full RIS with consideration of more options. Chapter 7.6 sets out options that may be considered in future RIS assessments and data that would need to be collected for an accurate analysis of cost and benefits.

The benefits and costs of each of the current three feasible options are summarised below. Further explanation of the assumptions used to estimate the costs imposed on the industry are included in Appendix A.

### 6.1 Base case: Do nothing approach

The 'do nothing' approach for sunseting regulations is to allow regulatory requirements to lapse and to let the industry operate without any requirements. If the current Regulations are allowed to lapse, there will no longer be the requirement to obtain a licence or a CoC for any marine work, register a recreational vessel, have vessels surveyed to ensure safety or have construction standards and mandatory safety equipment.

As discussed in chapter 5.3.1 market forces would ensure that a proportion of commercial and recreational vessels would continue to operate at safe levels in the absence of any regulations.

However, a small unknown proportion may lower safety standards leading to a greater number of incidents and possibly deaths.

### 6.1.1 Cost

There will be no costs imposed on the industry. Under this option commercial boat owners and operators will not be required to obtain qualifications or ensure vessels are surveyed each year to meet safety and equipment standards. Recreational boaters will not be required to obtain a license or register their vessel.

These are costs imposed on the industry in the following two options.

### 6.1.2 Benefit

The primary objective of the current Regulations is to ensure safety in the marine industry by minimising the number of incidents. Under this option no benefits will be experienced. In fact it is likely under this options that marine incidents would increase.

In the absence of any regulations the market may still ensure a safe marine environment, however this is extremely difficult to predict as regulations have been in place for approximately 100 years. Possible market response may ensure boats are kept in safe operating conditions for recreational boaters, parents may insist on children wearing PFD for safety and commercial vessels may maintain a safe operating environment to ensure occupational health and safety. MSV believes however that in the absence of regulation dangerous activities would be undertaken leading to a greater number of marine incidents. Without regulations it is likely there would be an increase in speeding vessels, drunk vessel operators, poorly maintained recreational and commercial vessels and inadequate safety equipment.

The basis of benefits under the following options is generated by the avoided cost of marine incidents due to regulatory requirement.

The following options set out the costs to industry participants (compliance and administrative) and the benefits (avoided costs of marine incidents) compared with the base case.

## 6.2 Option one: Remake the existing regulations

Costs imposed on the industry are estimated based on the base case where no costs would be imposed. Benefits are the costs avoided due to regulatory requirements.

Costs imposed by the current Regulations relate to the following categories.

- Requirements set out in Part 2 of the current Regulations under vessel operation, construction and equipment impose the following cost.
  - The requirement to have appropriate safety equipment on board such as PFDs and emergency location devices.
  - The cost of applying for a CoS and the time spent during the inspection or inspections of the vessel.
  - The opportunity cost of a commercial vessel such as a fishing vessel or trading vessels being out of action whilst in survey.
  - Prescribing construction standards and equipment.



- Administration costs associated with maintaining a register for hire and drive vessels (this cost is minimal as the information collected is needed for normal business operations).
- Requirements set out in Part 3 of the current Regulations under crewing, certificates and licenses impose the following costs.
  - The cost necessary for individuals to obtain a CoC to operate in the industry.
  - The cost for pilots to obtain the necessary training and build the necessary level of skills.
  - The cost to ships forced to use qualified pilots.
- Requirements set out in Part 4 of the current Regulations under registration of vessel impose the following cost.
  - Administration costs associated with registration.
  - The actual registration fee for each vessel operating in Victoria.
- Requirements set out in Part 5 and 6 of the current Regulations under alcohol and drug testing and other matters and prescribed measuring devices impose the following cost.
  - The cost of the hand held breath testing device.
  - The laboratory costs associated with processing test results.
- Requirements set out in Part 7 of the current Regulations under operator licences and personal watercraft endorsements impose the following cost.
  - The time for those wanting to operate a vessel in Victorian waters to undertake the test.
  - The monetary cost of applying for the licence.

This discussion, regarding the benefits generated from the current Regulations in the marine industry, is not split between different parts of the regulations. It is structured in this manner as the overall objective of the current Regulations is to avoid the cost of accidents and incidents. The benefits generated are likely to include:

- a likely reduction in the occurrence of incidents and accidents that lead to injury and loss of life. Avoiding these incidents avoids the cost of hospital visits, potential disabilities and even the cost of a life
- a reduction in the lost time due to injury or personal trauma
- a reduction in the cost of vessel damage and the cost of third party property damage due to a safer marine environment.
- a reduction in environmental costs associated with incidents and accidents in the marine environment.
- minimisation of marine insurance premiums
- increases in productivity for commercial vessels due to reduced asset loss
- a reduction in the need for search and rescue as fewer vessels are damaged or disappear

- pilots and harbour masters ensuring that adequately skilled individuals are responsible for navigating dangerous waters and avoiding any incidents
- unique vessel identification (by registering all vessels) allowing for easy identification of vessels and assisting in incident reporting and enforcement
- registration also assists in search and rescue missions as the make, model, size and vessel type can be identified quickly.

An estimate of the costs and benefits of option one is provided.

### 6.2.1 Cost

#### ***Vessel operation, construction and equipment***

Standards are in place to ensure minimal requirements for the operation, construction and equipment required for both commercial and recreational vessels. Standards can impose a cost on industry participants in enforcing them to operate or construct a vessel in a manner they would not have, or ensure certain equipment is onboard when they otherwise would not have. These requirements also impose an administrative cost for commercial vessels that are required to demonstrate vessels meet requirements during an annual survey.

#### **Commercial vessels**

In relation to operations, Regulations mandate an international standard for the operation of vessels known as the 'Prevention of Collisions Convention'. It is reasonable to expect that the majority of commercial vessel owners and operators would already comply with this standard regardless of Victorian regulatory requirements. One of the main purposes of including the standard in regulations is to provide clarity for commercial vessel operators on those requirements. This makes it easier for industry to know where to look for their obligations. In the absence of any regulations, there may be entrants to the sector who might otherwise not be aware of their obligations to operate vessels in line with international protocols. Moreover, incorporation of the National Standard in the proposed Regulations is important as the standard reflects international convention and marine employees, regardless of where they are from, would reasonably expect to operate in Victoria using international common principles of navigation. Incorporation therefore avoids the potential for confusion.

The main impact associated with incorporating the National Standard (over and above what might reasonably be considered 'business as usual') relates to Part E of the National Standards for Commercial Vessels – where Part E requires commercial vessel owners to develop and implement a Safety Management System for their operations.

In 2004, the National Marine Safety Committee released the final RIS for the *National Standards for Commercial Vessels: Part E Operation Requirements*.<sup>7</sup> The 2004 RIS estimated the one off cost for developing and implementing safety contingency plans would take 1 to 2 days at a cost of \$750. Given there are 1398 active commercial vessels in survey in Victoria then the total cost for this obligation (and assuming no operator has already prepared a plan) would be approximately \$1.04 million in 2004 dollars or \$1.2 million in today's dollars. This is an upper-bound estimate and would be lower if businesses are already complying with national requirements.

These cost estimates are based on Victoria's experience in developing safety cases and the estimated number of recreational vessels introduced into Victoria per annum. The 2004 RIS states that there will

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<sup>7</sup> See [http://www.nmsc.gov.au/media/pages\\_media\\_files/files/RIS\\_Final\\_Part\\_E.pdf](http://www.nmsc.gov.au/media/pages_media_files/files/RIS_Final_Part_E.pdf) accessed on 15 October 2009.

also be on-going costs to implement the requirements in the plan such as training, drills and information preparation. The 2004 RIS concludes that this is not expected to impose a cost over and above requirements vessel owners and operators should already be complying with as they are included in other parts of the National Standard. These additional costs were not calculated in the 2004 national RIS.

While this cost is not an insignificant impost – to the extent commercial vessel operators will incur it – the 2004 RIS concluded that the benefits of this requirement will outweigh the costs. The 2004 RIS was assessed as compliant by the then Office of Regulation Review (now the Office of Best Practice Regulation) and consistent with the Victorian Guide to Regulation no further work relating to this requirement has been undertaken in this RIS.

In regards to construction and equipment, requirements for commercial vessels are set out in a national standard known as the Uniform Shipping Law Code (USL) which will be replaced by the National Standard for Commercial Vessels. Alternatively vessels that are brought in from overseas that do not meet the USL standard must be upgraded before being sold or operated in Victoria. Therefore additional costs imposed on vessel construction within Victoria are minimal.

Direct costs to the industry imposed by the current Regulations include:

- the fee associated with initial and annual survey of commercial vessels each year
- administrative time it takes to complete initial and annual survey.

Fees set out for vessel survey for new and existing vessels are based on vessel size. The larger the vessel being surveyed the greater the cost. New vessels being surveyed must also pay a fee to have plans approved. Owners must pay fees for additional visits by surveyor and plan inspection alternatives. This information is collected on a vessel by vessel basis.

Unfortunately the MSV database cannot easily extract information on the exact number of surveys undertaken each year and the details of these vessels (for example the size of vessel being surveyed and the fee charged to commercial vessel owners or operators). Instead, MSV has provided information on the revenue generated from the industry from surveys. In 2007/08 this revenue was \$419,221. This is a cost imposed on the marine industry. It has been assumed that the revenue collected by MSV in relation to CoS represent a direct cost imposed on the industry.

Administrative cost imposed on the industry is the time taken to complete initial and annual surveys. A report completed for MSV in 2008 identified and quantified the administrative tasks undertaken for commercial vessels annually. Table 6.1 outlines the tasks, average annual frequency, the time taken to complete administration and average income per hour in the marine industry. These estimates have been endorsed by MSV and therefore are used as the basis for the administrative cost imposed on industry.

Table 6.1: Administrative cost of surveying vessels

Administrative task	Number completed annually	Time* (minutes)	Average cost per hour*	Total cost
Application for Safety Manning Determination	130	60	\$48.27	\$6,275
Application for Initial Survey	100	900	\$48.27	\$72,400
Radio Test Call Report	30	30	\$48.27	\$724
Application for Renewal	1,400	60	\$48.27	\$67,573
Application for Towage Permit	4	60	\$48.27	\$193
Slipping declaration	50	60	\$48.27	\$2,413
Deficiency stat dec	1,100	60	\$48.27	\$53,093
Application for Exemption or Equivalence	40	120	\$48.27	\$3,861
Application for Permission to Undertake Voyage	2	60	\$48.27	\$97
Notice of Disposal of Vessel	100	60	\$48.27	\$4,827
<b>Total administrative burden on commercial vessel owners</b>				<b>211,456</b>

\*Table note: Time estimates have been taken from MSV who commissioned a study into administrative burden imposed on the marine industry in 2008. The cost per hour was calculated from information collected from industry during consultation for the 2008 report. This includes on-costs and works out to be marginally less than ABS data on average weekly earning which is approximately \$55 per hour. The average cost per hour estimate of \$48.27 is used in the rest of the analysis.

The total cost imposed on commercial vessel owners and operators is summarised in Table 6.2. These costs include the compliance and administrative costs associated with the construction, operation and survey of commercial vessels

Table 6.2: Total cost of surveying vessels

	Annual cost (2007/08)	Three year NPV
Total fees imposed on industry	\$419,221	\$1,215,613
Total administrative costs	\$211,456	\$613,159
<b>Total</b>	<b>\$630,677</b>	<b>\$1,828,771</b>

Table note: a real discount factor of 3.5% has been used

## Recreational vessels

There are no mandated construction standards for recreational vessels in Victoria. Standards do exist but compliance with them is not mandatory. Many manufacturers do in fact build to the Australian or international standards as they often export vessels. Schedule 3 of the Marine Regulations lists construction requirements for vessels manufactured in Victoria however it does not require compliance with a specific standard.

The analysis assumes that Recreational vessels are constructed in Victoria to international standards. Therefore there are no additional regulatory costs imposed by Victorian regulations. This has been confirmed by MSV as a reasonable assumption.

Under the current Regulations, recreational vessels are required to have certain safety equipment on board. These requirements are specific pieces of equipment that all recreational vessels are required to have. These pieces of equipment have the potential to impose an additional burden on recreational boat

owners. However there were few variations to the then existing equipment requirements which resulted in minimal impact.

The equipment specified in the current Regulations is based on national standards developed in 2004. A RIS undertaken by MSV in 2005<sup>8</sup> for Victoria highlighted the costs and benefits associated with requiring recreational vessels to have certain safety equipment on board. The major change to mandatory safety equipment was the introduction of new standards relating to Personal Flotation Devices (PFD). However, the RIS also considered other safety equipment including anchor and chain, bilge pump or bailer, bucket with lanyard, compass, hand held flares (orange and red smoke), red star parachute flares, paddles or oars, water proof buoyant touches and marine radios.

The primary objective of mandating certain safety equipment was to improve marine safety by reducing fatalities as a result of marine accidents. With respect to items of safety equipment other than PFDs, the adoption of requirements contained within the national standard will also promote consistent national standards and provide permanent basis for the standard of equipment.

As it is difficult to predict the type of safety equipment that would be stored on recreational vessels if no regulations were in place it is not possible to estimate total costs imposed on the industry. Instead the costs calculated in the 2005 RIS will be used to estimate the cost imposed on the industry. The predicted cost of introducing the safety requirement for PFDs is \$2,011,214 per year (reported in 2005/06 dollars as \$1,814,000). This resulted in a benefit cost ratio of 1.66. This cost is included in this analysis. As there have been no recent studies on the cost of safety equipment on vessels, it is assumed that the estimates provided in the 2005 RIS continue to be accurate. MSV have indicated that prices can vary with different technologies entering the market. For simplicity, the numbers used in the 2005 RIS for PFDs are again used in this analysis.

The cost of other safety equipment required on recreational vessels is not possible to estimate without considerable research. The 2005 RIS did not calculate the cost of other safety equipment as it was difficult determining the safety equipment that would be carried in the absence of regulations and equipment that would not. Other reasons for not calculating cost in the 2005 RIS included:

- the safety equipment mandated is based on national standards
- the requirements in the national standard were developed using a qualitative risk analysis and there is no compelling argument to suggest these conclusions would differ significantly from an additional analysis
- the available incident data is insufficient to establish precisely which type of safety equipment support the objective of reduced marine incidents.

Information of the cost and use of safety equipments in the industry should be collected for future reviews.

There were also two miscellaneous amendments in the proposed Regulation. The first covers the activation of emergency position indicating radio beacons (EPIRBs). The second allows boaters to purchase from a wider range of PFDs. The requirement for vessels to carry a EPIRB was introduced in 2005 and therefore all existing recreational vessels already carry a EPIRB. The impact is therefore only the requirements for people to activate the device. The effect of this change was predicted to be minor and was not subject to formal assessment.

The three year NPV for recreation vessel equipment is \$5,831,906.

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<sup>8</sup> Regulatory Impact Statement (2005), Marine (Personal Flotation Devices and Other Safety Equipment) Regulations 2005.

Recreational vessels do not need to demonstrate compliance but can be fined if caught operating below the regulatory requirements set out. Therefore there is no administrative burden associated with the construction, operation or equipment requirements set out in the current Regulations.

### ***Crewing, certificates and licences***

The cost associated with obtaining a qualification to operate or be employed on a commercial vessel is made up of two parts:

- the fee associated with applying for a certain CoC or licence
- the administrative costs associated completing the application form correctly, displaying the obtained qualification and sending to MSV.

MSV was able to provide the number of new applications received over the past three years. Table 6.3 sets out the number of new applications received in 2007/08. On average over the past three years, 175 new applications for certificates have been received.

Unfortunately the MSV database does not have the functionality to easily pull out the number of renewals each year. Estimating renewal per year is also made difficult by the fact that up until 1999 certificates and licences did not need to be renewed. It is expected that the number of renewals will increase at a steady rate each year. The rationale for requiring renewal of certificate in the industry is fluid with individuals moving in and out of commercial vessels. The Uniform Shipping Law Code requires that commercial CoC be issued annually.

As numbers are uncertain and information on fees paid by industry is difficult to determine the most accurate manner in which to estimate costs imposed on industry from fees is to use the revenue collected by MSV. In the 2007/08 year MSV collected \$65,748 in relation to qualifications. It is assumed that the fees collected from industry regarding CoC represent the costs imposed on the industry.

To calculate the level of administrative burden imposed on the industry, annual renewals estimated in the 2008 report on administration have been used. It was estimated that the number of renewals received each year is approximately 250. This may be a conservative number based on a predicted increase in renewal applications but in the absence of more accurate data will be used for the analysis.

Table 6.3 shows the time taken to complete each form and the overall administrative burden imposed on the industry.

Table 6.3: Administrative cost for certificates of competency

Application for certificate of licence	Number completed annually	Time	Average cost per hour	Total cost
Application form for (various levels of competency)	430	450	\$48.27	\$155,660
Application for Issue or Renewal of a Licence as a Marine Pilot	0	0	\$48.27	\$0
Application for Renewal of a Certificate of Competency	250	225	\$48.27	\$45,250
Application for Revalidation of a Certificate of Competency	50	225	\$48.27	\$9,050
Certificate of Medical Fitness	425	60	\$48.27	\$20,513
Declaration of Medical Fitness	50	60	\$48.27	\$2,413
Eyesight Test Certificate	475	60	\$48.27	\$22,927
<b>Total</b>				<b>\$255,813</b>

Table note: Time estimates have been taken from MSV who commissioned a study into administrative burden imposed on the marine industry in 2008

The approximate total costs imposed on the marine industry in obtaining the correct CoC or licence is relevant for commercial vessels and is made up of direct costs imposed by fees and administrative costs associated with completing and submitting application forms. The requirement to issues CoCs annually will remain under the National Standards for Commercial Vessels.

Table 6.4: Total cost of certificates of competency

	Annual cost (2007/08)	Three year NPV
Total fees imposed on industry	\$65,748	\$190,649
Total administrative costs	\$255,813	\$741,780
<b>Total</b>	<b>\$321,561</b>	<b>\$932,430</b>

Table note: a real discount factor of 3.5% has been used

It could also be argued that the cost of obtaining a qualification should be included in the cost to the industry. This would involve the cost of attending a training course. This however is not included in the costs imposed on the industry as it is assumed that the individual that chooses to acquire further qualifications has considered the costs and benefits and concluded that the future potential earning outweighs the immediate cost of attending a course.

For information purposes, the cost of a course to obtain certain qualifications is included in the table below. This gives an understanding that it is not likely that these costs are a barrier to enter the market and if obtained would likely lead to higher future wages.

Table 6.5: New qualifications applied for and the approximate cost of training course

Qualification	Annual application	Training course cost
Master Class 3	1	
Master Class 4	6	\$3,490
Master Class 5	27	\$1,500
Mate 4		
Coxswain	125	\$2,500
Skipper 1		\$1,500
Skipper 2	1	\$1,950
Skipper 3		
Engineer Class 3	1	\$2,400
MED 1	1	\$1,350
MED 2	5	\$1,475
MED 3	10	\$1,500

Table note: 'Prices were obtained from internet research from the 'Sea School - Marine Training Centre' and 'The Australian Maritime College'. Blank spaces indicate that the information is not advertised or that there were no applications last year.

### **Registration of vessels**

To track recreational vessels a boat must be registered in the name of a person (provided the person is at least 12 years of age) or in the name of a corporation or incorporated body. To register a recreational vessel for the first time, applicants are required to provide the following details:

- name and address of the registered operator
- boat type and colour
- hull manufacturer's name and construction material
- overall length and breadth
- engine number, make and type (inboard or outboard)
- engine fuel type and power units
- previous registration number.

These requirements are set out in the current Regulations and no changes are proposed. For future reviews and RIS assessments, consideration of whether the above information request is sufficiently detailed or too onerous on boaters and can be simplified may be useful.

Registering a recreational vessel is required on an annual basis in line with car registration. The cost associated with registering a vessel includes the direct monetary cost and the time taken to complete the renewal form. These costs form total costs imposed on recreational boat owners for registration over the course of a year. Fees for registering a vessel are:

- \$33.90 for a vessel under 4 meters



- \$70.70 for vessels over 4 meters.

The functionality of the MSV database cannot easily produce the number of recreational vessels in each category. Instead MSV has provided the total revenue generated from recreational vessel registration fees. Total revenue generated totalled \$8,618,244 for 2008/09 from approximately 167,000 registrations (it is not possible to get exact numbers for last year). This is a direct cost imposed on the industry. The system data is collected on a 'live' data base and therefore constantly updated. As at 8 October 2009 the numbers are 65,647 up to and including 4 metres and 95,734 over 4 metres.

In addition to the direct fees imposed on the industry, the administrative costs in completing annual registration is considered. It is assumed that renewing vessel registration takes approximately ten minutes.

Table 6.6: Administrative costs for registering a vessel

	Annual number	Time taken to complete test	Cost per hour	Total time cost
Recreational licence issued	156,971	30	\$48.27	\$1,262,744

Table note: Time estimates have been taken from MSV who commissioned a study into administrative burden imposed on the marine industry in 2008

The total cost imposed on the industry in regards to registering a recreation vessel is split between the fees paid to register and the administrative time taken to complete renewal forms.

Table 6.7: Total cost of registering vessels

	Annual cost (2007/08)	Three year NPV
Total fees imposed on industry	\$8,618,244	\$24,990,273
Total administrative costs	\$1,262,744	\$3,661,573
<b>Total</b>	<b>\$9,880,988</b>	<b>\$28,651,846</b>

Table note: a real discount factor of 3.5% has been used

### **Alcohol and drug testing and other matters**

This section of the regulations imposes no additional cost on the industry.

Requirements set out in the current Regulations outline the procedures that must be followed and the equipment that must be used when water police are testing for alcohol or drugs and collecting samples to be tested. Industry participants are not required to purchase anything or apply for any paper work or licences.

Police undertake breath testing. It is one of the activities that the water police can undertake if they choose to and in the course of their normal duties or if they choose to have blitz on drinking. It is more difficult to test boaters and typically Police will wait until boaters are returning to shore, however they are able to test moving vessels on water if they deem it necessary. It is at the discretion of the Police.

The process in the Marine Act is meant to be closely aligned with the Road Safety Act. However it is understood that practical difficulties (currently being considered as part of the wider Marine Review) and police priorities mean that breath testing is not carried out on the water in the significant and frequent manner this takes place on the roads. Any delays to either Police or to operators of vessels can be described as rare and infrequent.

### Operator licences and personal watercraft endorsements

The costs involved in obtaining a recreational operator licence and personal watercraft endorsement include the direct cost of applying and the administrative time it takes to apply. These costs have been calculated to determine the total compliance and administrative costs imposed on recreational marine participants.

Table 6.8: Recreation vessel operator licences

Category	Estimated number
Total number of licences in existence	300,000
Average licences renewed annually	127,000
New licences issued annually	30,000
Endorsed for personal watercraft issued annually	44,000
Restricted licence issued annually	5,600

Table note: A total of 300,000 currently exist. Due to the length to which a licence is valid and grandfathering some licences, not all are renewed annually. Endorsements for personal watercraft are applied for in addition to a licence.

The total revenue generated from renewing and applying for recreational vessel operator's licence and personal watercraft endorsement in 2007/08 is \$10,794,000. This is a direct cost imposed on the industry. The administrative cost imposed on the industry is summarised below. Applying for a licence requires individuals to take a brief test and complete a form outlining personal details. Renewing a licence requires an individual to check and update personal information without taking the test. It is assumed that renewing a licence takes approximately ten minutes whilst applying for a licence take 30 minutes. The total administrative cost imposed on industry is approximately \$2 million.

Recreational boating licenses are able to be issued and renewed for 1, 3 or 5 years based on the same reasoning that it is a reasonable timeframe for keeping records up to date. VicRoads undertake this function for MSV. Multi-year licenses are in line with car licenses.

These estimates were sourced from a 2007 report that summarised administrative burden imposed on the marine industry from the regulations.

Table 6.9: Administrative cost for operator licences

	Annual number	Time taken to complete test	Cost per hour	Total time cost
Recreational licence issued	30,000	30	\$48.27	\$724,000
Recreational licence renewed	127,000	10	\$48.27	\$1,021,644
Recreational restricted licence issued	5,600	30	\$48.27	\$135,147
Recreational personal watercraft endorsement	44,000	5	\$48.27	\$176,978
<b>Total</b>				<b>2,057,769</b>

Table note: Time estimates have been taken from MSV who commissioned a study into administrative burden imposed on the marine industry in 2008

The total cost imposed on industry to obtain a recreation vessel operators licence and personal watercraft endorsement is made up of the fees set out in the current Regulations and the administrative time taken to obtain licences (time and cost of VicRoads to issue).

Table 6.10: Total cost of operator licences

	Annual cost (2007/08)	Three year NPV
Total fees imposed on industry	\$10,794,000	\$31,299,300
Total administrative costs	\$2,057,769	\$5,966,901
<b>Total</b>	<b>\$12,851,769</b>	<b>\$37,266,201</b>

Table note: a real discount factor of 3.5% has been used

### Government costs

The cost to government of administering and enforcing the current regulations should also be included in the analysis. The cost to government is the total cost incurred whilst regulating and enforcing the current regulations that is not covered by the fees collected. The total fees collected are approximately \$19.9 million or \$57.7 million as a three year NPV whilst MSV has advised that their budget to regulate the industry is \$24.2. Therefore the additional cost of administering the current Regulations is \$4.3 million (or \$12.6 million as a three year net present value). MSV have indicated that it is not likely that these figures will change significantly over the next three years.

### Summary of costs

The total cost imposed on the marine industry by the current Regulations is \$30.0 million per annum or \$87.1 million as a three year NPV. Components of this total cost are summarised in the table below.

Table 6.11: Total cost imposed by regulations

	Annual cost	Three year NPV
Vessel operation, construction and equipment – Commercial	\$630,677	\$1,828,771
Vessel operation, construction and equipment – Recreational	\$2,011,214	\$5,831,906
Crewing, certificates and licences	\$321,561	\$932,430
Registration of vessels	\$9,880,988	\$28,651,846
Alcohol and drug testing and other matters	\$0	\$0
Operator licences and personal watercraft endorsements	12,851,769	\$37,266,201
Government cost	\$4,347,487	\$12,606,383
<b>Total</b>	<b>\$30,043,697</b>	<b>\$87,117,537</b>

### 6.2.2 Benefit

Benefits generated from the regulatory requirements are the avoided cost of marine incidents. To calculate likely benefits generated from the current Regulations, cost data is used and includes:

- the cost of a death in the marine industry (using the cost of a statistical life)

- the cost of hospitalisation from a marine injury
- the insurance (pay out) for marine incident claims.

Using this information, a break even analysis is undertaken to determine how many incidents need to be avoided to cover the cost to the industry and based on information from the industry conclude whether it is reasonable to conclude that these incidents will be avoided if regulatory requirements are enforced.

Information on the cost of injury and death was taken from the National Health and Safety Commission and the National Approach to Maritime Safety Reform estimates. It was concluded that the average weighted cost of an incident resulting in a work place injury in 2008 prices, is \$237,000. Using this information it is possible to estimate the current cost to the industry for commercial vessel incidents. This estimate was used in the National Marine RIS and therefore to be consistent has been used in this analysis.

The total number of commercial vessel incidents in the marine industry in Victoria in 2007/08 was 147 (commercial and hire and drive vessels), 90 of these were reported as serious. It has been assumed that serious commercial vessel incidents are the equivalent of being injured in the work place. Therefore the current total cost to the industry of incidents is \$23,266,000 (this excludes deaths in the industry).

To calculate the current cost of recreational vessel incidents, insurance payout data is used. The average payout for a recreational vessel incident is \$3,829 (average payout using RACV data over 2006/07 and 2007/08). As the total number of recreational vessel incident was 1,091 for the 2007/08 year the total cost was \$4,177,439. As the majority of recreational vessel incidents did not lead to injury or death, insurance payout data seems a reasonable cost estimate as it captures property and third party damage.

It was estimated that as a result of recreational vessel incidents there were 223 hospital admissions and 679 emergency department presentations. The Monash University Accident Research Centre (MUARC)<sup>9</sup> estimated the cost of injury to Victoria at \$8,090 per injury (for hospitalised and non-hospitalised injuries). If this estimate is used for the hospitalisations and emergency department presentations there is a total impact of \$7,297,180. The cost of injury estimated by MUARC includes direct and indirect costs. Direct costs are made up of medical expenses such as hospital bills, ambulance, doctors and pharmaceuticals. Indirect costs represent a loss in productivity for accidents that lead to mild or severe disabilities. Productivity losses are represented by a reduction in wages and labour on-costs. This study appears to be the latest Victorian specific research undertaken.

The cost of death also needs to be considered. The National Approach to Maritime Safety Reform RIS has the cost of a fatality at \$6.24 million<sup>10</sup>. Other estimates recently used have the statistical value of life at \$3.74 million<sup>11</sup>. This analysis will use both to demonstrate the total potential impact of incidents. During the 2007/08 year there were 9 fatalities which were all recorded for recreational vessel incidents. Using \$3.74 million as the statistical value of life the impact totals \$33.7 million. If \$6.24 million is used the total impact is \$56.2 million. The total current cost to the industry from marine incidents is summarised in Table 6.12.

<sup>9</sup> Monash Accident Research Centre, (1997), The cost of injury to Victoria

<sup>10</sup> The Australian Safety and Compensation Council (ASCC) (2008), after conducting a meta-analysis suggested an average value of statistical life of \$6.0 million in 2006 prices – which equals \$6.24 million inflated.

<sup>11</sup> The Commonwealth Office of Best Practice Regulations ([www.finance.gov.au/obpr/docs/ValueStatisticalLife.pdf](http://www.finance.gov.au/obpr/docs/ValueStatisticalLife.pdf))

Table 6.12: Current impact of marine incidents

	Annual cost	Three year NPV
Commercial vessel incidents (excluding death)	\$23,266,000	\$67,348,299
Recreational vessel incidents (excluding death and injury)	\$4,177,439	\$12,113,296
Recreational vessel incidents leading to hospitalisation	\$7,287,180	\$21,393,362
Marine industry deaths	\$33.7m - \$56.2m	\$97.6m - \$162.8m
<b>Total</b>	<b>\$68.4m - \$90.9m</b>	<b>\$198.5m – \$263.7m</b>

### **Break even analysis**

To justify regulatory obligations the cost of incidents in the industry would need to increase by more than the total costs imposed on the industry (\$30.0m).

The proposed Regulations would therefore be justified if it is expected that there would be an increase in incidents of between 33% and 44% in the marine industry if regulations were not in place. MSV have indicated that without any regulations it is reasonable to assume that incidents leading to property damage, injury, hospitalisation and death would occur.

Based on an estimate of the value of statistical life of \$3.74 million, a proportionate increase of 44% in incidents equates to approximately an additional 4 deaths per year (an increase to 13 from 9) and an additional 415 recreational vessel incidents (an increase to 1570 from 1091 in 2007/08) and an additional 53 commercial vessel incidents (an increase to 200 from 139 in 2007/08).

It is also worth noting that the current Regulations would be justified if there was a sufficiently large increase in incidents (without an increase in deaths) to cover the costs of the Regulations. That being said, the Regulations would also be justified if there was a sufficiently large increase in deaths without any increase in incidents.

DoT and MSV believe that it is plausible that the current Regulations prevent enough marine incidents and deaths to justify the requirements.

## **6.3 Option two: Remake existing regulations with proposed changes**

Minor changes to the current Regulations mean the costs and benefits for option two are very similar to option one. Minor differences are highlighted below.

### **6.3.1 Cost**

#### **Vessel operation, construction and equipment**

The cost imposed by the requirement to operate a vessel, construct a vessel and ensure certain equipment is present on a vessel under option two is the same as option one.

The introduction of the requirement to activate a EPIRBs will not impose a material cost on the industry as the majority of the industry is already complying with national standards that were developed and introduced several years ago. MSV have indicated that the majority of recreational vessels already

purchase and register a EPIRB and would continue to do so in the absence of regulations. The purpose of introducing the requirement to register the EPIRB is a result of a small proportion of recreational vessel owners who are not aware of the registration process or forget to undertake this task. A complete register will allow for false alarms to be quickly addressed and safety resources dedicated only to those incidents which truly require attention, as well as speeding up the process of actually locating parties caught in real emergencies. The regulations make the requirement to register the EPIRB enforceable in Victoria.

AMSA estimates that the national rate of non-compliance in relation to EPIRB registration is 30%. This equates to 24,000 vessels (commercial and recreational) in Australia that have EPIRBs that are unregistered. The regulatory requirement mandating EPIRB registration is required for all vessels that operate over 2 nautical miles off shore. It is therefore more likely to be relevant for the commercial fleet. Based on estimates provided in the 2009 National RIS, Victoria has approximately 5% of the commercial fleet in Australia (1,380 commercial vessels in Victoria and a total of 27,953 in Australia). Therefore a reasonable (but perhaps upper bound) assumption would be that Victoria has 10% of the non-complying registrations. That is 2,400 vessels in Victoria do not have a registered EPIRB. Given MSV's estimate that new vessels in total are growing at 2.5% then this would suggest that on average 60 registrations per year would not occur if the proposed changes were not made.

MSV have advised that it takes around 5 minutes to complete the registration process. Based on an average hourly rate of \$48.27, the initial one-off cost imposed on vessels owners in Victoria will be approximately \$9,654. The on-going cost imposed on the Victoria marine industry will equal \$241. The three year NPV equals \$10,112. Given the materiality of this estimate the total cost for the proposed Regulations only reflects the cost estimates for the current Regulations in section 6.2.

The above estimate is based on MSV advice on the average time taken to complete a registration form. To provide some sensitivity around this estimate, the total cost imposed on the marine industry has also been calculated using an upper bound estimate of 30 minutes. The initial one off cost imposed on vessel owners is \$57,920 with an on-going cost of \$1,448. The three year NPV if an estimate of 30 minutes is used for EPIRB registration is \$60,670

Registration is effectively intended to occur with purchase, in that the person should immediately perform the registration, which is made easy through provision of online, email or fax options and is free.

The only other option would be for it to occur at point of purchase which retailers would be reluctant to do. Responsibility now lies with the vessel owner or operator. It seems this is the most efficient manner in which to register EPIRBs as retailers would require the customer to supply various pieces of information at the point of sale. There are a range of retailers and it would not be feasible for all to offer registration services. Also this would take the responsibility away from the individual and would most likely be more time consuming. These would be difficult to try to implement given that the system is managed nationally. For those individuals not aware of these changes an education campaign could be run.

AMSA will be responsible for the register, but individuals can update account details at any time. There is also the facility for trip particulars to be notified in this manner so that AMSA can access those details and respond even faster. Online changes are preferred, but AMSA also accept these through fax, email or post.

Additionally the introduction of the new Australian and International Standard for PFDs will widen the range of PFDs that can be used for boaters. All boaters are currently required to have PFDs on board their vessel for each person so this amendment will not add any additional burden. It will simply widen the choice of PFD that can be used. Its aim is to modernise current Regulations and enable boaters to use the most up-to-date PFDs.

### ***Crewing, certificates and licences***

The cost imposed by the requirement to obtain certain qualifications, certificates or licences under option two is the same as option one.

### ***Registration of vessels***

The cost imposed by the requirement to register a vessel under option two is the same as option one.

### ***Alcohol and drug testing and other matters***

As with option one, there is no compliance or administrative cost to the industry for these requirements.

### ***Operator licences and personal watercraft endorsements***

The cost imposed by the requirement to obtain a licence and personal watercraft under option two is the same as option one.

## **6.3.2 Benefit**

Benefits generated from the regulatory requirements are the avoided cost of marine incidents. To calculate likely benefits generated from the proposed Regulations, cost data outlined under option one is again used to conduct a break even analysis and determine the number of incidents that need to be avoided to cover the costs.

The small regulatory changes proposed aim to update requirements in the RIS and maintain safety levels in the industry. Therefore the benefits generated from regulatory requirements are likely to have a more beneficial impact on the industry than simply remaking the current regulation. The break even analysis outlined in option one is therefore also relevant for this option.

In addition, the introduction of the requirement to activate all EPIRBs may increase the safety outcomes in the industry. No data has yet been collected on the number of vessels that have been disabled or lost and not had an activated EPIRB. However it is believed that ensuring all vessels have an operational EPIRB will generate a benefit when a vessel is lost or disabled and involved in a search and rescue operation by:

- Speeding up rescue efforts considerably
- Reducing the number of false alarms; in both cases because

AMSA will be able to quickly access information about the vessel, contacts and emergency contacts. The regulations will support this by mandating registration in a manner that provides for national consistency.

As indicated in the nature and extent of the problem, it is possible that ensuring all vessel have registered their EPIRB, it will avoid unnecessary search and rescue efforts. Over the past 12 months, three false alarms have been recorded costing \$10,000 each. If this small change reduces the search and rescue efforts that are a result of false alarms, the proposed Regulations have the potential to save \$30,000 per annum in Victoria.

The introduction of the proposed Regulations in relation to new PFDs may result in less storage space on recreational vessels and be lighter leading to greater fuel efficiency. However, the main reason for introducing these new regulations is to allow recreational vessel owner greater choice when purchasing PFD without compromising safety.

## 6.4 Option three: Future possible regulatory options

Possible future legislative and regulative options that were outlined in section 6.1 have not been subject to a cost benefit analysis in this RIS. Legislative and regulatory options have not been finalised and narrowed and therefore are not targeted enough to conduct a quantitative assessment.

The changes outlined in section 5.1 and 5.3 are included in a discussion paper. The consultation period for the discussion paper closed on 21 September 2009. Submissions from industry are currently being collated and follow up consultations are still taking place. Once comments have been received and assessed legislative and regulatory options will be proposed. Changes proposed will be subject to detailed assessment when finalised. It is hoped that new legislative and regulatory requirements will be in place within three years.

The overarching objective of the review is to ensure that the regulatory framework in Victoria is modern and effective. The types of benefits that will be generated are the same of the benefits that want to be achieved from the current and proposed Regulations. That is to prevent marine incidents, injuries and deaths.

The possible costs associated with future regulatory options will be similar to the costs imposed by the current and proposed Regulations. It is possible there will be small changes to construction and operational standards, registration, competency, surveys, safety equipment and enforcement. Data outline in chapter 7.7 will be useful when assessing future regulatory options.

Future changes will be assessed in a detailed when finalised. They have not been included in this benefit cost analysis.

## 6.5 Fees assessment

Fees are collected into consolidated revenue which is then used to fund MSV regulatory activities. The fees set out in the current Regulations do not recover the full cost of undertaking MSV tasks. The current budget of MSV totals \$24.2 million. This estimate was provided by MSV.

Information supplied by MSV indicates that only \$19,897,213 is recovered from fees paid by the industry. These fees are registration of recreation vessels, renewal and new licences for recreational vessel owners and operators, CoS and CoC.

Increasing fees is seen by MSV as something that is highly contentious. In light of the current review the policy position advised by MSV is that they do not wish to change fees ahead of broader changes that could flow from the current analysis. In the main, cost recovery is accepted as the appropriate policy although the department believes that there is a need to balance commitment to the sector and the desire to promote a co-operative and supportive industry and hence promote high levels of compliance.

In this regard, the main review has received a mix of strong opposition to any fees on one hand, and some support for cost recovery under circumstances where 100% of the fees are visibly hypothecated back to safety projects in the marine environment.

Fees were increased in July 2009 in line with CPI and MSV intend to roll over the current level of fees and assess them in greater detail during the legislative review and the development of new regulations.

However, when considering fee levels for full cost recovery for sunseting regulations the preferred methodology is a bottom up approach. That is, determine the frequency of each fee payment and match it with the total regulatory costs.



Unfortunately data on frequency of each fee category is difficult to extract from information collected by MSV. As such, it is not possible to undertake a bottom up full assessment of fee levels to cost recover. Instead a top down approach has been undertaken. To fully recover the \$24.3 million in MSV costs fee levels would need to be increased by 22%. A summary of current fee levels and potential fee levels for full cost recovery is included in Appendix A. The table presented in Appendix A has assumed that all fee levels under-recover by the same proportion (22%). Although this may be unrealistic, due to data restrictions, this is the only manner in which to estimate fees levels that fully cost recover. It is more realistic that some fee categories recover costs of administering whilst other under recover by a greater percentage than 22%. Future fee options assessed in three years should consider setting individual fee level based on the individual administrative costs.

When undertaking a 'complete' RIS in three years, MSV will be required to undertake a bottom up approach to calculating fee levels. This will required data on the frequency in which each fee category is used.

## 7 Other considerations

### 7.1 Consultation

As government and industry participants are currently undertaking a detailed review of the industry and developing legislative and regulatory changes, direct consultation with the industry has not been undertaken. This is a reflection of the proportionate methodology being undertaken. Direct consultation with industry has been undertaken for the legislative review.

Data has been gathered from MSV from the industry review and from the consultation RIS developed for the National Approach to Maritime Safety.

Once completed, it is proposed that this RIS undergo a 28 day public consultation where anyone in the marine industry is free to comment.

This is less than 60 days consultation as recommended by the Victoria Guide to Regulations. However, as the proposed Regulations will only be in effect for three years and changes from the current Regulations are minimal, a shorter timeframe has been chosen. This also allows for the RIS process to be completed before the current Regulations sunset.

In addition to the proposed Regulations being in place for a three year period, industry stakeholders have recently had the opportunity to comment on the discussion paper relating to the legislative review being undertaken. High level results from submissions include:

- overwhelming rejection of any option to limit where recreational vessels can go based on construction factors such as size
- general rejection of any increase in fees or levies, but with a number of exceptions who would contemplate small increases if they are transparently hypothecated to particular marine safety purposes
- general support for strengthening compliance and enforcement options, especially serious offences, dealing with repeat offenders, and (to a lesser extent) increasing penalties
- strong support for better marine infrastructure and compliance presence (this is not tied to a willingness to pay more)
- quite a strong message to the effect that the present system isn't too bad, people don't want huge changes to the status quo as this may affect their ability to participate.

These opinions will be considered when developing and assessing legislative and regulatory options in three years.

The draft Marine Regulations 2009 have been provided to Department of Justice, Parks Victoria and Department of Sustainability and Environment for information and comment.

The content of both the regulations and legislation has been discussed in consultations on the main review, and those have included detailed consultation with Parks Victoria, Department of Sustainability and Environment, the Water Police, various waterway managers, as well as port bodies including Port of Melbourne, Victorian Regional Channels Authority, and the Harbour Masters for the ports.

## 7.2 Impact on small business

The proposed changes to the current regulatory regime are minimal and will not have a disproportionate impact on small businesses. The following points explain why small businesses are not disadvantaged.

- Changes are minimal with the majority of regulatory requirements having been in place for a significant period of time.
- The majority of the commercial vessel industry is made up of small businesses like traders and fishing boats so larger businesses do not have advantages over smaller operators.
- Compliance burden is the same for small and large businesses. The nature of the regulatory requirements means no economies of scale can be achieved. All vessels still need to be surveyed and all owners, operators and crew require adequate training and correct certification.

It is expected that the proposed Regulations will not have an adverse impact on small businesses. As all commercial vessels are surveyed to the same standards and recreational vessels operate to the same requirements, DoT believes that non-compliance will not have a differential impact on small businesses.

As most marine businesses in Victoria are small businesses, transitional costs are likely to be particularly important for them. The proposal to minimise the changes being made in these Regulations helps to manage these costs.

Feedback for small commercial business on the discussion paper was been relatively low key due to a perception that commercial regulation is 'going to the Commonwealth'.

Boat builders and dealers have a predominant concern with measures that would be barriers to participation, as this obviously impacts their business. Options to limit where recreational vessels can go on the basis of size were particularly unpopular. Clearly other measures that might limit participation such as restrictions on who could obtain licences, higher fees, or more constrictive rules in respect of where particular vessels can go would also be potential barriers to participation.

## 7.3 Competition impacts

As the proposed Regulations are not significantly altering any regulatory requirements that have been in place for a significant period of time, it is expected that there will be no impact on competition or trade. The Guide sets out three key aspects of competition including whether the regulations:

- Limit the number or range of suppliers: barriers to entry are ensuring a minimal level of safety and ensuring operators and crew are adequately qualified. As discussed in the benefit cost analysis, these minor costs to the industry are justified to protect industry participants and the general public.
- Limit the ability of suppliers to compete: requirements do not limit suppliers, set prices or raise the cost of production or services.
- Reduce the incentive of suppliers to compete vigorously: requirements do not have an impact on suppliers' ability to compete with each other.

Therefore it is expected that the proposed Regulations will not have an adverse impact on competition and trade. As indicated in the benefit cost analysis, it is likely that the benefits of regulating the marine industry outweigh the costs. Therefore the impact of the proposed Regulations on competition is minimal and necessary to ensure safety.

During the development of this RIS, MSV and DoT were consulted to ascertain the likely impacts of the proposed Regulations. Both MSV and DoT provided information on how the proposed Regulations would impact their organisation and how they would impact the industry.

## 7.4 Administrative burden

The proposed Regulations have been found to provide no material change to the administrative burden imposed on industry participants and therefore no formal Standard Cost Model Assessment is required.

The only requirement that may impose additional administrative cost is the new requirement to register a EPIRB. Based on information supplied by MSV it is estimated this may impose a one off cost of \$9,653 and an on-going cost of approximately \$241 per annum (or a one off cost of \$57,920 and an on-going cost of \$1,448 if a higher estimate of time is used). These estimates do not exceed the threshold for requiring a Standard Cost Model Assessment.

A Standard Cost Model Assessment is required on regulatory changes that either increase or decrease the administrative burden imposed on industry by greater than \$250,000. The minor changes being proposed will not have an impact on the administrative burden imposed on the industry.

## 7.5 Implementation and review

The administration of the proposed Regulations would not change. Marine Safety Victoria would be responsible for administration of the industry and their role will not differ from the current situation. VicRoads would continue to be responsible for registering and licensing for recreational vessels. MSV pays VicRoads in the order of \$3.8 million per annum for them to undertake recreational vessel registration and licensing.

The industry will not be required to complete, store or apply for anything additional and it will not be necessary to transition in the new requirements. The proposed option will be enforced in the same manner as the previous regulations through fines for non-compliance.

Checking whether or not EPIRBs are registered will become part of the normal “boat equipment check” that Police can undertake when they intercept a vessel. MSV delayed introducing this element of the need to carry an EPIRB until AMSA introduced a registration sticker scheme so that checking whether or not an EPIRB was registered was a simple task – i.e. all the officer must do is look for a registration label affixed to the device. They would already be checking to see if the boater had an EPIRB so it does not add to the compliance checking burden the Police have when assessing compliance with the need to have safety equipment.

## 7.6 Enforcement

The Water Police are tasked with enforcing the marine regulations and MSV contributes approximately \$1 million per annum. MSV does not have information on police costs of enforcing the marine regulations and police do not provide such information. It is a task that the police do in conjunction with their other responsibilities unless they are specifically undertaking targeted operations and hence separating out the cost is difficult.

Some waterway managers also have Authorised Officers under the Marine Act who are able to enforce certain provisions of the Marine regulations however this is not extensively used by all waterway managers. Waterway managers that are also local authorities (for example at Lake Nagambie) are able to directly recover the value of fines issued.

Enforcement tends to be performed alongside other roles that constitute marine management as a whole. Waterway managers may issue fines while also patrolling to clear hazards and update signage. Water Police do some enforcing at this level alongside high level security work, which is a significant priority for them. MSV perform all of the functions of the main regulator, which can include some enforcement activity.

No data is specific and identifiable available on the cost incurred by waterway managers when carrying out their enforcement. MSV advises that the cost of enforcement differ for waterway managers and depend largely on the extent of the water under their control, the typical behaviour of boaters in their area and the need for enforcement.

It is acknowledged that the value of fines may be inadequate in view of the costs of enforcement, either as born by local authorities or by the State, and for this reason steps, from increasing fines through to better enforcement administration, are being considered as part of the wider Marine Review.

In regards to new requirements on ERIPBs and PFD standards, MSV believe that there would not be specific or extra checks unless there was a specific operation targeting them and this is unlikely. They may however when inspecting a vessel that should be carrying an EPIRB check their licence, safety equipment and possible the EPIRB registration component. This would more likely occur if recreational vessel were a significant way off shore but would be incidental in regards to time and effort.

## 7.7 Evaluation and future regulatory review requirements

The impact analysis included in this RIS represents a proportionate approach and has not quantified in detail all feasible options that may address the safety issues identified. This approach has been taken as it is intended that the current Regulations be rolled over for a period of three years with only minor changes whilst a detailed legislative review is being undertaken. Reasons for this proportionate approach include:

- Minimising any substantial transition costs on the industry ahead of more possible substantive changes in coming years
- Reducing any confusion with the current legislative review being undertaken.

Only minor changes have been made to the current Regulations and it is expected that these changes will not impose any substantial additional costs on the industry. Instead the changes aim at modernising the current Regulations.

As set out earlier this RIS has assessed the impact of three options. The 'full RIS' undertaken within three years will assess the feasibility of a range of options that address all issues of marine safety. This will be to ensure that there are no unnecessary or irrelevant costs imposed on the industry.

The costs and benefit of each feasible option considered in three should be calculated on an individual requirement basis.

To adequately assess the benefit and cost of all feasible options required in the 'full RIS' (that will need to be completed in approximately three years), information and data will need to be collected and assesses. The information that is intended to be collected, so far as this proves possible, includes:

- Registrations by category
- Recreational licences by category
- The number of commercial vessel CoC by category

- The number of commercial vessel CoS by category
- Fees paid by industry participants by category
- Infringements by category
- The reasons for commercial and recreational vessel incidents
- Incident rates in other Australian jurisdictions
- The cost of safety equipment required on commercial and recreational vessels
- The construction and operational costs imposed on commercial and recreational vessel operators (cost above business as usual).
- The number of certificates of survey renewal each year
- The number of commercial vessel surveys undertaken each year (until it is no longer relevant as it is the responsibility of the Federal Government regulator)
- The cost of enforcement by each party (DoT, the water police to the extent that they are willing to provide such information, and waterway managers)
- Cost of processing registrations (VicRoads information)
- Information on the number of lives saved due to PFDs
- Cost of and compliance with the new EPIRBs registration
- The benefits of the EPIRB requirements
- The benefits of PFDs and the proportion of the industry that use PFDs appropriately
- The proportion of the industry that would continue to construct commercial and recreational vessels to international standards
- The cost imposed on those vessels owners that would not construct and operate their vessels to international standards
- The likely difference in safety outcomes if construction and operational standards were not adhered to by a proportion of the industry.

It is important that MSV attempt to collect this information so that a full analysis of costs and benefits can be completed in approximately three years when a full RIS is undertaken.

In regards to an inter-jurisdictional comparison and options that focus on the differences between regulations in each state and territory, this will be included in the RIS in three years. As a brief outline there are differences in the way that each jurisdiction manages its waterways but in general they are all similar. All jurisdictions except the NT register recreational vessels, although there might be slight variations in the types of vessels required to be registered, all but the NT require licenses however there are differences in the types of operators that need licenses and the type of tests they must pass. Commercially, there are differences in operational and competency requirements however the National Marine Safety Committee is working towards standardisation and also the change to a single national

jurisdiction for commercial vessels where AMSA regulate commercial vessels will affect the way in which this sector is managed.

MSV advises that, unlike Victoria, not all jurisdictions apply the Uniform Shipping Laws Code across the board despite the work nationally to achieve consistency. This should change in the next few years as the single national jurisdiction is implemented for some commercial vessels. In regards to commercial qualifications Victoria regulates similar requirements to the rest of Australia.

In regards to recreational vessels Victoria has less onerous licensing requirements than some jurisdictions such as Queensland, NSW and Tasmania, in that Victoria does not require practical testing. There are slight differences across jurisdictions as to who is required to be registered, usually on the basis of age and also vessel speed. Victoria introduced licensing in line with the agreed National Standard for licensing and all jurisdictions recognise licenses issued in other states.

Regarding safety equipment and “rules of the sea”, all jurisdictions have regulations which require operators to operate safely, such as, specifying distances to remain away from swimmers and other vessels, where boats are permitted to anchor, actions to be undertaken in the event of an incident and safety equipment to be carried. In Victoria, equipment requirements have been implemented as far as possible in line with the National Standard for Recreational Boat Safety Equipment.

A more detailed inter-jurisdictional comparison is set out in the legislative review discussion paper.

## 8 Conclusion and recommended option

Several factors must be taken into consideration when assessing the merits of this RIS and the likely impacts on the industry. These factors are:

- the current detailed legislative review being undertaken on the Marine Act, the intention that this review be subject to public release with submission collected and the development and implementation of a new Marine legislation and regulation in approximately three years. Therefore the proposed Regulations assessed in this RIS will only be implemented for a three year period
- only minor changes have been proposed. Changes are intended to ensure the proposed Regulations are up to date and relevant without any significant extra burden imposed on the industry. Changes have the intention to ensure safety incidents are kept at a minimum
- the proposed national regulations for commercial vessels. A national consultation RIS has been prepared assessing the costs and benefits of having a nationally consistent commercial vessel regime. The timeframe for a national regime is similar to the legislative review of state legislation with an implementation period starting in 2011.

Bearing these factors in mind it is still reasonable to expect that the benefits of implanting marine regulations in Victoria for a three year period will out weight the costs. Costs are made up of requirements imposed on the industry relating to:

- the operation, construction and required safety equipment on commercial and recreational vessels
- crewing, CoC and licences for commercial vessel operators and employees
- registration of recreational vessels
- operator licences for recreational vessels.

Costs in the industry total approximately \$30.0 million per year.

Two requirements that are to be introduced in the proposed Regulations that may have an impact are the requirements to register EPIRBs before using on a vessel and the introduction of standards that allow vessel owners and operators to purchase modern PFDs. The purpose of introducing these changes now and not waiting until the legislative review has been completed is two fold:

- Changes will provide greater clarity around requirements that are already set out in regulation. It is currently required to purchase and carry a EPIRB and therefore the new requirements to activate is simple and straightforward and will ensure all recreational vessels can be found and identified in an emergency. It is currently required to have PFD on vessels and therefore changes provide a greater clarity on the type of PFD that is adequate.
- These changes will not have significant transitional cost and are easily understood by the industry.

The benefit of implementing the proposed Regulations is the costs saved from a potential increase in marine incidents that may occur in the absence of regulation. As the overall cost to the industry is \$30.0 million, the number of incidents avoided because of regulations needs to equate to or be greater than a cost of \$30.0 million to justify their implementation.



It has been indicated by MSV that without any marine regulatory regime in place it is reasonable to expect an increase in incidents (that lead to property damage, injury, hospitalisation and death) large enough to justify the proposed Regulations.

Safety continues to be an issue in the marine industry with 9 recorded death last year, 1091 recreational vessel incidents and 139 commercial vessel incidents. Many of these incidents and death are seen by MSV as preventable. The current regulations aim to address the causes of these deaths and incidents with a focus on safety equipment, construction, operation and competencies. As deaths and incidents still occur in an environment that does set out regulatory requirements, MSV believe that without the regulations the number of deaths, injuries and incidents would increase.

MSV believes that it is reasonable to expect that there would be an increase in deaths and incidents greater than \$30.0 million in the absence of regulations.

## Appendix A Impact analysis assumptions

### Benefit cost assumptions

Costs have been calculated over a three year period (expected timeframe for the proposed Regulations) using a real discount factor of 3.5%.

A range of assumptions were used to calculate costs imposed on the industry. These are set out below.

- Direct commercial Vessel costs were taken from revenue collected by MSV from commercial vessel surveys.
- Administrative cost for commercial vessels were based on information MSV collected during a study in 2008 which looked at the time spent doing administrative tasks.
- During the study undertaken in 2008 industry indicated average weekly earnings (with on-costs) was \$1,810. Based on a 37.5 hour week the average hourly rate in the industry is estimated to be \$48.27
- Direct recreational Vessel costs were taken from revenue collected by MSV for qualifications.
- Administrative costs for recreational vessels were based on information MSV collected during a study in 2008 which looked at the time spent doing administrative tasks.
- To be consistent in the analysis, average weekly earnings was estimated at \$1,810 (including on-costs) taken from the information collected on commercial vessel operators during the 2008 study. This equates to \$48.27 per hour.
- Direct cost of registering a recreational vessel has been taken from the fees collected by MSV.
- Administrative costs associated with registering recreational vessels have been estimated based on the time taken to complete similar commercial vessel forms. MSV believe this is a reasonable assumption considering the type of information collected is similar (i.e. name, address, vessel type, etc).
- Direct cost of registering a recreational vessel has been taken from the fees collected by MSV.
- Administrative costs associated with registering recreational vessels have been estimated based on the time taken to complete similar commercial vessel forms.
- Direct cost of obtaining recreational vessel has been taken from the fees collected by MSV.
- Administrative costs associated with obtaining a recreational vessel licence have been estimated based on the time taken to complete similar commercial vessel forms.
- Average payout for a recreational vessels incident is \$3,829 based on insurance data. This is assumed to represent the cost of property damage resulting from an incident.
- The cost of injury to Victoria is assumed to be \$8,090 based on a study conducted by the Monash University Accident Research Centre.
- Two Values of a Statistical Life have been used. The first was used on the National Marine RIS (\$6.24 million) and the second is suggested by the Office of Best Practice Regulation (\$3.74

million). As the value of a statistical life is widely debated two values have been used to provide sensitivity around the analysis. The first value is suggested by the VCEC and the second is used in the national marine RIS.

**Fees assessment**

Fee levels as of 1 July 2009 and potential fee levels if MSV fully cost recovered. The total cost needed to be covered is \$24.2 million. Currently MSV recovers \$19.9 million from fees and would therefore need to lift fees across the board by 22%.

Category / Description	Current fee/penalty unit	Current fees - 1 July 2009 (\$)	Increase to achieve full cost recover
<b>Survey of vessel and examination of plans</b>			
Application fee for all new vessels survey and plan approval	1.54	\$18.00	\$21.89
<b>Plan approval fees</b>			
Class 1			
<7.51m	3.14	\$36.70	\$44.64
7.51 to 20m	5.05	\$59.00	\$71.76
>20m	6.64	\$77.60	\$94.38
Class 2, class 3			
<7.51m	3.14	\$36.70	\$44.64
7.51 to 20m	4.40	\$51.40	\$62.52
>20m	5.65	\$66.00	\$80.27
<b>New vessel survey by the Director</b>			
Class 1			
<7.51m	5.65	\$66.00	\$80.27
7.51 to 20m	5.05	\$59.00	\$71.76
>20m	4.40	\$51.40	\$62.52
Class 2, class 3			
<7.51m	5.65	\$66.00	\$80.27
7.51 to 20m	4.40	\$51.40	\$62.52
>20m	3.14	\$36.70	\$44.64
Booking survey for existing vessel	8.40	\$98.20	\$119.44
<b>Survey of existing vessels</b>			
Class 1			
<5.01m	8.85	\$103.50	\$125.88
5.01 to 10m	19.00	\$222.10	\$270.13
10.01 to 20m	25.30	\$295.80	\$359.77

## Impact analysis assumptions

20.01 to 35m	38.00	\$444.20	\$540.26
>35m	57.00	\$666.30	\$810.39
<b>Class 2, class 3</b>			
<5.01m	5.85	\$68.00	\$82.71
5.01 to 10m	12.65	\$147.90	\$179.88
10.01 to 20m	16.90	\$197.60	\$240.33
20.01 to 35m	25.30	\$295.80	\$359.77
>35m	38.00	\$444.20	\$540.26
Additional visit for an existing vessel survey	8.40	\$98.20	\$119.44
Considering application for alteration to classification or speculation of vessel	2.10	\$24.50	\$29.80
Inspection fee for alteration to classification or specification of vessel	8.40	\$98.20	\$119.44
Plan approval for alteration to classification or specification of vessel	6.30	\$73.60	\$89.52
Issue of certificate of survey	4.60	\$52.80	\$64.22
Issue of duplicate certificate of survey	4.60	\$52.80	\$64.22
<b><u>Certificate of competency and licences</u></b>			
Application for issue, variation or renewal of certificate of competency	1.54	\$18.00	\$21.89
Issue or renewal of certificates	4.60	\$53.80	\$65.43
Variation of certificates	2.90	\$33.90	\$41.23
Issue of duplicate certificate	4.60	\$53.80	\$65.43
Examination fees for certificates (written)	3.34	\$39.00	\$47.43
Examination fees for certificates (oral)	6.70	\$78.30	\$95.23
Application for issue, variation or renewal of pilot licence	1.54	\$18.00	\$21.89
Issue or renewal of pilot licence	4.60	\$53.80	\$65.43
Variation of pilot licence	2.90	\$33.90	\$41.23
Issue of duplication licence	4.60	\$53.80	\$65.43
<b><u>Examination fees for pilot licence</u></b>			
Port Waters of Melbourne and Geelong, and Port of Portland and Port of Hasting	105.50	\$1,233.30	\$1,500.00

Impact analysis assumptions

Port Waters of Melbourne and Geelong, and Port of Portland	84.45	\$987.20	\$1,200.68
Port Waters of Melbourne and Geelong and Port of Hastings	84.45	\$987.20	\$1,200.68
Port Waters of Melbourne Geelong	63.30	\$740.00	\$900.03
Port Waters of Melbourne and Port of Hastings	63.30	\$740.00	\$900.03
Port Waters of Melbourne and Port of Portland	63.30	\$740.00	\$900.03
Port Waters of Geelong and Port of Hastings	42.20	\$493.30	\$599.98
Port Waters of Geelong and Port of Portland	42.20	\$493.30	\$599.98
Port Water of Hastings and Port of Portland	42.20	\$493.30	\$599.98
Port Waters of Melbourne (both channels)	42.20	\$493.30	\$599.98
Port Waters of Melbourne (one channel)	24.75	\$289.30	\$351.86
Port Waters of Geelong	24.75	\$289.30	\$351.86
Port of Hastings	24.75	\$289.30	\$351.86
Port of Portland	24.75	\$289.30	\$351.86
Application for issue, variation or renewal of pilot exemption certificate	1.54	\$18.00	\$21.89
Issue or renewal of pilot exemption certificate	4.60	\$53.80	\$65.43
Variation of pilot exemption certificate	2.90	\$33.90	\$41.23
Issue of duplicate of pilot exemptions certificate	4.60	\$53.80	\$65.43
<b><u>Examination fees for issue, variation or renewal of pilot exemption certificate</u></b>			
Port Waters of Melbourne and Geelong, and Port of Portland and Port of Hasting	105.50	\$1,233.30	\$1,500.00
Port Waters of Melbourne and Geelong, and Port of Portland	84.45	\$987.20	\$1,200.68
Port Waters of Melbourne and Geelong and Port of Hastings	84.45	\$987.20	\$1,200.68
Port Waters of Melbourne Geelong	63.30	\$740.00	\$900.03
Port Waters of Melbourne and Port of Hastings	63.30	\$740.00	\$900.03
Port Waters of Melbourne and Port of Portland	63.30	\$740.00	\$900.03
Port Waters of Geelong and Port of Hastings	42.20	\$493.30	\$599.98

Port Waters of Geelong and Port of Portland	42.20	\$493.30	\$599.98
Port Water of Hastings and Port of Portland	42.20	\$493.30	\$599.98
Port Waters of Melbourne (both channels)	42.20	\$493.30	\$599.98
Port Waters of Melbourne (one channel)	24.75	\$289.30	\$351.86
Port Waters of Geelong	24.75	\$289.30	\$351.86
Port of Hastings	24.75	\$289.30	\$351.86
Port of Portland	24.75	\$289.30	\$351.86
<b><u>Boating facilities and safety education fee</u></b>			
<b>Facilities &amp; Education</b>			
Recreational vessel up to and including 4.0m in length powered with an engine	2.90	\$33.90	\$41.23
Recreational vessel over 4.0m in length with an engine	6.05	\$70.70	\$85.99
<b>Marks and plates for manufacturers and dealers</b>			
Issue of a special identification mark	6.05	\$70.70	\$85.99
Issue of special identification plate	1.28	\$15.00	\$18.24
Transfer fee on second-hand recreational vessel	1.28	\$15.00	\$18.24
<b><u>Operator licences and personal watercraft endorsements</u></b>			
<b>Fee for operator licence and personal watercraft endorsement</b>			
General operator licence	2.50	\$29.20	\$35.51
Restricted operator licence	1.25	\$14.60	\$17.76
Fee for replacement operator licence	1.56	\$18.20	\$22.14
Operator licence knowledge test fee	1.95	\$22.80	\$27.73
PWC Endorsement - General Operator Licence	set	\$5.10	\$6.20
PWC Endorsement - Restricted Operator Licence	set	\$2.50	\$3.04
Fee for search and records of operator licences	set	\$6.60	\$8.03

# Appendix B Proposed Regulations

# Marine Regulations

## Exposure Draft

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**Victoria**

## **Marine Regulations**

### **Exposure Draft**

#### **PART 1—PRELIMINARY**

##### **100 Objectives**

The objectives of these Regulations are—

- (a) to provide for the registration and operation of vessels;
- (b) to give effect to certain international conventions relating to the operation of vessels;
- (c) to provide for marine infringements;
- (d) to provide for the payment of fees to the Director;
- (e) to prescribe penalties for offences;
- (f) to provide for operator licences in respect of regulated recreational vessels;
- (g) to provide for endorsements on operator licences in respect of personal watercraft;



(h) generally to provide for various other matters authorised or required to be prescribed for the purposes of the Act.

#### **101 Authorising provisions**

These Regulations are made under sections 10, 55, 56, 58, 59, 105, 108 and 109 of the **Marine Act 1988**.

#### **102 Commencement**

These Regulations come into operation on 20 December 2009.

#### **103 Revocation**

The Regulations listed in Schedule 1 are **revoked**.

#### **104 Definitions**

In these Regulations—

*Act* means **Marine Act 1988**<sup>1</sup>;

*class 1 vessel* means any passenger vessel carrying more than 12 passengers (excluding any hire and drive vessels);

*class 2 vessel* means any trading vessel carrying up to 12 passengers;

*class 3 vessel* means any fishing vessel;

*class 1F vessel* means any hire and drive vessel;

*coastal waters* means all waters other than inland waters or enclosed waters;

designated hazardous area means—

- (a) any ocean bar; and
- (b) Port Phillip Heads; and
- (c) the Lakes Entrance Bar; and

- (d) any area of State waters designated by the Director under regulation 104;

***dive charter vessel*** means a trading vessel used or intended to be used wholly or principally for carrying passengers who engage in recreational diving activities during a voyage;

***dive flag*** means Code Flag "A" shown in Chapter 11 and Appendix 2 of the International Code of Signals, published by the International Maritime Organisation, 2005;

***diving equipment*** means underwater breathing apparatus of a kind that is self-contained (SCUBA) or is surface supplied;

***drysuit*** means a thermal insulation garment of a kind—

- (a) that covers the whole of the trunk of a person's body in one garment; and
- (b) that does not allow water to permeate on to the body of the person wearing it;

***enclosed waters*** means—

- (a) the waters inside the seaward entrance of the ports of Apollo Bay, Anderson Inlet, Gippsland Lakes, Snowy River, Mallacoota and Port Fairy, declared under section 5 of the **Port Services Act 1995**; and
  - (b) the waters of the Port of Barwon Heads upstream of the Barwon Heads–Ocean Grove road bridge; and
  - (c) the waters of the Port of Corner Inlet and Port Albert east of a line between Port Welshpool shipping pier and
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- Bentley Point (inside the entrances);  
and
- (d) the waters of Shallow Inlet; and
  - (e) the port waters (inside the entrance) of the Port of Portland; and
  - (f) the waters of Port Phillip Bay landward of an imaginary line drawn between Point Lonsdale and Point Nepean as shown on the chart AUS 144 "Approaches to Port Phillip", published by the Hydrographic Service, Royal Australian Navy, 9 November 2001; and
  - (g) the waters of Westernport Bay landward of its western entrance joined by an imaginary line drawn between West Head to the southern tip of Seal Rocks to Point Grant and landward of its eastern entrance joined by an imaginary line drawn between Cape Woolamai and Griffith Point as shown on the chart AUS 150 "Western Port", published by the Hydrographic Service, Royal Australian Navy, 22 March 1995; and
  - (h) the waters between the seaward entrance of Tamboon Inlet and the northerly boundary of an imaginary line drawn between Flanders track and the creek on the eastern side of the Inlet; and
  - (i) the waters between the seaward entrance of Wingan Inlet and the northerly boundary of an imaginary line drawn between Rocky Creek and the bank directly opposite to the west; and
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- (j) the waters between the seaward entrance of Sydenham Inlet and the mouth of the Bemm River;

***expiry date*** in relation to an operator licence, means the date determined in accordance with regulation 705 to be the date on which that licence expires;

***hand held orange smoke signal*** means a hand held orange smoke signal of a type that complies with—

- (a) the Uniform Shipping Laws Code Section 10 Life Saving Appliances Appendix V; or  
(b) AS 2092 Pyrotechnic Marine Distress Flares and Signals for Pleasure Craft;

***hand held red distress flare*** means a hand held red distress flare of a type that complies with—

- (a) the Uniform Shipping Laws Code Section 10 Life Saving Appliances Appendix V; or  
(b) AS 2092 Pyrotechnic Marine Distress Flares and Signals for Pleasure Craft;

***inland waters*** means—

- (a) rivers (inside the seaward entrance), creeks, canals, lakes, reservoirs and any similar waters either naturally formed or man made and which are either publicly or privately owned; and  
(b) the waters inside the seaward entrance of any rivers, creeks or streams which flow into port waters declared under section 5 of the **Port Services Act 1995**;
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***Lakes Entrance Bar*** means the sand bar at the entrance to the Port of Gippsland Lakes as shown on the chart AUS 182 "Lakes Entrance", published by the Hydrographic Service, Royal Australian Navy, 30 January 1998;

***length*** in relation to a recreational vessel, means the length of the hull of the vessel when measured in accordance with clause 5.2.2 of International Standard ISO 8666 (E) Small Craft—Principal Data;

***lifebuoy*** means a lifebuoy of a type that complies with—

- (a) the Uniform Shipping Laws Code Section 10 Life Saving Appliances Appendix P; or
- (b) AS 2261 Rescue Buoys;

***marine radio*** means—

- (a) a 27MHz or HF marine radio transceiver approved by the Australian Communications and Media Authority; or
  - (b) a VHF marine radio transceiver approved by the Australian Communications and Media Authority that complies with AS/NZS 4415.2 Radio Telephone Transmitters and Receivers for the Maritime Mobile Service Operating in the VHF Band—Technical Characteristics and Methods of Measurement—Major Coast Stations, Limited Coast Stations, Ship Stations and Hand Held Stations (non DSC) (ETS 300 162:1998, MOD);
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***National Standard for Commercial Vessels*** means the standard formulated, issued, prescribed or published by the National Marine Safety Committee of Australia;

***ocean bar*** means an area in State waters comprising a ridge of sand or gravel near or slightly above the surface of the water—

- (a) that is located near or at the entrance to the sea from a bay, inlet, river or other waterway; and
- (b) that extends across the mouth of that bay, inlet, river or waterway or parallel to the shore; and
- (c) that is permanent or occurs from time to time—

and includes all waters within 500 metres of the ridge;

***off the beach sailing yacht*** means an unballasted open sailing boat, including a centreboard dinghy, skiff and multihull yacht, but does not include a cabin boat, fixed keel vessel, kite board or sail board;

***open area*** in the case of—

- (a) a trading vessel, means an area—
  - (i) that is not closed or locked; and
  - (ii) that is open on the boundary on its aft side; and
- (b) a recreational vessel (other than a kayak or canoe)—
  - (i) that has a deck, means all deck areas including coach roofs, superstructures, open flying bridges, trampolines and nets, but excluding areas within a rigid

deck house, a rigid cabin, a rigid half cabin or a securely enclosed under-deck space; or

(ii) that does not have a deck, means the whole vessel, excluding areas within a rigid cabin, rigid half cabin or a securely enclosed space;

(c) a kayak or canoe, means the whole vessel;

***passenger*** means any person on board a vessel other than—

(a) the master and members of the crew or other persons employed or engaged in any capacity in the business of that vessel; and

(b) a child under one year of age;

***personal flotation device*** means a PFD Type 1, a PFD Type 2 or a PFD Type 3;

***personal particulars***, of a person, means the following details—

(a) the first name, second and third initials (if any) and family name of the person;

(b) the person's gender;

(c) the person's date of birth;

(d) the person's residential address;

(e) if there is no postal address to the person's residential address, the address for the service of notice;

***PFD Type 1*** means a personal flotation device of a type described in Part 2 of Schedule 2;

***PFD Type 2*** means a personal flotation device of a type described in Part 3 of Schedule 2;

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***PFD Type 3*** means a personal flotation device of a type described in Part 4 of Schedule 2;

***portable fire extinguisher*** means a dry chemical type fire extinguisher—

- (a) that complies with AS/NZS 1841.1 Portable Fire Extinguishers—General Requirements and AS/NZS 1841.5 Portable Fire Extinguishers—Specific Requirements for Powder Type Extinguishers; and
- (b) that is rated in accordance with AS/NZS 1850 Portable Fire Extinguishers—Classification, Rating and Performance Testing;

***Port Phillip Heads*** means the waters between an imaginary line drawn between Point Lonsdale and Point Nepean and the seaward limits of an imaginary line of a radius of 3 nautical miles centred on Point Lonsdale, also known as "The Rip", as shown on the chart AUS 143 "Port Phillip", published by the Hydrographic Service, Royal Australian Navy, 2 May 1973;

***power boat*** means a recreational vessel that has an engine that is used, or that is capable of being used, for propulsion;

***recreational tender*** means a vessel, other than a personal watercraft—

- (a) that does not exceed 4.8 metres in length; and
- (b) that is used, or that is intended to be used, as a means of transportation but not for towing; and



- (c) that conspicuously displays the name of its mother vessel or the registration number of that vessel and the letter "T"; and
- (d) that operates or is intended to operate—
  - (i) between the shore and another recreational vessel that is no more than 300 metres from the shore and no more than 300 metres from the point of its entry to the water; or
  - (ii) between recreational vessels that are no more than 300 metres apart;

***red star parachute distress rocket*** means a parachute distress rocket that complies with—

- (a) the Uniform Shipping Laws Code Section 10 Life Saving Appliances Appendix V, as formulated, issued, prescribed or published from time to time; or
- (b) AS 2092 Pyrotechnic Marine Distress Flares and Signals for Pleasure Craft;

***restricted visibility*** means conditions in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar cause;

***Roads Corporation*** has the same meaning as in the **Transport Act 1983**;

***testing officer*** means a testing officer referred to in regulation 601;

***trailerable yacht*** means a sailing vessel with a cabin that is capable of being towed on a trailer by a motor vehicle in accordance with the **Road Safety Act 1986**;

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***underway***, in relation to a vessel, means when the vessel is not—

- (a) at anchor; or
- (b) made fast to the shore; or
- (c) aground;

***wetsuit*** means a thermal insulation garment of a kind—

- (a) that covers the whole of the trunk of a person's body in one garment; and
- (b) that allows water to permeate on to the body of the person wearing it—

but does not include a vest or singlet;

***yacht*** means a recreational vessel that is designed to be propelled by wind power, or a combination of wind and engine power, and includes—

- (a) a monohull yacht; and
- (b) a trailerable yacht; and
- (c) a multihull yacht—

that is ballasted or has a cabin or a fixed keel, but does not include an off the beach sailing yacht.

## **105 Reference to standards**

Unless otherwise stated, in these Regulations—

- (a) a reference to an Australian Standard is a reference to that standard as formulated, issued, prescribed or published by Standards Australia from time to time; and
  - (b) a reference to an Australian and New Zealand Standard is a reference to that standard as formulated, issued, prescribed or published jointly by Standards Australia and
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Standards New Zealand from time to time;  
and

- (c) a reference to an International Standard is a reference to that standard as formulated, issued, prescribed or published by the International Organization for Standardization from time to time.

**106 Director may designate hazardous areas for purposes of Regulations**

The Director may, by notice published in the Government Gazette, designate an area of State waters described in the notice as a designated hazardous area for the purposes of these Regulations.

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**PART 2—VESSEL OPERATION, CONSTRUCTION AND  
EQUIPMENT**

**Division 1—Safe operation of vessels**

**200 Power to prohibit operation of vessel**

For the purposes of section 14 of the Act, the Director or a member of the police force may, in writing, direct that a particular vessel must not be operated on State waters if the Director or the member of the police force considers that—

- (a) the vessel is loaded with persons, cargo and equipment or other items that will make or are likely to make the vessel unstable; or
  - (b) the vessel is constructed in a manner that would place any occupant of the vessel at risk of injury or death; or
  - (c) the vessel is of a design that is not suitable for the intended voyage or use; or
  - (d) the machinery on board the vessel is unsafe or could create a fire or explosion on the vessel; or
  - (e) the machinery proposed to propel the vessel makes the vessel unsafe or unseaworthy or can develop power in excess of the maximum power recommended by the manufacturer of the vessel; or
  - (f) the cargo or goods carried on the vessel could be a risk—
    - (i) to that vessel; or
    - (ii) to other vessels; or
    - (iii) to people on the vessel; or
    - (iv) to people on other vessels; or
  - (g) the vessel is generally unseaworthy.
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**201 Written direction with reasons to be given**

If the Director or a member of the police force gives a direction under section 14 of the Act, a copy of the direction, and the reasons for making the direction, must be given to the owner and operator of the vessel as soon as practicable after the direction is given.

**202 Review of direction**

- (1) The owner or operator of the vessel may, within 14 days after the date that a copy of a direction under regulation 201 is given, apply to the Director for the direction to be reviewed.
- (2) The Director must, within 14 days after the date an application under subregulation (1) is received, review the direction given to the applicant.

**203 Revocation of direction**

If the Director considers that a direction under section 14 of the Act should no longer apply, the Director must—

- (a) revoke the direction in writing; and
- (b) provide the owner and the operator of the vessel with a copy of the written revocation of the direction as soon as practicable.

**204 International regulations for preventing collisions at sea**

- (1) The master of a vessel must observe the Prevention of Collisions Convention when operating a vessel on state waters.

**Note**

Under section 58(2) of the Act, a person who contravenes subregulation (1) is liable to a penalty of 100 penalty units or imprisonment for two years or both if the person is a natural person, or 200 penalty units if the person is a body corporate.

- (2) For the purposes of subregulation (1), Annex I, Annex II and Annex III of the Prevention of Collisions Convention do not apply to vessels on inland waters.

**Note**

The Prevention of Collisions Convention is defined in section 53 of the Act and set out in Schedule 1 of the Act.

**205 Emergency procedures and safety of navigation—trading and fishing vessels**

The master of a vessel to which section 59(2) of the Act applies must observe Chapter V of the regulations contained in the Annex to the Safety Convention (other than regulation 13 or 15 of that Chapter of those regulations).

**Note**

The Safety Convention (or the International Convention for the Safety of Life at Sea, 1974) is defined in section 53 of the Act and set out in Schedule 2 of the Act.

**206 Vessel not to operate unless provided with certain type of EPIRB**

- (1) A person must not operate a vessel on coastal waters more than 2 nautical miles from the shore unless the vessel is provided with an emergency position-indicating radio beacon (EPIRB)—
- (a) that has an operational frequency of 406 MHz; and
  - (b) that complies with Australian and New Zealand Standard AS/NZS 4280.1 406 MHz Satellite Distress Beacons—Part 1: Maritime Emergency Position-Indicating Radio Beacons (EPIRBs); and

- (c) that is registered with the Australian Maritime Safety Authority (AMSA) with up-to-date information and has affixed to it a proof-of-registration sticker from AMSA.

Penalty: 5 penalty units.

- (2) A person operating a vessel on coastal waters more than 2 nautical miles from the shore must carry proof issued by AMSA that the vessel is provided with an EPIRB of the type described in subregulation (1).

Penalty: 5 penalty units.

**207 Certificate of survey for vessel to be endorsed for Port Phillip Heads**

- (1) The owner of a trading vessel must ensure that the vessel does not carry passengers in or through Port Phillip Heads unless the vessel has a current valid certificate of survey that has been specifically endorsed by the Director for the carriage of passengers in or through Port Phillip Heads.

Penalty: 20 penalty units.

- (2) The master of a trading vessel must ensure that the vessel does not carry passengers in or through Port Phillip Heads unless the vessel has a current valid certificate of survey that has been specifically endorsed by the Director for the carriage of passengers in or through Port Phillip Heads.

Penalty: 20 penalty units.

**Note**

A certificate of survey issued by the Director to a trading vessel to carry passengers in or through Port Phillip Heads may be subject to any conditions imposed by the Director under section 99E(2) of the Act.

**208 Owner and master to comply with conditions for Port Phillip Heads**

- (1) The owner of a trading vessel that is less than 16 metres in length and is carrying passengers in or through Port Phillip Heads must take all reasonable steps to ensure that—
- (a) the vessel does not enter and does not traverse Port Phillip Heads—
    - (i) outside the hours of daylight or in periods of restricted visibility; or
    - (ii) if the most recent coastal waters forecast issued by the Bureau of Meteorology for northern Bass Strait predicts for the time of passage—
      - (A) sea and swell conditions exceeding 2 metres in height; or
      - (B) wind exceeding a speed of 20 knots coming from a direction that is in the southerly semi-circle of the compass; or
    - (iii) if the actual sea and swell conditions exceed 2 metres in height; or
    - (iv) if the actual average wind speed exceeds 20 knots and comes from a direction that is in the southerly semi-circle of the compass; and
  - (b) when the vessel enters, and while the vessel traverses, Port Phillip Heads each passenger and each crew member is wearing—
    - (i) in the case of a dive charter vessel, a fully sealed drysuit or wetsuit that is at least 5 millimetres thick; or
    - (ii) in any other case, a PFD Type 1; and
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- (c) before the vessel enters Port Phillip Heads, each passenger is given a briefing regarding safety, emergency and evacuation procedures; and
- (d) the vessel prominently flies Code Flag "R" of the International Code of Signals, when the vessel enters and while the vessel traverses Port Phillip Heads.

Penalty: 20 penalty units.

- (2) The master of a trading vessel that is less than 16 metres in length and is carrying passengers in or through Port Phillip Heads, must ensure that—
  - (a) the vessel does not enter and does not traverse Port Phillip Heads—
    - (i) outside the hours of daylight or in periods of restricted visibility; or
    - (ii) if the most recent coastal waters forecast issued by the Bureau of Meteorology for northern Bass Strait predicts for the time of passage—
      - (A) sea and swell conditions exceeding 2 metres in height; or
      - (B) wind exceeding a speed of 20 knots coming from a direction that is in the southerly semi-circle of the compass; or
    - (iii) if the actual sea and swell conditions exceed 2 metres in height; or
    - (iv) if the actual average wind speed exceeds 20 knots and comes from a direction that is in the southerly semi-circle of the compass; and

- (b) when the vessel enters, and while the vessel traverses, Port Phillip Heads each passenger and each crew member is wearing—
  - (i) in the case of a dive charter vessel, a fully sealed drysuit or wetsuit that is at least 5 millimetres thick; or
  - (ii) in any other case, a PFD Type 1; and
- (c) before the vessel enters Port Phillip Heads, each passenger is given a briefing regarding safety, emergency and evacuation procedures; and
- (d) the vessel prominently flies Code Flag "R" of the International Code of Signals, when the vessel enters and while the vessel traverses Port Phillip Heads.

Penalty: 20 penalty units.

- (3) Subregulations (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (2)(a)(ii), (2)(a)(iii) and (2)(a)(iv) do not apply in the case of a vessel that has already entered, and is traversing, Port Phillip Heads—
  - (a) when the weather forecast referred to is issued by the Bureau of Meteorology; or
  - (b) when the actual sea and swell conditions begin to exceed 2 metres in height; or
  - (c) when the actual average wind speed begins to exceed 20 knots and to come from a direction that is in the southerly semi-circle of the compass.

**209 Certificate of survey for vessel to be endorsed for Lakes Entrance Bar**

- (1) The owner of a trading vessel must ensure that the vessel does not carry passengers while operating across the Lakes Entrance Bar unless the vessel has a current valid certificate of survey that has
-

been specifically endorsed by the Director for the carriage of passengers across the Lakes Entrance Bar.

Penalty: 20 penalty units.

- (2) The master of a trading vessel must ensure that the vessel does not carry passengers while operating across the Lakes Entrance Bar unless the vessel has a current valid certificate of survey that has been specifically endorsed by the Director for the carriage of passengers across the Lakes Entrance Bar.

Penalty: 20 penalty units.

**Note**

A certificate of survey issued by the Director to a trading vessel to carry passengers across the Lakes Entrance Bar may be subject to any conditions imposed by the Director under section 99E(2) of the Act.

**210 Owner and master to comply with conditions for Lakes Entrance Bar**

- (1) The owner of a trading vessel that is carrying passengers in or through the Lakes Entrance Bar must take all reasonable steps to ensure that—
- (a) the vessel does not proceed to sea by crossing or attempting to cross the Bar if the most recent coastal waters forecast issued by the Bureau of Meteorology for eastern Bass Strait predicts for any time during the voyage—
    - (i) sea and swell conditions exceeding 2 metres in height; or
    - (ii) wind exceeding a speed of 20 knots coming from a direction that is in the southerly semi-circle of the compass; and

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- (b) the vessel does not cross, or attempt to cross, the Bar—
  - (i) outside the hours of daylight or in periods of restricted visibility; or
  - (ii) if the actual sea and swell conditions exceed 2 metres in height; or
  - (iii) if the actual average wind speed exceeds 20 knots and comes from a direction that is in the southerly semi-circle of the compass; and
- (c) each passenger and crew member is wearing a PFD Type 1 while the vessel crosses, or attempts to cross, the Bar; and
- (d) before the vessel crosses, or attempts to cross, the Bar, each passenger is given a briefing regarding safety, emergency and evacuation procedures; and
- (e) all passengers are located in the open area of the vessel when the vessel crosses, or attempts to cross, the Bar; and
- (f) the vessel prominently flies Code Flag "R" of the International Code of Signals, when the vessel crosses, or attempts to cross, the Bar.

Penalty: 20 penalty units.

- (2) The master of a trading vessel that is carrying passengers in or through the Lakes Entrance Bar, must ensure that—
    - (a) the vessel does not proceed to sea by crossing, or attempting to cross, the Bar if the most recent coastal waters forecast issued by the Bureau of Meteorology for eastern Bass Strait predicts for any time during the voyage—
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- (i) sea and swell conditions exceeding 2 metres in height; or
- (ii) wind exceeding a speed of 20 knots coming from a direction that is in the southerly semi-circle of the compass; and
- (b) the vessel does not cross, or attempt to cross, the Bar—
  - (i) outside the hours of daylight or in periods of restricted visibility; or
  - (ii) if the actual sea and swell conditions exceed 2 metres in height; or
  - (iii) if the actual average wind speed exceeds 20 knots and comes from a direction that is in the southerly semi-circle of the compass; and
- (c) each passenger and crew member is wearing a PFD Type 1 while the vessel crosses, or attempts to cross, the Bar; and
- (d) before the vessel crosses, or attempts to cross, the Bar, each passenger is given a briefing regarding safety, emergency and evacuation procedures; and
- (e) all passengers are located in the open area of the vessel when the vessel crosses, or attempts to cross, the Bar; and
- (f) the vessel prominently flies Code Flag "R" of the International Code of Signals, when the vessel crosses, or attempts to cross, the Bar.

Penalty: 20 penalty units.

- (3) Subregulations (1)(a), (1)(b)(ii), (1)(b)(iii), (2)(a), (2)(b)(ii) and (2)(b)(iii) do not apply in the case of a vessel that has already entered, and is crossing, the Lakes Entrance Bar—
- (a) when the weather forecast referred to is issued by the Bureau of Meteorology; or
  - (b) when the actual sea and swell conditions begin to exceed 2 metres in height; or
  - (c) when the actual average wind speed begins to exceed 20 knots and to come from a direction that is in the southerly semi-circle of the compass.

**Division 2—Survey, construction and equipment of commercial vessels**

**211 Survey of trading, fishing and hire and drive vessels**

- (1) For the purposes of section 97 of the Act, a certificate of survey for a trading, fishing or a hire and drive vessel may be issued by the Director for a period not exceeding 12 months.
- (2) Section 14 of the Uniform Shipping Laws Code extends and applies with respect to the requirements for the issue of a certificate of survey for a trading, fishing or hire and drive vessel.

**212 Trading and fishing vessels—construction and equipment**

- (1) The following provisions of the Uniform Shipping Laws Code extend and apply to trading vessels and fishing vessels—
    - (a) sections 5A, 5B, 5C (except clause 5C.15), 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L and 5M;
    - (b) section 6;
    - (c) section 7 (except clauses 74.4 and 74.5);
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- (d) sections 8A, 8B and 8C;
- (e) sections 9, 10, 11, 12 and 13.
- (2) Part E of the National Standard for Commercial Vessels extends and applies to trading vessels and fishing vessels.

**213 Hire and drive vessels—construction and equipment**

The owner and the operator of a hire and drive vessel must observe section 18 of the Uniform Shipping Laws Code (except clauses 2.4.1, 2.5.1, 2.5.3 and Part 3 and Part 4).

**214 Certificate of survey to be carried on board certain vessels**

- (1) If a vessel is a trading vessel, fishing vessel or hire and drive vessel, the owner of the vessel must ensure that at all times while the vessel is operating in State waters the certificate of survey issued for that vessel or a certified copy of it is displayed in a place on the vessel in a manner that it can be readily seen by any person on board the vessel.

Penalty: 10 penalty units.

- (2) If a vessel is a trading vessel or fishing vessel, the master of the vessel must ensure that at all times while the vessel is operating in State waters the certificate of survey issued for that vessel or a certified copy of it is displayed in a place on the vessel in a manner that it can be readily seen by any person on board the vessel.

Penalty: 10 penalty units.

- (3) For the purposes of this regulation, the Director may certify a copy of a certificate of survey to be a true copy of that certificate.

- (4) In this regulation *certified copy* of a certificate of survey means a copy of a certificate of survey that has been certified to be a true copy of that certificate by—
- (a) the Director; or
  - (b) a person authorised under section 107A(1) or 123C(1) of the **Evidence Act 1958** to take affidavits or witness the signing of statutory declarations.

### **Division 3—Operation of hire and drive vessels**

#### **215 Maintenance and production of register of hire contracts**

- (1) The owner of a hire and drive vessel must maintain a register in a form approved by the Director of each hire and drive contract entered into for the use of that vessel, which includes—
- (a) the full name, address and signature of the hirer; and
  - (b) the date and time that the vessel was hired to the hirer; and
  - (c) the number of people to be carried on the vessel; and
  - (d) the date and time that the vessel was returned by the hirer.

Penalty: 2 penalty units.

- (2) A person who hires a hire and drive vessel must provide to the owner of the vessel the details specified in subregulation (1)(a) and (c).

Penalty: 2 penalty units.



- (3) The owner of a hire and drive vessel must, if requested by a member of the police force or by a person authorised by the Director, produce for inspection the register maintained under subregulation (1).

Penalty: 2 penalty units.

**216 Sale or purchase of hire and drive vessel**

- (1) The owner of a hire and drive vessel who sells or otherwise disposes of the vessel must, within 14 days after the sale or disposal of the vessel, notify the Director in writing of—

- (a) the date of the sale or disposal of the vessel; and
- (b) the name, identification number and description of the vessel; and
- (c) the name and address of the purchaser or person acquiring the vessel; and
- (d) the owner's full name and address.

Penalty: 2 penalty units.

- (2) A person who purchases or otherwise acquires a hire and drive vessel must, within 14 days after the purchase or acquisition, notify the Director in writing of—

- (a) the date of the purchase or acquisition of the vessel; and
- (b) the name, identification number, and description of the vessel; and
- (c) the person's full name and address.

Penalty: 2 penalty units.

**217 Owner to report accident involving hire and drive vessel**

The owner of a hire and drive vessel that is involved in an accident resulting in personal injury or property damage must report, in writing and without delay, to the Director full particulars of the accident.

Penalty: 3 penalty units.

**218 Use of hire and drive vessel**

The hirer, and the operator (if the hirer is not the operator), of a hire and drive vessel must not—

- (a) permit any equipment listed on the certificate of survey for the vessel to be improperly used or handled; or
- (b) permit the vessel to proceed beyond or outside the geographical limits specified on the certificate of survey for the vessel.

Penalty: 4 penalty units.

**219 Instructions to be given to hirers**

- (1) The owner of a hire and drive vessel must take reasonable steps to ensure that the vessel is not hired out to a hirer or operated by a person who is not competent to take charge of that vessel within the geographical limits specified by the Director on the certificate of survey for the vessel.

Penalty: 5 penalty units.

- (2) The owner of a hire and drive vessel must ensure that any person who hires the vessel and any person who operates the vessel is given clear and concise instructions about—
  - (a) the correct and safe handling and navigation of the vessel; and

- (b) the correct and safe operation of machinery, fuel, gas and pumping systems and valves or openings in the hull of the vessel; and
- (c) the storage and use of life saving appliances, fire appliances and other safety equipment; and
- (d) the geographical limits within which the vessel may be operated.

Penalty: 5 penalty units.

- (3) The owner of a hire and drive vessel must ensure that any person who hires the vessel and any person who operates the vessel is given a plan showing the geographical limits within which the vessel may be operated.

Penalty: 5 penalty units.

- (4) The owner of a hire and drive vessel must obtain from the person hiring the vessel a signed statement indicating that the person fully understands the geographical limits and restrictions and any conditions that the Director has certified on the certificate of survey about the use of the vessel.

Penalty: 5 penalty units.

## **220 Reckless operation of hire and drive vessel**

- (1) A person must not operate a hire and drive vessel on State waters recklessly, negligently or in a way that is dangerous to the public or that is likely in any way to cause injury or damage to any person or property.

Penalty: 20 penalty units.

- (2) A person must not when being towed or propelled by a hire and drive vessel on State waters (whether or not the person is riding on water skis or a surfboard or any other device), act recklessly,

negligently or in a way that is dangerous to the public or that is likely in any way to cause injury or damage to any person or property.

Penalty: 20 penalty units.

- (3) Subregulations (1) and (2) do not apply to a person who uses a vessel in accordance with section 26 of the Act to assist a person in distress.

**221 Person under 10 to wear personal flotation device**

- (1) The owner of a hire and drive vessel must ensure that, when the vessel departs on a voyage on State waters, every person under the age of 10 years on that vessel is wearing a personal flotation device.

Penalty: 4 penalty units.

- (2) The hirer of a hire and drive vessel must ensure that, when that vessel is underway on State waters, every person under the age of 10 years on the vessel is wearing a personal flotation device.

Penalty: 4 penalty units.

- (3) Subregulations (1) and (2) do not apply to a person under the age of 10 years who is within a deck house, a cabin, a half-cabin or a securely enclosed under-deck space on the vessel.

**222 Fuelling of hire and drive vessel**

- (1) The owner of a hire and drive vessel, which is under the owner's immediate control, must not permit the vessel to be fuelled at a wharf, jetty or pier if there are passengers on board the vessel.

Penalty: 4 penalty units.

- (2) The hirer, and the operator (if the operator is not the hirer), of a hire and drive vessel must not permit the vessel to be fuelled at a wharf, jetty or pier if there are passengers on board the vessel.

Penalty: 4 penalty units.

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**223 Naked flame on hire and drive vessel**

- (1) The owner of a hire and drive vessel must not permit any appliance which produces a naked flame to be installed in any compartment of the vessel containing motors or a fuel tank.

Penalty: 4 penalty units.

- (2) The owner of a hire and drive vessel, which is under the owner's immediate control, must not permit any appliance which produces a naked flame to be used in any compartment of the vessel containing motors or a fuel tank.

Penalty: 4 penalty units.

- (3) The hirer, and the operator (if the operator is not the hirer), of a hire and drive vessel must not permit any appliance which produces a naked flame to be used in any compartment of the vessel containing motors or a fuel tank.

Penalty: 4 penalty units.

**224 Stowage of equipment on hire and drive vessel**

The owner of a hire and drive vessel must take reasonable steps to ensure that all lifesaving equipment, fire extinguishers and other safety equipment carried on the vessel are—

- (a) placed so that they are readily accessible;  
and
- (b) maintained in good order and working condition.

Penalty: 4 penalty units.

**225 Hire and drive vessel not to be overloaded**

- (1) The owner of a hire and drive vessel, which is under the owner's immediate control, must not permit more than the maximum number of
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passengers, as specified on the certificate of survey, on board the vessel at any one time.

Penalty: 4 penalty units.

- (2) A person must not operate a hire and drive vessel that has more than the maximum number of passengers, as specified on the certificate of survey, on board the vessel at any one time.

Penalty: 4 penalty units.

#### **Division 4—Recreational vessels**

##### **226 Construction of recreational vessels**

A person who constructs a recreational vessel must do so in accordance with the requirements of Schedule 3.

Penalty: 5 penalty units.

##### **227 Operation of recreational vessels**

A person must not operate a recreational vessel on State waters unless it is constructed in accordance with Schedule 3.

Penalty: 5 penalty units.

##### **228 Safety equipment required for recreational vessels**

- (1) A person must not operate a recreational vessel of a class specified in Column 2 of Table A in Schedule 4 in coastal waters unless the vessel is equipped with the items of equipment listed in Column 3 for that vessel in the quantity specified opposite in Column 4.

Penalty: 5 penalty units.

- (2) A person must not operate a recreational vessel of a class specified in Column 2 of Table A in Schedule 4 in enclosed waters unless the vessel is equipped with the items of equipment listed in

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Column 3 for that vessel in the quantity specified opposite in Column 5.

Penalty: 5 penalty units.

- (3) A person must not operate a recreational vessel of a class specified in Column 2 of Table A in Schedule 4 in inland waters unless the vessel is equipped with the items of equipment listed in Column 3 for that vessel in the quantity specified opposite in Column 6.

Penalty: 5 penalty units.

- (4) For the purposes of subregulations (1), (2) and (3), if the requirements relating to an item of equipment specified in Column 4, 5 or 6, respectively, in Table A in Schedule 4 are expressed to be subject to a condition, the recreational vessel is required to be equipped with that item of equipment only if the condition applies to the vessel.

**Examples**

- 1 For mechanically powered recreational vessels the requirements relating to a bailer are expressed in Columns 4, 5 and 6 as "1—if no electric or manual bilge pumping system". This means that such vessels are required to be equipped with a bailer only if the vessel does not have an electric or manual bilge pumping system.
  - 2 For any class of recreational vessels that is to be operated on coastal waters the requirements relating to a compass are expressed in Column 4 as "1—if more than 2 nautical miles from the coast". This means that such vessels are required to be equipped with a compass only if the vessel operates more than 2 nautical miles from the coast.
- (5) A person must not operate a recreational vessel unless each item of equipment that is required to be carried on board the vessel under subregulation (1), (2) or (3) complies with any requirements
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specified in Table B in Schedule 4 for that item of equipment.

Penalty: 5 penalty units.

**229 Fire fighting equipment required for recreational vessels**

- (1) This regulation applies to a person who operates a recreational vessel that carries fuel on board, or that is equipped with an electric start motor, gas installation or fuel stove.
- (2) Subject to subregulation (5), the person must ensure that—
  - (a) the vessel is equipped with the number of portable fire extinguishers specified in Column 2 of Table C in Schedule 4 for the size of the vessel specified opposite in Column 1; and
  - (b) each of those portable fire extinguishers is of the minimum nominal capacity specified in Column 2 of Table D in Schedule 4 for the volume of flammable or combustible liquids that is able to be carried on the vessel specified opposite in Column 1.

Penalty: 5 penalty units.

- (3) Subject to subregulation (4), the person must ensure that one of the portable fire extinguishers required to be carried on the vessel under subregulation (2) is positioned, and readily available, adjacent to the engine and fuel carrying spaces of the vessel.

Penalty: 5 penalty units.

- (4) Subregulation (3) does not apply if a fixed fire extinguishing system is fitted to the enclosed engine compartment of the vessel and the capacity of the system is the same or greater than the
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minimum nominal capacity of a portable fire extinguisher required under subregulation (2).

- (5) For the purposes of subregulation (2), a fixed fire extinguishing system referred to in subregulation (4) is taken to be a portable fire extinguisher.
- (6) If cooking facilities are located within an enclosed space on the vessel, the person must ensure that a fire blanket is positioned in a conspicuous location and that it is readily accessible to a person using the cooking facilities.

Penalty: 5 penalty units.

- (7) In this regulation—

*fire blanket* means a fire blanket that complies with AS/NZS 3504 Fire Blankets;

*fixed fire extinguishing system* means a fixed fire extinguishing system that complies with International Standard ISO 9094 Small Craft—Fire Protection.

### **230 Maintenance and placement of safety equipment and fire extinguishers**

- (1) A person must not operate a recreational vessel unless all lifesaving equipment, fire extinguishers and other safety equipment required to be carried on board the vessel under regulations 230 and 231—
  - (a) are placed or located in a conspicuous and readily accessible position at all times; and
  - (b) are kept in good order at all times; and
  - (c) are maintained or serviced in a way that ensures that they are able to operate at all times in the way that they were designed to operate; and

- (d) are serviced on or before the date specified by the manufacturer for that item of equipment.

Penalty: 5 penalty units.

- (2) If more than one fire extinguisher of the same type is required under regulation 231 to be carried on board a recreational vessel, a person must not operate the vessel unless each fire extinguisher of that type is located in a separate position on the vessel.

Penalty: 5 penalty units.

**231 PFD to be worn on certain recreational vessels at all times by person on open area**

- (1) A person who is on an open area of a recreational vessel of a type listed in column 2 of Table A in Schedule 5 must wear a personal flotation device—
  - (a) of a type specified in Column 3 of the Table opposite that type of vessel at all times when the vessel is underway on coastal waters; and
  - (b) of a type specified in Column 4 of the Table opposite that type of vessel at all times when the vessel is underway on enclosed waters; and
  - (c) of a type specified in Column 5 of the Table opposite that type of vessel at all times when the vessel is underway on inland waters.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to a person who is operating a kite board or sail board if—
    - (a) the person is no more than 400 metres from the shore; and
    - (b) the person is wearing a wetsuit that is at least 3 millimetres thick.
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- (3) Subregulation (1) does not apply to a person who—
- (a) is engaged in diving from a recreational vessel that is displaying a dive flag and that is not moving at a speed greater than 5 knots; or
  - (b) is in the process of donning or removing diving equipment on board a recreational vessel that is displaying a dive flag and that is not moving at a speed greater than 5 knots.

**232 PFD to be worn on certain recreational vessels during time of heightened risk**

- (1) A person who is on an open area of a recreational vessel of a type listed in column 2 of Table B in Schedule 5 must, during a time of heightened risk wear a personal flotation device—
- (a) of a type specified in Column 3 of the Table opposite that type of vessel when the vessel is underway on coastal waters; and
  - (b) of a type specified in Column 4 of the Table opposite that type of vessel when the vessel is underway on enclosed waters; and
  - (c) of a type specified in Column 5 of the Table opposite that type of vessel when the vessel is underway on inland waters.

Penalty: 5 penalty units.

- (2) In this regulation *time of heightened risk* means—
- (a) when the vessel is crossing or attempting to cross an ocean bar or operating within a designated hazardous area; or

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- (b) when the vessel is being operated by a person who is alone; or
  - (c) when the vessel is being operated during the period commencing one hour after sunset and ending one hour before sunrise; or
  - (d) when the vessel is being operated during a period of restricted visibility; or
  - (e) when there is a significant likelihood that—
    - (i) the vessel may capsize or be swamped by waves; or
    - (ii) the occupants of the vessel may fall overboard or be forced to enter the water; or
  - (f) when the vessel is operating in an area where—
    - (i) a gale warning; or
    - (ii) a storm warning; or
    - (iii) a severe thunderstorm warning; or
    - (iv) a severe weather warning—  
issued by the Bureau of Meteorology, is current; or
  - (g) if the vessel is a yacht and no safety barriers, lifelines, rails, safety harnesses or jacklines are in use.
- (3) Subregulation (1) does not apply to a person—
- (a) who is engaged in diving from a recreational vessel that is displaying a dive flag and that is not moving at a speed greater than 5 knots; or
  - (b) who is in the process of donning or removing diving equipment on board a recreational vessel that is displaying a dive flag and that
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is not moving at a speed greater than 5 knots—

if the vessel is crossing or attempting to cross an ocean bar, operating within a designated hazardous area or being operated during the period commencing one hour after sunset and ending one hour before sunrise.

**233 Children under 10 to wear PFD at all times**

Despite regulations 234 and 235, the operator of a recreational vessel of a type listed in column 2 of Table A or Table B in Schedule 5 must ensure that every person aged less than 10 years old who is on an open area of the vessel wears, at all times, a personal flotation device that is—

- (a) of a type specified in column 3 of those Tables opposite that type of vessel when the vessel is underway on coastal waters; and
- (b) of a type specified in column 4 of those Tables opposite that type of vessel when the vessel is underway on enclosed waters; and
- (c) of a type specified in column 5 of those Tables opposite that type of vessel when the vessel is underway on inland waters.

Penalty: 5 penalty units.

**234 Person being towed by recreational vessel to wear PFD**

- (1) A person who is being towed by a recreational vessel must, at all times, wear a personal flotation device.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to a person on board a vessel that is being towed by another vessel.
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**235 Person not to operate recreational vessel until each person wears a PFD**

- (1) The person operating a recreational vessel must not allow the vessel to start a voyage until each person on board complies—
  - (a) with regulation 234 or 236 (as the case may be); or
  - (b) with regulation 235, if a time of heightened risk exists.

Penalty: 5 penalty units.

- (2) If a time of heightened risk arises while the vessel is underway, the person operating the vessel must take all reasonable steps to ensure that each person on board complies with regulation 235.

Penalty: 5 penalty units.

- (3) The person operating a recreational vessel must not allow the vessel to start towing a person unless the person is wearing a personal flotation device.

Penalty: 5 penalty units.

- (4) In this regulation, *time of heightened risk* has the same meaning as it has in regulation 235(2).

**236 Exemption from safety equipment requirements**

- (1) The Director may, by notice published in the Government Gazette, exempt any person or any class of persons in respect of any vessel or any class of vessels from the requirements of regulation 228, 229, 230, 231, 232, 233, 234 or 235.
- (2) The Director may impose conditions on an exemption relating to all or any of the following—
  - (a) specifying the type of vessel to which the exemption applies;

- (b) specifying the activity that the vessel is engaged in;
  - (c) requiring the occupants of the vessel to wear particular equipment or devices;
  - (d) requiring the vessel to be used for particular purposes;
  - (e) specifying the length of the vessel;
  - (f) specifying the items of equipment to which the exemption applies;
  - (g) specifying items of equipment that must be carried on board the vessel;
  - (h) specifying the procedures that are to be put in place for the protection and safety of participants in, or observers of, the activity;
  - (i) specifying any other matters considered necessary by the Director.
- (3) A person must comply with any conditions that apply to exemptions given under this regulation.

Penalty: 5 penalty units.

**237 Fuelling of recreational vessel**

The operator of a recreational vessel must not permit the vessel to be fuelled at a wharf, jetty or pier if there are passengers on board the vessel.

Penalty: 4 penalty units.

**238 Naked flame on recreational vessel**

- (1) The owner of a recreational vessel must ensure that any appliance which produces a naked flame is not installed in any compartment of the vessel that contains motors or a fuel tank.

Penalty: 4 penalty units.

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- (2) The operator of a recreational vessel must ensure that any appliance which produces a naked flame is not used in any compartment of the vessel that contains motors or a fuel tank.

Penalty: 4 penalty units.

**239 Overloaded recreational vessel not to be operated**

- (1) A person must not operate a recreational vessel that is overloaded within the meaning of this regulation.

Penalty: 4 penalty units.

- (2) A recreational vessel is overloaded—

- (a) if the number of persons on the vessel exceeds the maximum number of persons specified by the manufacturer of the vessel on a capacity plate attached to the vessel; or

- (b) if—

- (i) the recreational vessel is of a length specified in Column 1 of the following Table and the number of persons being carried on board the vessel as specified in Column 2 of the Table is exceeded—

**Table**

<i>Column 1</i> <i>Length of recreational vessel</i>	<i>Column 2</i> <i>Maximum No. of Persons</i>
Less than 3 metres	2
3 metres or more but less than 3.5 metres	3
3.5 metres or more but less than 4.5 metres	4
4.5 metres or more but less than 5 metres	5

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<i>Column 1</i>	<i>Column 2</i>
<i>Length of recreational vessel</i>	<i>Maximum No. of Persons</i>
5 metres or more but less than 5.5 metres	6
5.5 metres or more but less than 6 metres	7

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; or

- (ii) if the vessel is a single deck vessel and is 6 metres or more in length and the number of people being carried on board exceeds 7 or the number of people derived by applying the following formula (rounded up to the nearest whole number), whichever is the greater—

$$P = 0.75 \times L \times \sqrt{B}$$

where—

P = the number of people;

L = the length of the vessel in metres;

B = the width of the vessel in metres; or

- (iii) if the vessel is fitted with a flying bridge and is 6 metres or more in length and the number of people being carried on board exceeds 7 or the number of people derived by applying the following formula (rounded up to the nearest whole number), whichever is the greater—

$$P = 0.6 \times L \times \sqrt{B}$$

where P, L and B have the same meaning as they have in subparagraph (ii); or

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- (iv) if the vessel is fitted with a flying bridge and the number of people carried on that flying bridge exceeds one quarter of the number of people (rounded up to the nearest whole number) permitted to be carried on the vessel under subparagraph (iii); or
- (v) if the vessel is a decked canoe or kayak or is otherwise fitted with individual cockpits and the number of persons carried on the vessel exceeds the number of individual cockpits in the vessel irrespective of the age of the person.

Penalty: 4 penalty units.

- (3) For the purposes of this regulation a vessel is not overloaded if—
    - (a) the manufacturer of the vessel has certified in writing that the vessel may be safely operated with a specified number of people on board; and
    - (b) the number of people on board the vessel does not exceed that specified number.
  - (4) In calculating the number of people on board a vessel for the purposes of this regulation, except subregulation (2)(b)(v)—
    - (a) children aged more than 12 months but less than 12 years will be counted as 0.5 person;
    - (b) children aged less than 1 year will not be included.
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**PART 3—CREWING, CERTIFICATES AND LICENCES**

**Division 1—Crewing of vessels and certificates of competence**

**300 Crewing of trading vessels**

- (1) A trading vessel must be crewed in accordance with a determination by the Director.
- (2) The Director must determine the crewing of a trading vessel in accordance with the requirements of Part D of the National Standard for Commercial Vessels.

**301 Crewing of fishing vessels**

- (1) A fishing vessel must be crewed in accordance with a determination by the Director.
- (2) The Director must determine the crewing of a fishing vessel in accordance with the requirements of Part D of the National Standard for Commercial Vessels.

**302 Certificates of competency under the National Standard for Commercial Vessels**

The Director may issue in accordance with Part D of the National Standard for Commercial Vessels a certificate of competency of the following grades—

- (a) Master Class 3;
  - (b) Master Class 4;
  - (c) Master Class 5;
  - (d) Mate Class 4;
  - (e) Coxswain;
  - (f) Skipper Grade 1;
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- (g) Skipper Grade 2;
- (h) Skipper Grade 3;
- (i) Marine Engineer Class 3;
- (j) Marine Engine Driver Grade 1;
- (k) Marine Engine Driver Grade 2;
- (l) Marine Engine Driver Grade 3.

**303 Certificate of competency**

- (1) An application for the issue, variation or renewal of a certificate of competency may be made to the Director.
  - (2) An application must be—
    - (a) in the form determined by the Director; and
    - (b) accompanied by—
      - (i) evidence that the applicant has completed a course appropriate for the purpose for which the certificate is issued that is approved by the Director; and
      - (ii) evidence that the applicant has complied with any prerequisites for a certificate of competency specified in Annex D of Part D National Standard for Commercial Vessels; and
      - (iii) any documents needed to support any information supplied on that form (if required by the Director); and
      - (iv) the fee prescribed in Division 2 of Part 8 of these Regulations.
  - (3) A certificate of competency is valid for a period of 5 years after the date it is issued.
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- (4) The Director may require—
- (a) the applicant to provide further information or material in respect of the application; and
  - (b) that the information be verified; and
  - (c) proof of the identity of the person making the application.

**304 Certificate of competency to be subject to endorsement for Port Phillip Heads**

The master of a trading vessel carrying passengers in or through Port Phillip Heads must not so operate the vessel unless he or she holds a current valid certificate of competency endorsed by the Director for that purpose.

Penalty: 20 penalty units.

**305 Requirements to be met before a certificate of competency may be endorsed for Port Phillip Heads**

The Director may issue a certificate of competency or vary an existing certificate of competency so that it is endorsed for a trading vessel carrying passengers in or through Port Phillip Heads, if the certificate holder or applicant has completed to the satisfaction of the Director the training course conducted by or on behalf of the Director set out in Schedule 6.

**306 Period of endorsement remains in force for Port Phillip Heads**

An endorsement on a certificate of competency issued under regulation 305 remains in force while the certificate remains current unless it is suspended or cancelled by the Director.

**307 Certificate of competency to be subject to endorsement for Lakes Entrance Bar**

The master of a trading vessel carrying passengers across the Lakes Entrance Bar must not so operate the vessel unless he or she holds a current valid certificate of competency endorsed by the Director for that purpose.

Penalty: 20 penalty units.

**308 Special requirements for Lakes Entrance Bar**

- (1) The Director may issue a certificate of competency or vary an existing certificate of competency so that it is endorsed for a trading vessel carrying passengers across the Lakes Entrance Bar, if the certificate holder or applicant—
    - (a) has met the qualifying sea service prerequisites, as set out in Schedule 7; and
    - (b) has successfully completed a training course conducted by or on behalf of the Director, as set out in Schedule 7; and
    - (c) is able to satisfy an examiner or panel of examiners appointed by the Director by means of an oral examination or written examination or both that he or she is competent to act as a master of a trading vessel carrying passengers across the Lakes Entrance Bar in accordance with this Division; and
    - (d) has complied with subregulations (2), (3) and (4).
  - (2) On completion of the requirements of subregulation (1)(a), (b) and (c), the applicant must complete—
    - (a) one or more crossings of the Lakes Entrance Bar as the master of a trading vessel; and
-

- (b) be accompanied on each crossing of the Lakes Entrance Bar by a person approved by the Director to assess the applicant's competency.
- (3) The applicant must maintain an accurate and complete written record of each qualifying crossing of the Lakes Entrance Bar required by subregulation (2) and the range of conditions experienced during each crossing.
- (4) The record of the applicant's qualifying sea service must be in a form approved by the Director and the record must be made available to the Director at the time of application for its examination.

**309 Period of endorsement remains in force for Lakes Entrance Bar**

An endorsement on a certificate of competency issued under regulation 308 remains in force while the certificate is current unless—

- (a) the endorsement is suspended or cancelled by the Director; or
- (b) the certificate holder requests in writing that the Director cancel the endorsement.

**Division 2—Pilots, pilot exemption and local knowledge**

**310 Offence to act as a pilot without a licence**

A person must not act as a pilot unless that person holds a pilot licence issued by the Director.

Penalty: 10 penalty units.

**311 Pilot exempt master**

- (1) A master who holds a pilot exemption for a particular port, in accordance with this Division, is exempted from the requirement to engage a pilot with respect to that port.
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- (2) A pilot exemption may be issued to a master in accordance with a determination of the Director.

**312 Pilot licence or pilot exemption**

- (1) Director may issue a pilot licence or a pilot exemption.
- (2) An application for a pilot licence or pilot exemption may be made to the Director.
- (3) An application must be—
- (a) in the form determined by the Director; and
  - (b) accompanied by—
    - (i) evidence of the qualifications which the applicant claims entitle him or her to a pilot licence or pilot exemption; and
    - (ii) the prescribed fee.
- (4) The pilot licence or pilot exemption may be limited by a condition imposed by the Director.
- (5) The Director—
- (a) may require the applicant to provide further information or material in respect of the application; and
  - (b) may require that the information be verified; and
  - (c) may require proof of the identity of the person making the application.

**313 Qualifications for the issue of a pilot licence and pilot exemption**

- (1) A person is qualified to hold a pilot licence if he or she has satisfied the requirements in the relevant determination of the Director.
- (2) A person is qualified to hold a pilot exemption if he or she has satisfied the requirements in the relevant determination of the Director.
-



**314 Period a pilot licence or pilot exemption remains valid**

- (1) A pilot licence is valid for a period of 5 years after the date it is issued provided it is not cancelled by the Director.
- (2) A pilot exemption remains valid for a period of 2 years after the date it is issued provided it is not cancelled by the Director.

**315 Local knowledge certificate**

A local knowledge certificate may be issued to a master in accordance with a determination by the Director.

**316 Circumstances in which holder of local knowledge certificate is not required to use pilot**

For the purposes of section 96(2)(c) of the Act, a master who is the holder of a certificate of local knowledge issued under this Division is not required to use the services of a pilot in port waters if the vessel that the master has command or charge of—

- (a) is a vessel of a type that the holder of the certificate is authorised to operate by a current valid certificate of competency issued by the Director; and
- (b) is a vessel greater than 35 metres in length and operates either permanently, or for the time being solely, within the limits of port waters.

**317 Local knowledge certificate**

- (1) A person may apply to the Director for the issue of a local knowledge certificate.
  - (2) An application under subregulation (1) must—
    - (a) be in the form determined by the Director; and
-

- (b) be accompanied by—
  - (i) evidence that the applicant has a valid current certificate of competency for the vessel that he or she is in charge of; and
  - (ii) evidence that the applicant has completed any training required by the Director; and
  - (iii) evidence that the applicant has sufficient qualifying service and experience appropriate to the port waters to which the local knowledge certificate will apply; and
  - (iv) the fee prescribed in Division 2 of Part 8 of these Regulations.
- (3) The Director—
  - (a) may require the applicant to provide further information or material in respect of the application; and
  - (b) may require the information to be verified; and
  - (c) may require proof of the identity of the person making the application.
- (4) The certificate of local knowledge may be limited by a condition imposed by the Director.

**318 Period a certificate of local knowledge remains valid**

A certificate of local knowledge is valid for a period of 5 years after the date it is issued provided it is not cancelled by the Director.

**Division 3—Harbour masters**

**319 Harbour master licence**

- (1) A person may apply to the Director for the issue, variation or renewal of a harbour master licence.
- (2) The application must—
  - (a) be in the form determined by the Director; and
  - (b) specify the area of State waters for which the licence is required; and
  - (c) be accompanied by evidence that the applicant has a valid current certificate of competency as a Master Class 1 or equivalent as the Director may direct; and
  - (d) be accompanied by evidence of sufficient qualifying service and experience appropriate to the State or port waters to which the harbour master licence will apply; and
- (3) The Director—
  - (a) may require the applicant to provide further information or material in respect of the application; and
  - (b) may require the information to be verified; and
  - (c) may require proof of the identity of the person making the application.

**320 Period harbour master licence remains in force**

A harbour master licence remains in force for a period of 5 years after the date it is issued provided it is not cancelled by the Director.

**Division 4—Carriage of certificate, licence or exemption**

**321 Carriage of certificate, licence or exemption**

The holder of a current valid certificate, licence or exemption issued under this Part must carry the certificate, licence or exemption whilst operating a vessel covered by that certificate or licence or exemption.

Penalty: 2 penalty units.

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## **PART 4—REGISTRATION OF VESSELS**

### **Division 1—Registration of vessels**

#### **400 Requirements for registration of vessels**

- (1) The owner or operator of a vessel that—
  - (a) is operated on State waters; or
  - (b) is intended to be operated on State waters—  
may apply to the Director to register or renew the registration of that vessel.
- (2) An application for registration must—
  - (a) include the name and address of the owner or operator of the vessel; and
  - (b) be accompanied by proof as to the identity and address of the applicant; and
  - (c) specify the following details about the vessel to be registered—
    - (i) the type of engine;
    - (ii) the type of drive;
    - (iii) the type of vessel;
    - (iv) the type of hull;
    - (v) the length, breadth and colour;
    - (vi) the make of engine;
    - (vii) the name of engine maker;
    - (viii) the engine number;
    - (ix) the engine's horsepower;
    - (x) the engine power units;
    - (xi) the number of cylinders in the engine;

- (xii) the internal diameter of the cylinders;
  - (xiii) current registration details  
(if applicable);
  - (xiv) assigned registration number  
(if applicable);
  - (xv) whether an Australian Builders Plate  
has been fixed to the vessel; and
- (d) be accompanied by the fee for boating facilities and safety education prescribed in Division 3 of Part 8.
- (3) An application for renewal of registration must be accompanied by the fee for boating facilities and safety education prescribed in Division 3 of Part 8.
- (4) Subregulations (2)(d) and (3) do not apply to a person who registers a vessel that—
- (a) is used or intended to be used primarily for search and rescue purposes; and
  - (b) is owned by an organisation approved by the Director for the purposes of section 10(3) of the Act.

**401 Period of registration**

- (1) After receiving the relevant fee prescribed in Division 3 of Part 8, the Director—
- (a) may register a vessel for a period not exceeding one year;
  - (b) may renew the registration of a vessel for a period not exceeding one year.
- (2) Registration or renewal of registration of a vessel commences on the day on which the Director issues the certificate of registration.
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**402 Registration label and identification mark**

- (1) For each vessel that is registered or for which the registration is renewed under regulation 401, the Director must issue a registration label and assign an identification mark.
  - (2) The registered owner or operator of a vessel must ensure that the registration label issued by the Director under subregulation (1) for that vessel is fixed and remains fixed in a conspicuous position on the outside or upper part of the vessel.  
Penalty: 2 penalty units.
  - (3) The registered owner or operator of a vessel must ensure that the identification mark that is assigned by the Director for that vessel is painted or displayed on the hull of the vessel on each side of the bow as high as practicable above the waterline in characters that are—
    - (a) no less than 150 millimetres high; and
    - (b) in proportionate breadth; and
    - (c) coloured in contrast to the surface on which they are displayed.Penalty: 2 penalty units.
  - (4) A person must not fix to a vessel a registration label or paint on, apply or otherwise fix to or display on a vessel an identification mark if the registration label or identification mark is not assigned by the Director to that vessel.  
Penalty: 2 penalty units.
  - (5) A person who operates a registered vessel on State waters must ensure that the identification mark assigned to that vessel by the Director is fixed and remains fixed in a conspicuous position on the outside or upper position of the vessel.  
Penalty: 2 penalty units.
-

#### **403 Cancellation of registration**

The Director must cancel the registration of the vessel if—

- (a) the registered owner or operator of a vessel requests the Director in writing to cancel the registration of that vessel; or
- (b) the Director is satisfied that a vessel has been stolen and not recovered or has been destroyed; or
- (c) the Director is satisfied that false or misleading information has been provided in connection with the registration of the vessel.

#### **404 Suspension of registration**

- (1) If, after considering a report from a person authorised under section 13 of the Act to inspect a vessel, the Director is satisfied that a registered vessel does not comply with the Act or the regulations, the Director, by notice in writing served personally or by post on the registered owner or operator of the vessel, may suspend the registration of the vessel.
  - (2) The Director must specify in the notice under subregulation (1) the reasons why the vessel does not comply with the Act or the regulations.
  - (3) The Director may at any time during the current period of registration of that vessel, by notice in writing served personally or by post on the registered owner or operator of the vessel, withdraw the suspension notice if the Director is satisfied that—
    - (a) the deficiencies and defects in the vessel have been remedied; and
    - (b) the vessel complies with the Act and the regulations.
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#### **405 Transfer of registered vessel**

- (1) A registered owner of a vessel who sells or otherwise disposes of the vessel must, within 14 days after the sale or disposal of the vessel—
  - (a) complete and sign the relevant section of an application for transfer of registration in the form approved for that purpose by the Director; and
  - (b) give the application to the person who acquires the vessel.

Penalty: 2 penalty units.

- (2) A person who purchases or otherwise acquires a registered vessel must, within 14 days after the purchase or acquisition of the vessel—
  - (a) ensure that the person disposing of the vessel has completed the relevant section of the application for transfer of registration; and
  - (b) complete the relevant section of the application; and
  - (c) give the completed application for transfer of registration form to the Director.

Penalty: 2 penalty units.

#### **406 General exemptions from registration**

- (1) For the purposes of section 8(1) of the Act, the following vessels are exempted from registration—
  - (a) a vessel, that is not a recreational tender, of not more than 5 metres in length that is used or intended to be used as a means of transport on inland waters or enclosed waters and that conspicuously displays the name of its mother vessel or the registration number of that vessel and the letter "T" and that operates or is intended to operate—

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- (i) between the shore and another vessel not more than 300 metres from the shore; or
    - (ii) between vessels not more than 300 metres apart and not more than 300 metres from the shore;
  - (b) a recreational tender;
  - (c) a vessel that does not have an engine that is used or is capable of being used for propulsion;
  - (d) a fishing vessel;
  - (e) a trading vessel;
  - (f) a hire and drive vessel;
  - (g) a vessel which—
    - (i) is temporarily being operated on State waters; and
    - (ii) is registered in another State or a Territory of the Commonwealth; and
    - (iii) displays in accordance with an Act or regulation of that State or Territory an identifying plate, mark or number issued or allocated by the relevant authority in that State or Territory for the vessel;
  - (h) a vessel that—
    - (i) is temporarily being operated on State waters; and
    - (ii) is exempt from registration as a vessel in another State or a Territory of the Commonwealth in which the owner of the vessel ordinarily resides;
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- (i) a recreational vessel with an engine used or capable of being used for propulsion that is under the control of a manufacturer or dealer who has a special identification mark and a special identification plate issued in accordance with Division 2.

### **Division 2—Identification plates and marks**

#### **407 Special identification plates and marks**

- (1) A person who is a manufacturer of or dealer in recreational vessels with engines used or capable of being used for propulsion may apply to the Director for the issue of a special identification plate or mark.
- (2) An application must be accompanied by the appropriate fees prescribed in Division 3 of Part 8.
- (3) The Director may issue a special identification plate or mark to the manufacturer or dealer.

#### **408 Conditions of use of special identification plates and marks**

- (1) A person issued with a special identification plate or mark in accordance with regulation 407—
  - (a) must ensure at all times that the special identification plate or mark is displayed on the vessel for which the plate or mark has been issued; and
  - (b) must not use, or allow the vessel to be used, for any purposes other than—
    - (i) operating the vessel from place to place while the vessel is in the process of manufacture; or
    - (ii) operating the vessel from the place of manufacture to the place where it will be offered for sale; or

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- (iii) testing the vessel; or
  - (iv) demonstrating the vessel to a purchaser or prospective purchaser; or
  - (v) delivering the vessel for or after sale; or
  - (vi) carrying out repairs to the vessel; or
  - (vii) returning the vessel to its owner after it has been repaired; and
- (c) must not allow the vessel to be operated by a person other than the manufacturer or dealer or a person employed by the manufacturer or dealer; and
- (d) must ensure that the special identification plate or mark is fixed to the vessel where it can be easily seen with every letter, figure and symbol on the plate or mark upright and clearly distinguishable from a distance of at least 20 metres from the vessel; and
- (e) must keep at the manufacturer's or dealer's office or place of business a record of the name and address of each person who operates the vessel.

Penalty: 4 penalty units.

- (2) A manufacturer of or dealer in recreational vessels must not enter any particulars which he or she knows, or should reasonably know, to be false in any records kept under subregulation (1)(e).

Penalty: 4 penalty units.

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**PART 5—ALCOHOL AND DRUG TESTING AND OTHER  
MATTERS**

**500 Prescribed breath test devices**

The prescribed devices for the purposes of section 29(1) of the Act are the breath testing devices known as—

- (a) the Alcotest 80/A;
- (b) the Lion Alcolmeter also known as the lion alcolmeter S-D2;
- (c) the lion alcolmeter SD-400PA;
- (d) the Alcolizer LE.

**501 Procedure for breath analysis**

It is a requirement for the proper operation of a breath analysing instrument that a person authorised under section 31(3) of the Act to operate a breath analysing instrument—

- (a) does not require a person to provide a breath sample for analysis until the operator is satisfied that the person has not consumed any alcohol for a period of at least 15 minutes before the analysis; and
- (b) provides a fresh mouthpiece for use by each person required to provide a breath sample; and
- (c) uses only a mouthpiece which, until required for taking a breath sample, has been kept in a sealed container.

**502 Breath analysis certificate**

For the purposes of section 31(4) of the Act the prescribed form for a certificate is the form in Schedule 8.

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**503 Method of obtaining blood sample**

If a blood sample is taken by a registered medical practitioner for the purposes of the Act—

- (a) the sample must be obtained by venipuncture; and
- (b) the site of the puncture must be cleansed with a swab taken from a container that—
  - (i) is sealed against contamination; and
  - (ii) bears a label stating that the container holds an aqueous solution of chlorohexidine and cetrimide and no methylated spirits, alcohol, tincture of iodine or other substance containing alcohol.

**504 Procedure after taking blood sample**

- (1) A registered medical practitioner who takes a blood sample for the purposes of section 31 or 31A of the Act must ensure that—
  - (a) the sample of blood is placed in 3 dry containers, each containing approximately the same amount of blood; and
  - (b) each container is vacuum sealed or sealed with a septum seal; and
  - (c) each container in which the sample is placed bears a label stating—
    - (i) that the container holds an anti-coagulant and a preservative; and
    - (ii) the specific anti-coagulant and the specific preservative that the container holds; and

- (iii) the name of the chemist, laboratory or pharmaceutical organisation that prepared the container; and
  - (d) each container has attached to it a label bearing the signature of the registered medical practitioner, the date and time the sample was taken and the name of the person from whom the sample was taken or, if the name of the person is not known, sufficient information to enable the sample to be identified with the person from whom it was taken.
- (2) If a blood sample has been taken under section 31A of the Act, the registered medical practitioner must ensure that—
- (a) one container is placed in a locked receptacle provided for that purpose at the place at which the sample was taken; and
  - (b) one container is placed and sealed in a container labelled "screening sample"; and
  - (c) one container is delivered to the person from whom the blood sample was taken or placed with that person's personal property at the place at which the sample was taken.

**505 Certificate by medical practitioner taking blood sample**

For the purposes of section 32(3) of the Act, the prescribed form for a certificate is the form in Schedule 9.

**506 Analysts certificate**

For the purposes of section 32(4) of the Act, the prescribed form for a certificate is the form in Schedule 10.

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**507 Notice of immediate operator licence suspension**

A notice for the purposes of section 28C(1) of the Act must, in addition to the matters referred to in that section, contain the following details—

- (a) the name and address of the accused; and
- (b) a statement of the offence with which the accused is charged and, in the case of an offence under paragraph (b), (e) or (f) of section 28(1) of the Act, the alleged concentration of alcohol in the blood or breath (as the case requires) of the accused; and
- (c) the approximate time and place of commission of the offence with which the accused is charged; and
- (d) the name, signature and business address of the person who charged the accused; and
- (e) the date on which the notice was given to the accused.

**508 Suspended operator licence document to be surrendered to Director**

For the purposes of section 61BA(7) of the Act, a person to whom section 61BA(1) of the Act applies must surrender his or her operator licence document to the Director.

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## **PART 6—PRESCRIBED MEASURING DEVICES**

### **600 Prescribed measuring devices**

- (1) The prescribed measuring devices for the purposes of sections 88 and 89(6) of the Act are the laser devices known as—
  - (a) the LTI 20-20 Ultralyte LR; and
  - (b) the Prolaser III.
- (2) A measuring device referred to in subregulation (1) must be calibrated in knots.

### **601 Testing Officer**

For the purposes of section 88 of the Act, a prescribed measuring device must be tested by one of the following—

- (a) a technical officer or the head of a faculty, school or department of electrical engineering, electronics or communications at a post secondary education institution within the meaning of the **Education and Training Reform Act 2006**;
- (b) a person skilled in the development and operation of speed measuring devices and authorised in writing by the Chief Commissioner of Police;
- (c) the principal testing officer of a testing body accredited in the field of electrical testing by the National Association of Testing Authorities, Australia (NATA).

### **602 Testing of prescribed measuring devices**

For the purposes of section 88 of the Act, a prescribed measuring device is tested in the prescribed manner if the testing officer who tests the device—

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- (a) is satisfied that the device is in a satisfactory electrical condition and, in particular, that any maintenance carried out on the device has been carried out in a satisfactory manner; and
- (b) is satisfied that the device is properly calibrated so that it operates within the limits of error of not more than 2 knots greater than or less than the true speeds determinable from the test; and
- (c) records and retains the results of the test, including—
  - (i) a statement showing the frequencies or speeds at which the calibration was effected and the number of times at each frequency or speed the calibration was effected; and
  - (ii) the date of the test and the ambient temperature at the time of the test.

### **603 Sealing of prescribed measuring devices**

For the purposes of section 88 of the Act, a prescribed measuring device is sealed in the prescribed manner if—

- (a) the device has been tested in accordance with regulation 602 and the device has satisfied the test requirements; and
- (b) the device is sealed by the testing officer who carried out the test; and
- (c) the device is sealed with a seal that effectively prevents interference with the mechanism or circuitry of the device without breaking the seal; and

- (d) the testing officer keeps full and accurate records of the device sealed, including—
  - (i) the identification number of the device; and
  - (ii) the date on which the test was carried out; and
  - (iii) the manner in which the device was sealed; and
- (e) the records referred to in paragraph (d) are signed by the testing officer who sealed the device.

#### **604 Use of prescribed measuring device**

For the purposes of section 88 of the Act, a prescribed measuring device is used in the prescribed manner if—

- (a) whenever the operator connects the device to a source of electricity, the operator ensures that all elements of the speed display are illuminated; and
  - (b) the operator activates the device with the device aimed in the direction of a vessel within the operator's field of vision and observes the reading displayed on the digital speed display; and
  - (c) the device has been tested in accordance with regulation 602 within 12 months before the occasion of its use; and
  - (d) the device has been sealed in accordance with regulation 603.
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**PART 7—OPERATOR LICENCES AND PERSONAL  
WATERCRAFT ENDORSEMENTS**

**Division 1—General provisions relating to operator licences**

**700 Eligibility to apply for an operator licence**

The following persons are not eligible to apply for an operator licence—

- (a) a person who is disqualified from operating a regulated recreational vessel under the law of Victoria;
- (b) a person who is the holder of an operator licence that has been suspended, during the period of that suspension;
- (c) a person who is disqualified from operating a recreational vessel—
  - (i) under the law of another State or a Territory of the Commonwealth; or
  - (ii) under the law of another country—  
in circumstances which, if they occurred in Victoria, would have resulted in the person being disqualified from operating a regulated recreational vessel in Victoria;
- (d) a person who is the holder of a licence or other authority to operate a recreational vessel issued by another State or a Territory of the Commonwealth that has been suspended, during the period of that suspension.

**701 Requirements for applying for an operator licence**

- (1) An applicant for the issue of an operator licence must give the Director an application in writing that contains or is accompanied by—
  - (a) the applicant's personal particulars;
  - (b) evidence to verify those personal details; and
  - (c) evidence that the applicant has passed any test the Director has required the applicant to undergo under Part 10A of the Act; and
  - (d) the fee prescribed in Part 8.
- (2) The Director may require an applicant for the issue of an operator licence—
  - (a) to have his or her photograph or digitised image made or to provide a photograph or digitised image of the applicant in a form approved by the Director; and
  - (b) to provide a specimen signature; and
  - (c) in the case of an applicant who has been disqualified from operating a recreational vessel in another State or a Territory of the Commonwealth, after being convicted of an offence involving alcohol or other drugs, to provide evidence that the applicant has complied with any requirements of the law of that State or Territory relating to the assessment of operators convicted of offences involving alcohol or other drugs.

**702 Licence holder may surrender operator licence**

- (1) The holder of an operator licence may, by notice in writing to the Director, surrender his or her operator licence to the Director for cancellation.
  - (2) A notice under subregulation (1) must be accompanied by the operator licence document.
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- (3) The holder of an operator licence may surrender his or her operator licence to the relevant authority in another State or a Territory of the Commonwealth or another country for cancellation.
- (4) The Director must cancel an operator licence if the holder of the licence surrenders his or her operator licence under subregulation (1) or (3).

### **703 Refusal to issue operator licence**

- (1) The Director may refuse an application for the issue of an operator licence if the Director is satisfied that—
    - (a) the applicant has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels; or
    - (b) the applicant has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act; or
    - (c) in the case of an applicant who has been disqualified from operating a recreational vessel in another State or a Territory of the Commonwealth, after being convicted of an offence involving alcohol or other drugs, the applicant has failed to provide evidence that he or she has complied with any requirements of the law of that State or Territory relating to the assessment of operators convicted of offences involving alcohol or other drugs.
  - (2) If, under subregulation (1), the Director decides to refuse an application to issue an operator licence, the Director must notify the applicant of that decision.
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- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**704 Operator licence period**

- (1) An operator licence remains in force for the period determined by the Director which must be either for a period of 1 year, 3 years or 5 years.
- (2) The Director may have regard to the period applied for by the applicant in making a determination under subregulation (1).

**705 Operator licence expiry date**

- (1) An operator licence expires at the end of the day that is recorded in the records maintained by the Director as the end of the term specified in that operator licence.
- (2) A personal watercraft endorsement on an operator licence expires on the date the operator licence expires.
- (3) In any proceedings for a contravention of the Act or regulations made under the Act, the record, that is kept by the Director, of the expiry date of a licence is admissible in evidence, and in the absence of evidence to the contrary, is proof that the licence expires on the day so recorded.

**706 Operator licence conditions**

- (1) A condition to which an operator licence is subject may be shown on the operator licence by means of a code.
- (2) If a condition is shown by a code, the operator licence document must bear a note to the effect that the condition can be found out by enquiry of the Director.

- (3) The holder of an operator licence that is subject to conditions must carry, while operating a regulated recreational vessel, a notice issued by the Director containing a full explanation of those conditions, if required by the Director to do so.

Penalty: 1 penalty unit.

- (4) A code in Column 1 of the following Table may be used on a licence document to indicate that the licence is subject to the condition set out opposite in Column 2 of the Table.

**Table**

<i>Column 1</i> <i>Condition</i> <i>code</i>	<i>Column 2</i> <i>Licence condition</i>
S	That the operator licence holder must wear corrective lenses at all times while operating a regulated recreational vessel or personal watercraft.
V	That the operator licence holder must operate only a regulated recreational vessel that is fitted with specified operator aids or modified as directed in writing by the Director.
X	That the operator licence holder must comply with any condition of which he or she has been notified in writing by the Director.

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#### **707 Notice of renewal of operator licence**

- (1) In this regulation ***notice of renewal of an operator licence*** means a notice addressed to the holder of the operator licence that states that, if the operator licence is not renewed on or before a date specified in the notice, the operator licence will expire on that date, or a notice that is in or to that effect.
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- (2) If the Director fails to send a notice of renewal of an operator licence or if the notice is not received by the holder of the operator licence, that failure or non-receipt does not affect—
- (a) the expiry date of the operator licence; or
  - (b) the obligation of the holder of the operator licence to renew the licence if he or she intends to operate a regulated recreational vessel after the expiry of his or her existing operator licence.

#### **708 Renewal of operator licence**

A person may apply to the Director to renew his or her operator licence at any time before, or within 6 months after, the expiry date of the operator licence by giving the Director an application for renewal of the operator licence in the form approved by the Director that contains or is accompanied by—

- (a) the applicant's personal particulars; and
- (b) evidence to verify those personal details; and
- (c) the fee prescribed in Part 8.

#### **709 Refusal to renew**

- (1) The Director must refuse an application to renew an operator licence if the applicant—
- (a) has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels; or
  - (b) has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act.

- (2) If, under subregulation (1), the Director decides to refuse an application to renew an operator licence, the Director must notify the applicant of that decision.
- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**710 Date of expiry of renewed operator licence**

- (1) The date on which a renewed operator licence expires is to be calculated from the expiry date of the operator licence being renewed.
- (2) Subregulation (1) does not have the effect of retrospectively renewing the operator licence.

**711 Re-issue of operator licence**

A person may apply to the Director to have his or her operator licence re-issued at any time, more than 6 months but before 5 years, after the expiry date of the operator licence by giving the Director an application for re-issue of the operator licence in the form approved by the Director that contains or is accompanied by—

- (a) the applicant's personal particulars; and
- (b) evidence to verify those personal details; and
- (c) the fee prescribed in Part 8.

**712 Refusal to re-issue operator licence**

- (1) The Director must refuse an application to re-issue an operator licence if the applicant—
  - (a) has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels;or

- (b) has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act.
- (2) If, under subregulation (1), the Director decides to refuse an application to re-issue an operator licence, the Director must notify the applicant of that decision.
- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**713 Date of expiry of re-issued operator licence**

- (1) The date on which a re-issued operator licence expires is to be calculated from the date on which the operator licence is re-issued.
- (2) Subregulation (1) does not have the effect of retrospectively re-issuing the operator licence.

**714 Application for variation of operator licence**

An applicant for the variation of an operator licence must give the Director an application in writing that contains or is accompanied by—

- (a) the applicant's personal particulars; and
- (b) evidence to verify those personal details; and
- (c) details of the requested variation.

**715 Refusal to vary operator licence**

- (1) The Director may refuse an application for the variation of an operator licence if the Director is satisfied that the applicant—
  - (a) has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels;or

- (b) has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act.
- (2) If, under subregulation (1), the Director decides to refuse an application to vary an operator licence, the Director must notify the applicant of that decision.
- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**716 Conditions on restricted operator licence**

- (1) In addition to any conditions specified in the licence, a restricted operator licence is subject to the conditions specified in subregulations (2) and (3).
- (2) The holder of the restricted operator licence must not operate a regulated recreational vessel at a speed—
  - (a) of 10 knots or more in any one of the following circumstances—
    - (i) if there is not in the vessel a person who is at least 16 years old and who is the holder of an operator licence of a class appropriate for that vessel;
    - (ii) before sunrise;
    - (iii) after sunset;
  - (b) of more than 20 knots in any other case.
- (3) The holder of a restricted operator licence must not operate a regulated recreational vessel if the vessel is towing a person, another vessel or an object.

### **717 Operator licence receipt**

- (1) The Director may issue an operator licence receipt as an interim measure prior to the issue of an operator licence document in the form required by regulation 718.
- (2) An operator licence receipt must be in the form of the operator licence document required by regulation 718 except for the photograph or digitised image of the person.
- (3) An operator licence receipt issued under subregulation (1) may be produced as evidence of the grant of an operator licence for three months from the date the operator licence receipt was issued.

### **718 Form of operator licence document**

An operator licence document must show details of the following—

- (a) an identification number for the person to whom it is issued; and
  - (b) the first name, second and third initials (if any) and family name of the person; and
  - (c) a photograph or digitised image of the person; and
  - (d) the person's residential address; and
  - (e) the person's date of birth; and
  - (f) the person's signature (or a reproduction of that signature); and
  - (g) the expiry date of the licence; and
  - (h) the code for any condition to which the licence is subject in accordance with regulation 706; and
  - (i) if the licence has a personal watercraft endorsement, the code "PWC".
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**719 Issue of replacement operator licence document**

- (1) The Director may, upon payment by the holder of an operator licence of the fee prescribed in Part 8, issue a replacement operator licence document to replace one which has been stolen, lost, damaged, destroyed, mislaid, mutilated or rendered illegible in any way.
- (2) The holder of an operator licence who applies for a replacement operator licence document must provide to the Director—
  - (a) the applicant's personal particulars; and
  - (b) evidence to verify those personal details.

**720 Records**

- (1) The Director must maintain records in respect of each operator licence which include details of the following—
    - (a) the identification number allocated to the person to whom the operator licence was issued; and
    - (b) the applicant's personal particulars; and
    - (c) the commencement and expiry dates of the operator licence; and
    - (d) any condition to which the operator licence is subject; and
    - (e) whether the licence has a personal watercraft endorsement.
  - (2) Any person whose name appears in records referred to in subregulation (1) is entitled, on payment of the fee prescribed in Part 8, to request a search of the records and to obtain a certificate as to any matter appearing in the records in relation to him or her.
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**721 Change of name, address or condition**

- (1) The holder of an operator licence must notify the Director, not more than 14 days after the change, about any change in his or her—
  - (a) name; or
  - (b) residential address; or
  - (c) postal address or address for service of notices.

Penalty: 1 penalty unit.

- (2) Unless required by the Director, the advice from the person referred to in subregulation (1) need not be in writing.
- (3) The holder of an operator licence must, as soon as practicable, notify the Director of any permanent or long term injury or illness that may impair his or her ability to operate a regulated recreational vessel safely.

Penalty: 1 penalty unit.

**Division 2—Variation, cancellation and suspension of operator licences**

**722 Variation, suspension or cancellation of operator licence**

- (1) The Director may vary, suspend or cancel an operator licence or vary the conditions on an operator licence if it appears to the Director that—
  - (a) the holder of the licence has refused to undergo, or has failed, any test the Director has required the person to undergo under Part 10A of the Act; or

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- (b) it would be dangerous for the holder of the licence to operate a regulated recreational vessel because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things; or
- (c) the holder of the licence has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels; or
- (d) a court order requires the holder of the licence to pay a sum of money by way of a fine, penalty, costs or restitution or any two of those things and—
  - (i) the order was made in respect of an offence arising out of the use of a regulated recreational vessel in Victoria, including a marine infringement; and
  - (ii) a person authorised by law to issue or to execute a warrant for the enforcement of the court order notifies the Director that the Order is wholly or partially unsatisfied; or
- (e) the holder of the licence is not, under regulation 700, eligible to apply for an operator licence; or
- (f) the operator licence was issued or renewed in error; or
- (g) a cheque submitted to the Director as payment of a fee under these Regulations has been dishonoured; or



- (h) the holder of the licence has been convicted in another State or a Territory of the Commonwealth or another country of an offence which, if the person had been the holder of a licence or other authority in that State, Territory or country would have enabled the relevant authority in that State, Territory or country to suspend or cancel the person's licence or other authority; or
  - (i) the holder of the licence has failed to comply with a condition of the operator licence; or
  - (j) the holder of the licence is disqualified from operating a general recreational vessel in another country or the person's licence or other authority in that country has been cancelled because of a judgement, order or decision made under, or otherwise by operation of, the law of that country.
- (2) The Director must suspend or cancel an operator licence if the holder of the licence is disqualified from operating a general recreational vessel in another State or a Territory of the Commonwealth or the person's licence in that State or Territory has been cancelled because of a judgement, order or decision made under, or otherwise by operation of, the law of that State or Territory.
- (3) The Director may vary an operator licence to correct any error or omission in it and issue a replacement operator licence document.

**723 Procedures for variation, cancellation or suspension of operator licence**

- (1) If, under regulation 722(1), the Director decides to—
    - (a) vary an operator licence; or
    - (b) vary the conditions on an operator licence; or
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- (c) suspend an operator licence; or
  - (d) cancel an operator licence—  
the Director must notify the holder of the licence of that decision, and that decision must not take effect until at least 28 days after the notice is given.
- (2) A notice under subsection (1) must be in writing and must set out—
- (a) the reasons for the variation, suspension or cancellation; and
  - (b) the effect of the variation, suspension or cancellation; and
  - (c) the date of the variation, suspension or cancellation; and
  - (d) the action if any that may be taken by the holder of the licence in order to avoid the variation, suspension or cancellation; and
  - (e) the date by which the holder of the licence must take that action.
- (3) An operator licence is varied, suspended or cancelled in accordance with the terms of a notice given under subregulation (1) on the date specified in the notice unless the Director, by further notice in writing, withdraws the notice.
- (4) This regulation does not apply to the suspension of an operator licence under section 119(2) of the Act.
- (5) If an operator licence is varied, suspended or cancelled by the Director under section 119 of the Act or by a court, the holder of that licence must, upon being given a notice of the variation, suspension or cancellation—
- (a) give the operator licence immediately to the person who gave the notice; or
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- (b) send or take the operator licence to the place specified in the notice within the period specified in the notice.

Penalty: 5 penalty units.

- (6) If, under section 119 of the Act, the Director has—
  - (a) varied an operator licence; or
  - (b) varied the conditions of an operator licence—

the Director must, upon receiving the operator licence from the holder under subregulation (5), issue the holder with a replacement operator licence document.

**724 Suspension of operator licence for purposes of section 119(2) of the Act**

- (1) The Director must not suspend an operator licence for the reasons specified in regulation 722(1)(a) unless the Director notifies the holder of the licence, in writing, that the Director has decided to suspend the operator licence and sets out in the notice—
  - (a) the reasons for the suspension; and
  - (b) the effect of the suspension and the date on which the suspension takes effect; and
  - (c) the date by which the holder must return the operator licence to the Director.
- (2) An operator licence is suspended in accordance with the terms of a notice given under subregulation (1) on the date specified in the notice unless the Director, by further notice in writing, withdraws the notice.

- (3) If an operator licence is suspended by the Director under section 119(2) of the Act, the holder of the licence must, upon being given a notice of suspension under subregulation (1)—
- (a) give the operator licence immediately to the person who gave the notice; or
  - (b) send or take the operator licence to the place specified in the notice within the period specified in the notice.

Penalty: 5 penalty units.

**725 Prescribed time for suspension of operator licence**

For the purposes of section 119(1)(c) of the Act, the prescribed time for which an operator licence may be suspended is any period up to 12 months as determined by the Director.

**Division 3—Exemptions from requirement to hold operator licence**

**726 Exemptions applying to licences issued outside Victoria**

- (1) A person is exempt from the requirement to hold an operator licence authorising the person to operate a class of regulated recreational vessel if the person—
- (a) has a licence, certificate or other authority issued in another State or a Territory of the Commonwealth and who was ordinarily resident in the issuing State or Territory at the time of issue; or

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- (b) has an appropriate licence or other authority issued in another country and written in the English language or accompanied by an accurate English translation and who was ordinarily resident in that country at the time of issue—

that authorises him or her to operate a regulated recreational vessel of that class.

- (2) A person is not exempt or ceases to be exempt under subregulation (1) in any of the following circumstances—
    - (a) if the holder of the licence, certificate or other authority issued in another State or a Territory of the Commonwealth has resided in Victoria for a continuous period of more than 3 months; or
    - (b) if the holder of the licence or other authority issued in another country has a permanent visa issued by the Commonwealth for more than 3 months; or
    - (c) if the person is disqualified from operating a recreational vessel in another State or a Territory of the Commonwealth or another country or has his or her licence suspended; or
    - (d) if, in the reasonable opinion of the Director, it would be dangerous for the person to operate a regulated recreational vessel because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things.
  - (3) If the Director forms an opinion on the matters set out in subregulation (2)(d) the Director must give the person notice in writing of the following—
    - (a) that he or she is no longer exempt from the requirement to hold an operator licence;
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- (b) that he or she must not operate a regulated recreational vessel on State waters;
- (c) the reasons why that person is no longer exempt;
- (d) any action that may be taken by the person in order to regain the exemption;
- (e) the date by which the person must take that action.

**727 Exemption from licensing requirements**

A person who is the operator of a general recreational vessel that is—

- (a) engaged solely in sailing; and
- (b) is not using any mechanical means of propulsion—

is exempt from the requirement to hold an operator licence under Part 10A of the Act while so operating that vessel.

**728 Exemption from licensing requirements for persons undergoing training**

A person who—

- (a) is operating a regulated recreational vessel as part of a training course approved by the Director for the purposes of obtaining an operator licence; and
- (b) is accompanied in the vessel by a person who is approved by the Director to conduct training courses for the purposes of obtaining an operator licence—

is exempt from the requirement to obtain an operator licence under Part 10A of the Act while so operating that vessel.

**Division 4—General provisions relating to personal watercraft endorsements**

**729 Requirements for applying for personal watercraft endorsement**

An applicant for the making of a personal watercraft endorsement must give the Director an application in writing that contains or is accompanied by—

- (a) the applicant's personal particulars; and
- (b) evidence to verify those personal details; and
- (c) evidence that the applicant has passed any test the Director has required the applicant to undergo under Part 10A of the Act; and
- (d) the applicant's current operator licence; and
- (e) the fee prescribed in Part 8.

**730 Refusal to make personal watercraft endorsement**

- (1) The Director may refuse an application for the making of a personal watercraft endorsement if the Director is satisfied that—
    - (a) the applicant has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of personal watercraft; or
    - (b) the applicant has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act; or
    - (c) in the case of an applicant who has been disqualified from operating a recreational vessel in another State or a Territory of the Commonwealth, after being convicted of an offence involving alcohol or other drugs, the
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applicant has failed to provide evidence that he or she has complied with any requirements of the law of that State or Territory relating to the assessment of operators convicted of offences involving alcohol or other drugs.

- (2) If, under subregulation (1), the Director decides to refuse an application for a personal watercraft endorsement on an operator licence, the Director must notify the applicant of that decision.
- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**731 Operator licence receipt with personal watercraft endorsement**

- (1) The Director may issue an operator licence receipt with a personal watercraft endorsement as an interim measure prior to the issue of an endorsed operator licence document in the form required by regulation 718.
- (2) An operator licence receipt with a personal watercraft endorsement must be in the form of the operator licence document required by regulation 718 except for the photograph or digitised image of the person.
- (3) An operator licence receipt with a personal watercraft endorsement issued under subregulation (1) may be produced as evidence of the grant of an operator licence as so endorsed for three months from the date the operator licence receipt was issued.



**Division 5—Variation or cancellation of personal watercraft endorsement**

**732 Operator licence holder may request cancellation of personal watercraft endorsement**

- (1) The holder of an operator licence with a personal watercraft endorsement may, in writing, request the Director to cancel the personal watercraft endorsement on the licence.
- (2) A request under subregulation (1) must be accompanied by the operator licence document.
- (3) The Director must cancel a personal watercraft endorsement on an operator licence if requested to do so by the holder of the licence under subregulation (1).
- (4) If the Director has cancelled the personal watercraft endorsement in accordance with a request under subregulation (1), the Director must issue a replacement operator licence document without a personal watercraft endorsement.

**733 Application for variation of personal watercraft endorsement**

An applicant for the variation of a personal watercraft endorsement must give the Director an application in writing that contains or is accompanied by—

- (a) the applicant's personal particulars; and
- (b) evidence to verify those personal details; and
- (c) details of the requested variation.

**734 Refusal to vary personal watercraft endorsement**

- (1) The Director may refuse an application for the variation of a personal watercraft endorsement if the Director is satisfied that the applicant—
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- (a) has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of personal watercraft; or
  - (b) has refused to undergo, or has failed, any test the Director has required the applicant to undergo under Part 10A of the Act.
- (2) If, under subregulation (1), the Director decides to refuse an application to vary a personal watercraft endorsement on an operator licence, the Director must notify the applicant of that decision.
- (3) A notice under subregulation (2) must be in writing and must set out the reasons for the refusal.

**735 Variation or cancellation of personal watercraft endorsement**

- (1) The Director may vary or cancel a personal watercraft endorsement or vary the conditions of a personal watercraft endorsement on an operator licence if it appears to the Director that—
- (a) the holder of the licence has refused to undergo, or has failed, any test the Director has required the person to undergo under Part 10A of the Act; or
  - (b) it would be dangerous for the holder of the licence to operate a personal watercraft because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things; or
  - (c) the holder of the licence has insufficient knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of personal watercraft; or
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- (d) a court order requires the holder of the licence to pay a sum of money by way of a fine, penalty, costs or restitution or any two of those things and—
    - (i) the order was made in respect of an offence arising out of the use of a personal watercraft in Victoria, including a marine infringement; and
    - (ii) a person authorised by law to issue or to execute a warrant for the enforcement of the court order notifies the Director that the Order is wholly or partially unsatisfied; or
  - (e) the personal watercraft endorsement was made in error; or
  - (f) a cheque submitted to the Director as payment of a fee under these Regulations has been dishonoured; or
  - (g) the holder of the licence has been convicted in another State or a Territory of the Commonwealth or another country of an offence which, if the person had been the holder of a licence or other authority in that State, Territory or country would have enabled the relevant authority in that State, Territory or country to suspend or cancel the person's licence or other authority; or
  - (h) the holder of the licence is disqualified from operating a personal watercraft in another country or the person's licence or other authority in that country has been cancelled because of a judgement, order or decision made under, or otherwise by operation of, the law of that country.
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- (2) The Director must cancel a personal watercraft endorsement on an operator licence if the holder of the licence is disqualified from operating a personal watercraft in another State or a Territory of the Commonwealth or the person's licence or other authority in that State or Territory has been cancelled because of a judgement, order or decision made under, or otherwise by operation of, the law of that State or Territory.

**736 Procedures for variation or cancellation of personal watercraft endorsement**

- (1) If, under regulation 735(1), the Director decides to—
- (a) vary a personal watercraft endorsement; or
  - (b) vary the conditions of a personal watercraft endorsement; or
  - (c) cancel a personal watercraft endorsement—
- on an operator licence the Director must notify the holder of the licence of that decision, and that decision must not take effect until at least 28 days after the notice is given.
- (2) A notice under subregulation (1) must be in writing and must set out—
- (a) the reasons for the variation or cancellation; and
  - (b) the effect of the variation or cancellation; and
  - (c) the date of the variation or cancellation; and
  - (d) the action that may be taken by the holder of the licence in order to avoid the variation or cancellation; and
  - (e) the date by which the holder of the licence must take that action.
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- (3) A personal watercraft endorsement on an operator licence is varied or cancelled in accordance with the terms of a notice given under subregulation (1) on the date specified in the notice unless the Director, by further notice in writing, withdraws the notice.
- (4) If a personal watercraft endorsement on an operator licence is cancelled or varied by the Director under section 119 of the Act, the holder of the licence must, upon being given a notice of variation or cancellation—
  - (a) give the endorsed operator licence immediately to the person who gave the notice; or
  - (b) send or take the endorsed operator licence to the place specified in the notice within the period specified in the notice.

Penalty: 5 penalty units.

- (5) The Director must, upon receiving the endorsed operator licence from the holder under subregulation (4), issue the holder with a replacement operator licence document.

#### **Division 6—Tests in relation to regulated recreational vessels**

##### **737 Tests**

- (1) For the purposes of section 120(3) of the Act, a test of the class described in Column 1 of the following Table must be carried out by a person of the class described opposite the test in Column 2 of the Table.
  - (2) The Director must accept, for the purposes of section 120, a certificate of the results of a medical test conducted in another State or a Territory of the Commonwealth if the test is
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carried out by a person in accordance with this regulation.

**Table**

<i>Column 1</i> <i>Class of Test</i>	<i>Column 2</i> <i>Prescribed class of person</i>
Medical test.	Registered medical practitioners.
Tests related to eyesight.	Registered medical practitioners, optometrists, occupational therapists, people authorised by the Director and officers of the Roads Corporation authorised in writing by the Director for the purpose.
An evaluation of an operator's physical and cognitive abilities or skills to operate a regulated recreational vessel.	Occupational therapists and persons authorised in writing by the Director to conduct tests of physical and cognitive abilities to operate a regulated recreational vessel.
Tests of knowledge of the provisions of the Act, these Regulations or any notice under section 15 of the Act applying to the operation of regulated recreational vessels.	Officers of the Roads Corporation and people authorised in writing by the Director.

**Division 7—Internal review procedures for operator licences and personal watercraft endorsements**

**738 Application for internal review**

- (1) If the Director decides to—
    - (a) refuse an application for an operator licence or an application to vary, renew or re-issue an operator licence; or
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- (b) refuse an application for a personal watercraft endorsement on an operator licence or an application to vary, renew or re-issue such an endorsement; or
- (c) vary a condition on an operator licence or a personal watercraft endorsement under section 119 of the Act; or
- (d) suspend, vary or cancel an operator licence under section 119 of the Act; or
- (e) vary or revoke a personal watercraft endorsement on an operator licence under section 119 of the Act—

the applicant or holder of the licence (as the case requires) may apply to the Director for an internal review of the Director's decision.

- (2) An application under subregulation (1) must be made within 28 days of the day on which the person is notified of the Director's decision under these Regulations.
  - (3) The Director must notify each person who is entitled to a review of a decision under subregulation (1) of his or her right to apply for such a review.
  - (4) The Director must give the notice under subregulation (3) within 14 days after the making of the decision.
  - (5) A decision must not be reviewed by the person who made the decision.
  - (6) After considering an application for review, the Director must—
    - (a) affirm the decision; or
    - (b) vary the decision; or
    - (c) revoke the decision.
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- (7) The Director must notify the person who applied for the review in writing of the Director's decision under subregulation (6) within 28 days after the day on which the application for internal review is received by the Director.
- (8) The making of an application for internal review of a decision does not stay the operation of the decision.

**739 Applicant entitled to be given reasons**

- (1) If a person is entitled to apply for a review of a decision by the Director under regulation 738, the person may apply to the Director for written reasons for the decision.
- (2) The Director must, within 28 days of receiving an application under subregulation (1), provide to the person who made the application—
  - (a) the decision of the Director and the reasons for that decision; and
  - (b) the name or position of the person who made the decision.
- (3) A person is not entitled to make an application under subregulation (1) if the Director has already provided the person with written reasons for his or her decision.



**PART 8—FEES**

**Division 1—Survey of vessels and examination of plans**

**800 Existing vessel**

In this Division, *existing vessel* means—

- (a) a vessel which is currently in survey in Australia; or
- (b) a vessel which has previously been under survey in Australia.

**801 Application fee for new vessel survey and plan approval**

A fee of 1.54 fee units must be paid to the Director for considering an application for—

- (a) a new vessel survey;
- (b) a vessel plan approval.

**802 Plan approval fees**

The fee which must be paid to the Director for approval of plans for a new vessel of a size specified in Column 2 of the following Table is the amount calculated by multiplying the length of the vessel in metres by the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.

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**Table**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>For all class 1 vessels. Fee per metre of the length of vessel</i>	<i>For all other classes of vessels. Fee per metre of the length of vessel</i>
1	For new vessels of or not exceeding 7.5 metres in length	3.14 fee units	3.14 fee units
2	For new vessels exceeding 7.5 metres in length and less than 20 metres in length	5.05 fee units	4.4 fee units
3	For new vessels of or exceeding 20 metres in length	6.64 fee units	5.65 fee units

**803 Fees for new vessel survey by the Director**

The fee which must be paid to the Director for a survey of a new vessel of a size specified in Column 2 of the following Table is the amount calculated by multiplying the length of the vessel in metres by the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.

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**Table**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>For all class 1 vessels. Fee per metre of the length of vessel</i>	<i>For all other classes of vessels. Fee per metre of the length of vessel</i>
1	For new vessels of or not exceeding 7.5 metres in length	5.65 fee units	5.65 fee units
2	For new vessels exceeding 7.5 metres in length and less than 20 metres in length	5.05 fee units	4.4 fee units
3	For new vessels of or exceeding 20 metres in length	4.4 fee units	3.14 fee units

**804 Fee for booking a survey for existing vessel**

A fee of 8.4 fee units must be paid to the Director at the time of booking a survey for an existing vessel for—

- (a) scheduling a surveyor authorised by the Director to attend at a particular time and location for the purposes of surveying the vessel;
- (b) preparing the relevant documents for the survey; and
- (c) the costs incurred for the authorised surveyor to travel to and from the vessel.

### 805 Fee for survey of existing vessels

The fee which must be paid to the Director for the survey of an existing vessel of a size specified in Column 2 of the following Table is the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.

<b>Table</b>			
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>Class 1 vessels</i>	<i>All other classes</i>
1	For vessels of or not exceeding 5 metres in length	8.85 fee units	5.85 fee units
2	For vessels exceeding 5 metres in length or of or not exceeding 10 metres in length	19 fee units	12.65 fee units
3	For vessels exceeding 10 metres in length or of or not exceeding 20 metres in length	25.3 fee units	16.9 fee units
4	For vessels exceeding 20 metres in length or of or not exceeding 35 metres in length	38 fee units	25.3 fee units
5	For vessels exceeding 35 metres in length	57 fee units	38 fee units

**806 Fee for additional visit for an existing vessel survey**

A fee of 8.4 fee units must be paid to the Director for each additional visit by a surveyor authorised by the Director that is required for the purposes of an existing vessel survey.

**807 Fee for considering application for alteration to classification or specification of vessel**

A fee of 2.1 fee units must be paid to the Director for considering an application for an alteration to the classification or specification of a vessel.

**808 Inspection fee for alteration to classification or specification of vessel**

A fee of 8.4 fee units must be paid to the Director for each inspection of a vessel for the purposes of altering the classification or specification of the vessel.

**809 Fee for plan approval for alteration to classification or specification of vessel**

A fee of 6.3 fee units for each hour spent by a person authorised by the Director in approving a plan must be paid to the Director for an application for an alteration to the classification or specification of a vessel that requires a plan approval.

**810 Fee for issue of certificate of survey**

A fee of 4.6 fee units must be paid to the Director for the issue of a certificate of survey.

**811 Fee for issue of duplicate certificate of survey**

A fee of 4.6 fee units must be paid to the Director for the issue of a duplicate certificate of survey.

**Division 2—Certificates of competency and licences**

**812 Application fee for issue, variation or renewal of certificate of competency**

A fee of 1.54 fee units must be paid to the Director for considering an application for—

- (a) the issue of a certificate of competency; or
- (b) the variation of a certificate of competency; or
- or
- (c) the renewal of a certificate of competency.

**813 Fee for issue or renewal of certificates**

A fee of 4.6 fee units must be paid to the Director for the issue or renewal of—

- (a) a certificate of competency; or
- (b) a certificate of local knowledge.

**814 Fee for variation of certificates**

A fee of 2.9 fee units must be paid to the Director for the variation of a certificate of competency.

**815 Fee for issue of duplicate certificate**

A fee of 4.6 fee units must be paid to the Director for the issue of a duplicate of—

- (a) a certificate of competency; or
- (b) a certificate of local knowledge.

**816 Examination fees for certificates**

- (1) A fee of 3.34 fee units for each examination is payable by a person who sits a written examination conducted by or on behalf of the Director for—

- (a) the issue of a certificate of competency; or
-

- (b) the variation of a certificate of competency;  
or
  - (c) the renewal of a certificate of competency; or
  - (d) the issue of a certificate of local knowledge.
- (2) A fee of 6·7 fee units for each examination is payable by a person who sits an oral examination conducted by the Director for—
- (a) the issue of a certificate of competency; or
  - (b) the variation of a certificate of competency;  
or
  - (c) the renewal of a certificate of competency; or
  - (d) the issue of a certificate of local knowledge.

**817 Fee for application for issue, variation or renewal of pilot licence**

A fee of 1·54 fee units must be paid to the Director for considering an application for—

- (a) the issue of a pilot licence; or
- (b) the variation of a pilot licence; or
- (c) the renewal of a pilot licence.

**818 Fee for issue or renewal of pilot licence**

A fee of 4·6 fee units must be paid to the Director for the issue or renewal of a pilot licence.

**819 Fee for variation of pilot licence**

A fee of 2·9 fee units must be paid to the Director for the variation of a pilot licence.

**820 Fee for duplicate of pilot licence**

A fee of 4·6 fee units must be paid to the Director for the issue of a duplicate of a pilot licence.

### 821 Examination fees for pilot licences

A person who sits an examination for the issue, variation or renewal of a pilot licence for the ports and channels described in Column 2 of the following Table must pay to the Director the amount specified in Column 3 of the Table opposite that port or channel.

**Table**

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Ports and Channels</i>	<i>Column 3</i> <i>Fee</i>
1	Port Waters of Melbourne and Geelong, and Port of Portland, and Port of Hastings	105.5 fee units
2	Port Waters of Melbourne and Geelong, and Port of Portland	84.45 fee units
3	Port Waters of Melbourne and Geelong, and Port of Hastings	84.45 fee units
4	Port Waters of Melbourne and Geelong	63.3 fee units
5	Port Waters of Melbourne and Port of Hastings	63.3 fee units
6	Port Waters of Melbourne and Port of Portland	63.3 fee units
7	Port Waters of Geelong and Port of Hastings	42.2 fee units
8	Port Waters of Geelong and Port of Portland	42.2 fee units
9	Port of Hastings and Port of Portland	42.2 fee units
10	Port Waters of Melbourne (both channels)	42.2 fee units
11	Port Waters of Melbourne (one channel)	24.75 fee units



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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Ports and Channels</i>	<i>Fee</i>
12	Port Waters of Geelong	24.75 fee units
13	Port of Hastings	24.75 fee units
14	Port of Portland	24.75 fee units

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**822 Fee for application for issue, variation or renewal of pilot exemption certificate**

A fee of 1.54 fee units must be paid to the Director for considering an application for—

- (a) the issue of a pilot exemption certificate; or
- (b) the variation of a pilot exemption certificate; or
- (c) the renewal of a pilot exemption certificate.

**823 Fee for issue or renewal of pilot exemption certificate**

A fee of 4.6 fee units must be paid to the Director for the issue or renewal of a pilot exemption certificate.

**824 Fee for variation of pilot exemption certificate**

A fee of 2.9 fee units must be paid to the Director for the variation of a pilot exemption certificate.

**825 Fee for duplicate of pilot exemption certificate**

A fee of 4.6 fee units must be paid to the Director for the issue of a duplicate of a pilot exemption certificate.

**826 Fee for conduct of examination by the Director for issue, variation or renewal of pilot exemption certificate**

A person who sits an examination for the issue, variation or renewal of a pilot exemption certificate for the ports and channels described in Column 2 of the following Table must pay to the

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Director the amount specified in Column 3 of the  
Table opposite that port or channel.

**Table**

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Ports and Channels</i>	<i>Column 3</i> <i>Fee</i>
1	Port Waters of Melbourne and Geelong, Port of Portland and Port of Hastings	105.5 fee units
2	Port Waters of Melbourne and Geelong and Port of Portland	84.45 fee units
3	Port Waters of Melbourne and Geelong and Port of Hastings	84.45 fee units
4	Port Waters of Melbourne and Geelong	63.3 fee units
5	Port Waters of Melbourne and Port of Hastings	63.3 fee units
6	Port Waters of Melbourne and Port of Portland	63.3 fee units
7	Port Waters of Geelong and Port of Hastings	42.2 fee units
8	Port Waters of Geelong and Port of Portland	42.2 fee units
9	Port of Hastings and Port of Portland	42.2 fee units
10	Port Waters of Melbourne (both channels)	42.2 fee units
11	Port Waters of Melbourne (one channel)	24.75 fee units
12	Port Waters of Geelong	24.75 fee units
13	Port of Hastings	24.75 fee units
14	Port of Portland	24.75 fee units

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**Division 3—Boating facilities and safety education fee**

**827 Fees for boating facilities and safety education**

The fee which must be paid to the Director for boating facilities and safety education for a vessel of a type specified in Column 2 of the following Table is the amount specified in Column 3 of the Table opposite that type of vessel.

**Table**

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Type of vessel</i>	<i>Column 3</i> <i>Fee</i>
1	For a recreational vessel up to and including 4·0 metres in length powered with an engine	2·9 fee units per annum
2	For a recreational vessel over 4·0 metres in length powered with an engine	6·05 fee units per annum

**828 Fees for marks and plates for manufacturers and dealers**

- (1) A fee of 6·05 fee units must be paid to the Director for the issue of a special identification mark.
- (2) A fee of 1·28 fee units must be paid to the Director for the issue of a special identification plate.

**829 Transfer fee on second-hand recreational vessel**

A fee of 1·28 fee units must be paid to the Director for the transfer of a registered second-hand powered recreational vessel.

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**Division 4—Operator licences and personal watercraft endorsements**

**830 Fee for operator licence and personal watercraft endorsement**

The fee which must be paid to the Director for the issue, renewal or re-issue of an operator licence or the making of a personal watercraft endorsement of a class specified in column 2 of the following Table is the amount set out in column 3 of the Table opposite that class of licence or endorsement.

**Table**

<i>Item</i>	<i>Class of licence or endorsement</i>	<i>Fee</i>
1	General operator licence	2.5 fee units per annum
2	Restricted operator licence	1.25 fee units per annum
3	Personal watercraft endorsement on a general operator licence	0.45 fee units per annum
4	Personal watercraft endorsement on a restricted operator licence	0.22 fee units per annum

**831 Fee for replacement operator licence**

A fee of 1.56 fee units must be paid to the Director for the issue of a replacement operator licence under regulation 719.

**832 Fee for search of records of operator licences**

A fee of 0.58 fee units must be paid to the Director for a search of the Director's records and a certificate as to any matter appearing in those records under regulation 720.

**833 Refund of fee**

If the Director cancels a person's operator licence that has been issued by the Director for a period of 3 years or 5 years whether—

- (a) upon receiving a notification from the person under regulation 702 to surrender the operator licence; or
- (b) under regulation 722—

the Director may refund part of the fee for the issue of the operator licence, calculated in accordance with the formula—

$$\frac{89}{100} \times \frac{A}{B} \times C$$

where—

- A is the unexpired number of months of duration of the operator licence; and
- B is the total number of months for which the operator licence was granted; and
- C is the amount paid for the operator licence.

**834 Operator licence knowledge test fee**

A fee of 1.95 fee units must be paid to the Director for a person to sit a test the person is required by the Director to undergo under Part 10A of the Act.

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## PART 9—MARINE INFRINGEMENTS

### 900 Prescribed offences

- (1) For the purposes of Part 7 of the Act, the prescribed kinds of offences are the offences described in Column 2 of the Table in Schedule 13 that are offences against the provisions referred to in column 3 of that Table.
- (2) For the purposes of section 60(5) of the Act, the penalty prescribed for a prescribed offence is the amount specified in Column 4 of the Table in Schedule 13 that is shown opposite the prescribed offence.
- (3) A description of a prescribed offence in Column 2 of the Table in Schedule 13 is for convenience of reference only and is not to be taken to affect the nature or elements of the offence to which the description refers or the operation of these Regulations.

### 901 Extension of time to object if no actual notice

- (1) For the purposes of section 61B(1) of the Act, an application to have the time for objecting to the notice extended must—
  - (a) be filed with an infringements registrar (within the meaning of the **Infringements Act 2006**) or a registrar (within the meaning of Schedule 3 to the **Children, Youth and Families Act 2005**); and
  - (b) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the extension is sought.

- (2) If an application is made under section 61B(1) of the Act to an infringements registrar within the meaning of the **Infringements Act 2006**, the registrar must—
- (a) refer the application to the Magistrates' Court constituted by a Magistrate; and
  - (b) cause a notice of the time and place of the hearing of the application to be given or sent to—
    - (i) the person who issued the infringement notice; and
    - (ii) the applicant.

**902 Payment of penalty**

For the purposes of section 61BA(6) of the Act, payment of a penalty may be made by posting or delivering the amount of the penalty to the address specified in the marine infringement notice as the address for payment of the penalty.

**903 Proof of prior convictions or findings of guilt**

For the purposes of section 62(1) of the Act, the prescribed form for setting out particulars of alleged prior convictions or findings of guilt is the form in Schedule 14.

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**PART 10—EVIDENTIARY REQUIREMENTS**

**1000 Certificate as to matter extracted from the Director's records**

For the purposes of section 89(1) of the Act, the prescribed form for a certificate is the form in Schedule 11.

**1001 Certificate as to name in which vessel is registered**

For the purposes of section 89(3) of the Act, the prescribed form for a certificate is the form in Schedule 12.

**1002 Certificate as to testing and sealing of prescribed speed measuring devices**

- (1) For the purposes of section 89(6) of the Act, the prescribed form of a certificate to the effect that a prescribed speed measuring device has been tested or sealed in the prescribed manner is the form set out in Schedule 15.
  - (2) The testing officer is authorised to sign the certificate.
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## **PART 11—SAVINGS AND TRANSITIONALS**

### **1100 Definitions**

In this Part—

*1999 Regulations* means the Marine Regulations 1999<sup>2</sup>;

*commencement day* means the day on which these Regulations come into operation.

### **1101 Designated hazardous areas**

The notification of an area of State waters as a designated hazardous area under regulation 104 of the 1999 Regulations that is in force immediately before the commencement day, continues in force and has effect as if the notification were given under regulation 104 of these Regulations.

### **1102 Exemptions from safety equipment requirements**

An exemption notified under section 231 of the 1999 Regulations that is in force immediately before the commencement day, continues in force and has effect as if it were an exemption notified under regulation 238 of these Regulations.

### **1103 Determinations by Director**

A determination made by the Director for the purposes of Part 3 of the 1999 Regulations that is in force immediately before the commencement day, continues in force and has effect for the purposes of Part 3 of these Regulations.

### **1104 Pilot licences and pilot licence exemptions**

A pilot licence or a pilot licence exemption issued under regulation 312 of the 1999 Regulations that is valid immediately before the commencement day, remains valid according to its terms and has effect as if it were a licence or an exemption, as

the case may be, issued under regulation 312 of these Regulations.

**1105 Registration of vessels**

- (1) The registration, or renewal of registration, of a vessel under regulation 401 of the 1999 Regulations that is in force immediately before the commencement day, continues in force according to its terms and has effect as if it were a registration, or renewal of registration, under regulation 401 of these Regulations.
- (2) A registration label issued, or an identification mark assigned, under regulation 402 of the 1999 Regulations has effect as if the registration label were issued or the identification mark assigned, as the case may be, under regulation 402 of these Regulations.
- (3) The suspension of the registration of a vessel under regulation 404 of the 1999 Regulations that is in force immediately before the commencement day, continues in force and has effect as if it were a suspension under regulation 404 of these Regulations.

**1106 Special identification plates and marks**

A special identification plate or mark issued under regulation 408 of the 1999 Regulations has effect as if the special identification plate or mark were issued under regulation 408 of these Regulations.

**1107 Notifications and internal reviews**

- (1) The notification by the Director under the 1999 Regulations of any of the following decisions that is given before the commencement date has effect as if the notification had been given under these Regulations—

- (a) the refusal of an application for an operator licence or an application to vary, renew or re-issue an operator licence;
- (b) the refusal of an application for a personal watercraft endorsement on an operator licence or an application to vary, renew or re-issue a personal watercraft endorsement;
- (c) the variation, of a condition on an operator licence or a personal watercraft endorsement under section 119 of the Act;
- (d) the suspension, variation or cancellation of an operator licence under section 119 of the Act;
- (e) the variation or revocation of a personal watercraft endorsement on an operator licence under section 119 of the Act.

**Note**

Under regulation 738(2), the applicant or holder of the licence, as the case may be, may apply to the Director for an internal review of the decision within 28 days of the day on which he or she is notified of the decision.

- (2) An application under regulation 738 of the 1999 Regulations for an internal review of a decision that was received but not determined before the commencement day must be determined in accordance with these Regulations.

**1108 Infringements committed before commencement day**

- (1) If a marine infringement is committed against the 1999 Regulations before the commencement day and the marine infringement has not been re-enacted under Schedule 13 to these Regulations, the marine infringement continues to be a marine infringement of a kind prescribed for the purposes of Part 7 of the Act and a marine infringement notice for the infringement may be
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issued or served in accordance with the 1999 Regulations as if they had not been revoked.

- (2) If a marine infringement is committed before the commencement day against the 1999 Regulations and the marine infringement has been re-enacted under Schedule 13 to these Regulations—
  - (a) the marine infringement is taken to be a marine infringement under Schedule 13 to these Regulations with the corresponding code, description of offence and penalty under Schedule 13; and
  - (b) a marine infringement notice for that infringement may be issued or served in accordance with these Regulations.
- (3) The revocation of 1999 Regulations does not affect a marine infringement notice issued or served in accordance with the 1999 Regulations—
  - (a) before the commencement day; or
  - (b) after the commencement day for an infringement referred to in subregulation (1).

#### **1109 Compliance with standards**

An item of safety equipment that was installed on a vessel before the commencement day and that, immediately before the commencement day, complies with the relevant standard prescribed under the 1999 Regulations, is taken to comply with the relevant standards prescribed under these Regulations for the item of equipment.

#### **1110 Interpretation of Legislation Act not limited**

This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.

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**SCHEDULES**

**SCHEDULE 1**

Regulation 103

**REGULATIONS REVOKED**

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<i>S.R. No.</i>	<i>Title</i>
145/1999	Marine Regulations 1999
13/2000	Marine (Amendment) Regulations 2000
91/2001	Marine (Fees) Regulations 2001
127/2001	Marine (Amendment) Regulations 2001
8/2002	Marine (Amendment) Regulations 2002
143/2003	Marine (Fees) Regulations 2003
152/2004	Marine (Alcohol Measurement) Regulations 2004
82/2005	Marine (Fees) Regulations 2005
154/2005	Marine (Personal Flotation Devices and Other Safety Equipment) Regulations 2005
155/2005	Marine (Infringements) Regulations 2005
113/2008	Marine (Infringements Amendments) Regulations 2008
126/2009	Marine Amendment Regulations 2009

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## SCHEDULE 2

Regulation 104

### TYPES OF PERSONAL FLOTATION DEVICES

#### PART 1—DEFINITION

In this Schedule *recognised appraiser* means—

- (a) a certifying body accredited by the Joint Accreditation Scheme of Australia and New Zealand (JAS-ANZ); or
- (b) a laboratory with National Association of Testing Authorities (NATA) accreditation; or
- (c) a notified body in accordance with the European Union Maritime Equipment Directive, Module B (MED-B) as formulated, issued, prescribed or published from time to time; or
- (d) a body approved by the Director.

#### PART 2—PFD TYPE 1

A personal flotation device is a PFD Type 1 if it complies with—

- (a) AS 1512—Personal Flotation Devices Type 1; or—
  - (b) AS 4758.1—Personal Flotation Devices Part 1: General Requirements relating to Level 275 PFDs; or
  - (c) AS 4758.1—Personal Flotation Devices Part 1: General Requirements relating to Level 150 PFDs; or
  - (d) AS 4758.1—Personal Flotation Devices Part 1: General Requirements relating to Level 100 PFDs; or
  - (e) Australian Maritime Safety Authority Marine Orders Part 25, Appendix 1, Section 2 SOLAS (Safety of Life at Sea) Life-jackets, as formulated, issued, prescribed or published from time to time; or
-

- (f) Uniform Shipping Laws Code, Section 10, Appendix R (for Coastal Lifejackets), as formulated, issued, prescribed or published from time to time; or
  - (g) International Standard ISO 12402:2006—Personal flotation devices performance level 275; or
  - (h) International Standard ISO 12402:2006—Personal flotation devices performance level 150; or
  - (i) International Standard ISO 12402:2006—Personal flotation devices performance level 100; or
  - (j) one of the following recognised standards for personal flotation devices, or types of personal flotation devices, that has been approved by a recognised appraiser—
    - (i) European Standard EN 399–1993 Lifejackets—275N, as formulated, issued, prescribed or published by the European Union from time to time; or
    - (ii) European Standard EN 396–1993 Lifejackets—150N, as formulated, issued, prescribed or published by the European Union from time to time; or
    - (iii) European Standard EN 395–1993 Lifejackets—100N, as formulated, issued, prescribed or published by the European Union from time to time; or
    - (iv) Canadian General Standards CAN/CGSB-65.11-M88 Personal Flotation Devices (For Adults), as formulated, issued, prescribed or published by the Canadian General Standards Board from time to time, and CAN/CGSB-65.15-M88 Personal Flotation Devices (For Children), as formulated, issued, prescribed or published by the Canadian General Standards Board from time to time; or
    - (v) Underwriters Laboratories Standards UL 1180 Fully Inflatable Recreational Personal Flotation Devices, as formulated, issued, prescribed or published from time to time; or
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- (vi) New Zealand Standard NZS 5823:2001 Type 401, as formulated, issued, prescribed or published by Standards New Zealand from time to time; or
- (h) any standard or specifications approved by the Director.

**PART 3—PFD TYPE 2**

A personal flotation device is a PFD Type 2 if it complies with—

- (a) AS 1499 Personal Flotation Devices Type 2; or
- (b) AS 4758.1—Personal Flotation Devices Part 1: General Requirements relating to Level 50 PFDs; or
- (c) European Standard EN 393–1993 Lifejackets—50N, as formulated, issued, prescribed or published by the European Union from time to time; or
- (d) International Standard ISO 12402:2006—Buoyancy aids (level 50).

**PART 4—PFD TYPE 3**

A personal flotation device is a PFD Type 3 if it complies with—

- (a) AS 2260 Personal Flotation Devices Type 3; or
  - (b) AS 4758.1 – Personal Flotation Devices Part 1: General Requirements relating to Level 50 Special Purpose PFDs.
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### SCHEDULE 3

Regulations 226 and 227

#### CONSTRUCTION OF RECREATIONAL VESSELS

##### *Thermal Protection*

- 1 Hot pipes or other sources of heat in close proximity to woodwork or other flammable material on a recreational vessel must be insulated.
- 2 All engine exhaust piping and silencers on a recreational vessel must—
  - (a) be water cooled or efficiently insulated; and
  - (b) be installed so as to prevent the transfer of heat to readily combustible materials.
- 3 All engine exhaust systems on a recreational vessel must—
  - (a) be led well clear of fuel tanks and fuel tank overflows; and
  - (b) be arranged so that exhaust fumes emerge outside the hull of the vessel.

##### *Liquefied Petroleum Gas and Compressed Natural Gas*

- 4 Unless the Director has given approval in writing to the contrary, if liquefied petroleum gas or compressed natural gas is carried on a recreational vessel—
  - (a) the gas cylinders must not be installed inside a deckhouse or below decks;
  - (b) the gas cylinders must be stored in the open air and secured in strongly constructed racks;
  - (c) in the case of a partially decked or open recreational vessel the gas cylinders must not be stored in lockers.

- 5 All gas piping on a recreational vessel must be securely fastened within the vessel.
- 6 Any gas-burning appliance on a recreational vessel must be securely fastened in position and the space containing the appliance must be adequately ventilated.

***Flame Arrestor***

- 7 The carburettor or carburettors of any engine, except an outboard motor, in a recreational vessel must be fitted with—
  - (a) a flame arrestor or backfire trap which is effective if the engine backfires, to prevent the flame caused by the backfire from making contact with the atmosphere; or
  - (b) a screen or cap of not less than 30 gauge, 30 mesh brass or stainless steel wire gauge which is securely sealed in or over the air intake.

***Seaworthiness***

- 8 A recreational vessel must be seaworthy and any internal ballast in the vessel must be securely fastened in position.

***Reserve Buoyancy***

- 9 (1) In this clause, reserve buoyancy means—
    - (a) fabricated air-tight tanks; or
    - (b) inflatable devices which can be conveniently stowed on a vessel; or
    - (c) buoyant foam that—
      - (i) is impervious to chemical action by petrol, oil and salt water; and
      - (ii) is of a closed cell structure; and
      - (iii) is suitably protected against fire; or
    - (d) buoyant foam that is approved by the Director; or
-

- (e) any combination of the systems specified in subparagraphs (a) to (d); or
  - (f) any other system approved by the Director.
- (2) A recreational vessel that is an open boat and that does not have an enclosed superstructure must have reserve buoyancy that is sufficient to support—
- (a) the hull; and
  - (b) the weight of the motor, fuel tanks and all non-buoyant material; and
  - (c) 10% of the total combined weight of the hull, motor, fuel tanks and all non-buoyant material.
- (3) A recreational vessel that—
- (a) is an open boat; and
  - (b) does not have an enclosed superstructure; and
  - (c) was constructed and first registered after 1 July 1963—
- must have reserve buoyancy built into the hull of the vessel.

***Ventilation***

- 10 (1) A recreational vessel which is using any liquid of a volatile nature or any gas as fuel must be provided with an effective means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to ensure that any explosive or flammable gases are removed.
- (2) Subclause (1) does not apply to an open vessel.
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**SCHEDULE 4**

**SAFETY EQUIPMENT ON RECREATIONAL VESSELS**

**TABLE A**

Regulations 228(1), 228(2), 228(3), 228(4)

**EQUIPMENT TO BE CARRIED ON RECREATIONAL  
VESSELS**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
<b>Mechanically Powered Recreational Vessels</b>					
01	Power boat up to and including 4.8 metres in length	PFD Type 1	1 for each person on board or being towed	1 for each person on board or being towed	0
		PFD Type 1, PFD Type 2 or PFD Type 3	—	—	1 for each person on board or being towed
		Anchor, and chain or line or both	1	1	0
		Electric or manual bilge pumping system	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces
		Bailer	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system
		Compass	1—if more than 2 nautical miles from the coast	0	0

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
		Bucket with lanyard	1	1	1
		Marine radio	1—if more than 2 nautical miles from the coast	0	0
		Red star parachute distress rocket	1—if more than 2 nautical miles from the coast	0	0
		Hand held orange smoke signal	2	2	0
		Hand held red distress flares	2	2	0
		Pair of oars with rowlocks or pair of paddles	1	1	1
		Waterproof buoyant torch	1	1	1
02	Power boat more than 4.8 metres in length	PFD Type 1	1 for each person on board or being towed	1 for each person on board or being towed	0
		PFD Type 1, PFD Type 2 or PFD Type 3	—	—	1 for each person on board or being towed
		Anchor, and chain or line or both	1	1	0
		Electric or manual bilge pumping system	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
		Bailer	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system
		Compass	1—if more than 2 nautical miles from the coast	0	0
		Bucket with lanyard	1	1	1
		Marine radio	1—if more than 2 nautical miles from the coast	0	0
		Red star parachute distress rocket	1—if more than 2 nautical miles from the coast	0	0
		Hand held orange smoke signal	2	2	0
		Hand held red distress flares	2	2	0
		Waterproof buoyant torch	1	1	1
		Lifebuoy	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length
		Dinghy or liferaft	1—if vessel is more than 12 metres in length	0	0

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
03	Personal watercraft	PFD Type 1, PFD Type 2 or PFD Type 3  Waterproof buoyant torch	1 for each person on board or being towed  1	1 for each person on board or being towed  1	1 for each person on board or being towed  1
04	Recreational tender	PFD Type 1, PFD Type 2 or PFD Type 3	1 for each person on board	1 for each person on board	1 for each person on board
<b>Sail Powered Recreational Vessels</b>					
05	Off the beach sailing yacht	PFD Type 1  PFD Type 1 or PFD Type 2  Electric or manual bilge pumping system  Bailer	1 for each person on board when operating more than 2 nautical miles from coast  1 for each person on board when operating 2 nautical miles from coast or less  1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces  1—if no electric or manual bilge pumping system and if vessel is not self draining without intervention from crew	0  1 for each person on board  1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces  1—if no electric or manual bilge pumping system and if vessel is not self draining without intervention from crew	0  1 for each person on board  1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces  1—if no electric or manual bilge pumping system and if vessel is not self draining without intervention from crew

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
		Compass	1—if more than 2 nautical miles from the coast	0	0
		Marine radio	1—if more than 2 nautical miles from the coast	0	0
		Red star parachute distress rocket	1—if more than 2 nautical miles from the coast	0	0
		Hand held orange smoke signal	2—if more than 2 nautical miles from the coast	0	0
		Hand held red distress flares	2—if more than 2 nautical miles from the coast	0	0
06	Yacht	PFD Type 1	1 for each person on board	0	0
		PFD Type 1 or PFD Type 2	0	1 for each person on board	1 for each person on board
		Anchor, and chain or line or both	1	1	0
		Electric or manual bilge pumping system	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces
		Bailer	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system
		Compass	1—if more than 2 nautical miles from the coast	0	0



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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
		Bucket with lanyard	1	1	1
		Marine radio	1—if more than 2 nautical miles from the coast	0	0
		Red star parachute distress rocket	1—if more than 2 nautical miles from the coast	0	0
		Hand held orange smoke signal	2	2	0
		Hand held red distress flares	2	2	0
		Waterproof buoyant torch	1	1	1
		Lifebuoy	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length	1—if vessel is 8 metres or more in length but not more than 12 metres in length; 2—if vessel is more than 12 metres in length
		Dinghy or liferaft	1—if vessel is more than 12 metres in length	0	0

**Human Powered Recreational Vessels**

07	Kayak, canoe, raft and rowing boat	PFD Type 1, PFD Type 2 or PFD Type 3	1 for each person on board	1 for each person on board	1 for each person on board
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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
		Electric or manual bilge pumping system	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces	1—if vessel has covered bilge or closed underfloor compartments, other than airtight void spaces
		Bailer	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system	1—if no electric or manual bilge pumping system
		Compass	1—if more than 2 nautical miles from the coast	0	0
		Hand held orange smoke signal	2—if more than 2 nautical miles from coast	0	0
		Hand held red distress flares	2—if more than 2 nautical miles from coast	0	0
		Waterproof buoyant torch	1—if more than 2 nautical miles from coast	0	0
		Spare oar with rowlock, or spare pair of oars with rowlocks, or spare paddle, as the case may be, to properly operate that kind of vessel	1—if more than 2 nautical miles from coast	0	0
08	Funboat and pedal boat	PFD Type 1, PFD Type 2 or PFD Type 3	1 for each person on board	1 for each person on board	1 for each person on board

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Item number</i>	<i>Class of vessel</i>	<i>Item of equipment</i>	<i>Requirements for coastal waters</i>	<i>Requirements for enclosed waters</i>	<i>Requirements for inland waters</i>
09	Recreational tender	PFD Type 1, PFD Type 2 or PFD Type 3	1 for each person on board	1 for each person on board	1 for each person on board

Note: Refer to regulation 206 for details of requirements about the carriage of EPIRBs on recreational vessels and to regulations 231 and 232 for requirements about the carriage of portable fire extinguishers and fire fighting equipment on recreational vessels.

**TABLE B**

Regulation 228(4)

**REQUIREMENTS FOR EQUIPMENT ON  
RECREATIONAL VESSELS**

<i>Item of equipment</i>	<i>Equipment requirements</i>
Anchor and chain or line	The anchor with chain or line or both chain and line must be of sufficient strength and durability to secure the vessel and must be appropriate for that purpose in the area of operation of the vessel. The chain or line or combination must be securely attached to both the anchor and the vessel at all times.
Bilge pumping system	An electric or manual bilge pumping system must have a pump or pumps that are capable of draining each compartment of the boat. This may require the system to comprise more than one bilge pump. The pump must have a strainer fitted to the suction pipe. The strainer must be of a sufficiently small mesh size to prevent choking of the pump by debris.
Bailer	A bailer must be suitable for bailing water from the boat. A bucket with lanyard may also be used as a bailer.
Dinghy or liferaft	The dinghy or liferaft must be able to support the weight of all people on board in the event of swamping.
Hand held orange smoke signal, hand held red distress flare, red star parachute distress rocket	Hand held orange smoke signals, hand held red distress flares and red star parachute distress rockets kept on the vessel for use must not exceed the manufacturer's expiry date.

**TABLE C**

Regulation 229

**TYPES OF FIRE EXTINGUISHERS TO BE CARRIED ON  
CERTAIN SIZE OF VESSEL**

<i>Column 1</i>	<i>Column 2</i>
<i>Vessel size</i>	<i>Number of portable fire extinguishers required to be carried</i>
Vessels less than 8 metres	1
Vessels 8–12 metres	2
Vessels more than 12 metres	3

**TABLE D**

Regulation 229

**MINIMUM CAPACITY OF PORTABLE FIRE  
EXTINGUISHERS FOR CERTAIN VESSELS**

<i>Column 1</i>	<i>Column 2</i>
<i>Volume of flammable or combustible liquids that are able to be carried on vessel</i>	<i>Minimum nominal capacity of fire extinguisher</i>
For vessels which have the capacity to carry less than 115 litres	0.9 kg
For vessels which have the capacity to carry 115–350 litres	2.0 kg
For vessels which have the capacity to carry 351–695 litres	4.5 kg
For vessels which have the capacity to carry more than 695 litres	9.0 kg

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**SCHEDULE 5**

Regulations 231, 232, 233

**PFDS TO BE WORN ON RECREATIONAL VESSELS**

**TABLE A**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item number</i>	<i>Vessel type</i>	<i>PFD requirements for coastal waters</i>	<i>PFD requirements for enclosed waters</i>	<i>PFD requirements for inland waters</i>
01	Power boat up to and including 4-8 metres in length	PFD Type 1	PFD Type 1	PFD Type 1, PFD Type 2 or PFD Type 3
02	Personal watercraft	PFD Type 1, PFD Type 2 or PFD Type 3	PFD Type 1, PFD Type 2 or PFD Type 3	PFD Type 1, PFD Type 2 or PFD Type 3
03	Recreational tender	PFD Type 1	PFD Type 1 or PFD Type 2	PFD Type 1, PFD Type 2 or PFD Type 3
04	Off-the-beach sailing yacht	PFD Type 1 or, if vessel is located within 2 nautical miles from coast, PFD Type 2	PFD Type 1 or PFD Type 2	PFD Type 1 or PFD Type 2
05	Kite board or sail board	PFD Type 1 or PFD Type 2	PFD Type 1, PFD Type 2 or PFD Type 3	PFD Type 1, PFD Type 2 or PFD Type 3
06	Canoe, kayak, rowing boat, raft, pedal boat or fun boat	PFD Type 1, PFD Type 2 or PFD Type 3	PFD Type 1, PFD Type 2 or PFD Type 3	PFD Type 1, PFD Type 2 or PFD Type 3

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**TABLE B**

Regulations 231, 232, 233

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item number</i>	<i>Vessel type</i>	<i>PFD requirements for coastal waters</i>	<i>PFD requirements for enclosed waters</i>	<i>PFD requirements for inland waters</i>
01	Power boat more than 4.8 metres but not more than 12 metres in length	PFD Type 1	PFD Type 1	PFD Type 1, PFD Type 2 or PFD Type 3
02	Yacht	PFD Type 1	PFD Type 1 or PFD Type 2	PFD Type 1, PFD Type 2 or PFD Type 3

**SCHEDULE 6**

Regulation 305

**QUALIFYING TRAINING FOR PORT PHILLIP HEADS**

- 1 An applicant for an endorsement on a certificate of competency to operate a trading vessel carrying passengers in Port Phillip Heads must complete a training course approved by the Director that covers local knowledge, operating guidelines and vessel and passenger safety.
  - 2 The course shall include but not be limited to the following—
    - (a) local knowledge, including lights, charted depths, channels, local dangers, tidal flows, navigation leads, beacons and topmarks;
    - (b) VHF radio communication procedures;
    - (c) passenger briefing and control;
    - (d) person overboard response procedures;
    - (e) occupational health and safety;
    - (f) boat operation and handling techniques specific to Port Phillip Heads;
    - (g) guidelines and rules for crossing Port Phillip Heads;
    - (h) local meteorological and tidal conditions;
    - (i) emergency contingency planning.
-



**SCHEDULE 7**

Regulation 308

**QUALIFYING SEA SERVICE AND TRAINING FOR THE  
LAKES ENTRANCE BAR**

***Prerequisite qualifying sea service***

- 1 An applicant for an endorsement on a certificate of competency to operate a trading vessel carrying passengers across the Lakes Entrance Bar must have completed a minimum of 20 outwards crossings and 20 inwards crossings of the Lakes Entrance Bar.
- 2 On each crossing of the Lakes Entrance Bar, the applicant must be at the helm and in charge of a trading or fishing vessel.
- 3 Of the trips specified in Clause 1, not more than 2 trips in any 24 hour period shall be counted as qualifying sea service.

***Training***

- 4 An applicant for an endorsement on a certificate of competency to operate a trading vessel carrying passengers across the Lakes Entrance Bar must complete a training course approved by the Director that covers local knowledge, operating guidelines and vessel and passenger safety.
- 5 The course shall include but not be limited to the following—
  - (a) local knowledge, including lights, charted depths, channels, local dangers, tidal flows, navigation leads, beacons and topmarks;
  - (b) VHF radio communication procedures;
  - (c) passenger briefing and control;
  - (d) person overboard response procedures;

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- (e) occupational health and safety;
  - (f) boat operation and handling techniques specific to the Lakes Entrance Bar;
  - (g) guidelines and rules for crossing the Lakes Entrance Bar;
  - (h) local meteorological and tidal conditions;
  - (i) emergency contingency planning.
-

**SCHEDULE 8**

Regulation 502

**CERTIFICATE OF RESULTS OF BREATH ANALYSIS**

I, \_\_\_\_\_ of \_\_\_\_\_

- (1) Am the person who operated the breath analysing instrument described below.
- (2) Am authorised to do so by the Chief Commissioner of Police.
- (3) State that the following matters are to the best of my knowledge true.

Serial Number of Breath Analysing Instrument used to conduct the breath analysis:

Sample Number:

Location where the test was conducted:

Name of person whose breath was tested:

Date of birth of person whose breath was tested:

Surname of person who operated breath analysing instrument:

Results of self test of breath analysing instrument prior to person's breath being analysed:

Results of self test of breath analysing instrument after person's breath being analysed:

Results of zero tests of breath analysing instrument prior to person's breath being analysed:

Results of zero tests of breath analysing instrument after person's breath being analysed:

Date of person's breath test:

Time of person's breath test:

Concentration of alcohol in grams per 210 litres of exhaled air indicated by the analysis to be present in the breath of the person tested:

Signature:

\_\_\_\_\_

**SCHEDULE 9**

Regulation 505

**CERTIFICATE BY MEDICAL PRACTITIONER TAKING  
BLOOD SAMPLE**

I \_\_\_\_\_, a medical practitioner registered under  
*(insert name of medical practitioner)*  
the **Health Professions Registration Act 2005**, certify that the sample of  
blood described below was taken in accordance with the requirements of the  
Marine Regulations 2009.

Name of the person from whom the blood sample was taken:

Time that the blood sample was taken:

Date that the blood sample was taken:

Name of the medical practitioner who took the sample:

Signature of the medical practitioner who took the sample:

  

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**SCHEDULE 10**

Regulation 506

**ANALYST'S CERTIFICATE**

I certify that

- (a) I am a properly qualified analyst within the meaning of section 32 of the Act.
- (b) The concentration of alcohol found in the sample described below was:

The method of analysis of the blood sample analysed was as follows—

*(Insert here a statement as to the method of analysis used).*

Description of the identification label referred to in regulation 504(1)(d) that is attached to the container in which the blood sample is placed:

*(Insert here a description of the identification label).*

Name of the properly qualified analyst:

Signature of the properly qualified analyst:

Date on which the analysis was conducted:

\_\_\_\_\_

**SCHEDULE 11**

Regulation 1000

**CERTIFICATE AS TO MATTERS WHICH APPEAR IN OR  
CAN BE CALCULATED FROM THE RECORDS KEPT BY  
THE DIRECTOR OF MARINE SAFETY**

Certificate issued under section 89(1) of the **Marine Act 1988**

The matters set out in this certificate appear in, or have been calculated from, the records kept by the Director of Marine Safety or a delegate of the Director.

*(Insert here the details to which the certificate relates).*

Dated:

Signature of Director or delegate

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**SCHEDULE 12**

Regulation 1001

**CERTIFICATE AS TO REGISTRATION OF VESSEL ISSUED  
UNDER SECTION 89(3) OF THE MARINE ACT**

According to the records of the Director of Marine Safety, on *(insert date)*  
the vessel described below was registered under the Act in the name of

Description of vessel

*(Insert here the details which identify the vessel).*

Dated:

Issued by the Director of Marine Safety

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**SCHEDULE 13**

Regulation 900

**MARINE INFRINGEMENTS**

*MA* means the Act; and

*MR* means Marine Regulations 2009;

*Notice* means Notice No. 1 made under section 15 of the Act on 26 June 1998 and published in Government Gazette Number G 26 on 2 July 1998 (pages 1706–1824) as amended from time to time.

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Registration</b>			
2251	Operate an unregistered vessel or vessel not exempt from registration	MA s. 8(1)(a)	1·2 penalty units
2252	Own or be in charge of an unregistered vessel or vessel not exempt from registration and cause or allow it to be operated	MA s. 8(1)(b)	1·2 penalty units
2253	Operate or cause or allow operation of a vessel in breach of a condition of registration	MA s. 8(2)	1·2 penalty units
2254	Fail to fix registration label in conspicuous position	MR r. 402(2)	0·8 penalty units
2255	Fail to fix identification mark in a conspicuous position	MR r. 402(5)	0·8 penalty units
2256	Fail to comply with requirements for transfer of registration	MR r. 405(1), 405(2)	0·8 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Safety Distances, Speed Restrictions etc.</b>			
State Waters			
2257	Operate a vessel at a speed exceeding 5 knots within 50 metres of a person.	MA s. 15(3) Notice cl. 2(a)	1·6 penalty units
2258	Operate a vessel at a speed exceeding 5 knots within 100 metres of a divers flag	MA s. 15(3) Notice cl. 2(b)	1·6 penalty units
2259	Operate a vessel at a speed exceeding 5 knots within 50 metres of another vessel	MA s. 15(3) Notice cl. 2(c)	1·6 penalty units
2260	Operate a sailboard	MA s. 15(3) Notice cl. 17	1·2 penalty units
Inland Waters			
2261	Operate a vessel at a speed exceeding 5 knots within 50 metres of the water's edge or a structure	MA s. 15(3) Notice cl. 3	1·6 penalty units
Coastal Waters and Ports			
2262	Operate a vessel at a speed exceeding 5 knots  (a) within 200 metres of the water's edge except in an access lane;  (b) within 50 metres of a wharf or similar structure except in an access lane;  (c) when passing through an anchorage for small vessels.	MA s. 15(3) Notice cl. 4	1·6 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Miscellaneous Navigation Offences</b>			
2263	Operate a vessel in an access lane in contravention of the Notice	MA s. 15(3) Notice cl. 6	1·6 penalty units
2264	Operate a vessel at a speed exceeding the speed limit specified in the Notice for the area of water	MA s. 15(3) Notice cl. 7	1·6 penalty units
2265	Enter prohibited area towing water skier or when water skiing	MA s. 15(3) Notice cl. 8	1·6 penalty units
2266	Operate a vessel in a prohibited area	MA s. 15(3) Notice cl. 9	1·6 penalty units
2267	Operate a vessel with an engine in a prohibited area	MA s. 15(3) Notice cl. 10	1·6 penalty units
2268	Fail to operate vessel in a manner which creates minimal or no wash in a no wash zone	MA s. 15(3) Notice cl. 11	1·6 penalty units
2269	Operate a vessel with an engine in a direction other than as permitted by the Notice in inland waters	MA s. 15(3) Notice cl. 14	1·6 penalty units
2270	Operate a vessel or engage in an activity in a prohibited area of water	MA s. 15(3) Notice cl. 12	1·6 penalty units
2271	Use waters contrary to conditions of use specified in the Notice	MA s. 15(3) Notice cl. 13	1·6 penalty units
2272	Fail to give way to other vessel when departing from shore on a vessel with an engine	MA s. 15(3) Notice cl. 15	1·6 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Water skiers</b>			
2273	Fail to wear approved lifejacket, buoyancy vest, buoyancy garment or personal flotation device when water skiing	MA s. 15(3) Notice cl. 18	1·6 penalty units
2274	Tow water skiers in contravention of the Notice	MA s. 15(3) Notice cl. 19	1·2 penalty units
<b>Smoke and Noise</b>			
2275	Operate a vessel emitting annoying or dangerous smoke, visible vapour or smells	MA s. 15(3) Notice cl. 20	0·8 penalty units
2276	Operate vessel without adequate silencing device securely fixed to engine	MA s. 15(3) Notice cl. 21(1)(a)	0·8 penalty units
2277	Operate a vessel without a silencing device that does not have a cut out or similar device	MA s. 15(3) Notice cl. 21(1)(b)	0·8 penalty units
2278	Operate vessel so as to create undue noise	MA s. 15(3) Notice cl. 21(2)	0·8 penalty units
<b>Miscellaneous Offences</b>			
2283	Being the owner or master of a trading or fishing vessel, fail to properly report an accident to the Director	MA s. 20(3)	1·6 penalty units
2284	Fail to obey a direction given by a member of the police force or an authorised officer	MA s. 21(2)	1·6 penalty units
2286	Tamper with a vessel without just cause or excuse	MA s. 24(1)	1·2 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2288	Obstruct an officer in the exercise of his or her duty	MA s. 92(2)	1·6 penalty units
2289	Refuel vessel at a wharf, jetty or pier with passengers on board	MR r. 239	2 penalty units
2291	Permit a naked flame to be installed in compartment of vessel containing motors or fuel tank	MR r. 240(1)	1·6 penalty units
2292	Permit naked flame to be used near motor or fuel tank on vessel	MR r. 240(2)	2 penalty units
2293	Overload vessel	MR r. 241(1)	2 penalty units
2294	Fail to give information when required	MA s. 18(2)	0·8 penalty units
2295	Fail to stop vessel when required	MA s. 19(3)	1·2 penalty units
2296	Refuse or fail to state name and address or state false name and address	MA s. 19(4)(a) or (b), 60(7)(a) or (b)	1·2 penalty units
2298	Bathe within 50 metres of a launching ramp being used or about to be used or an access lane	MA s. 15(3) Notice cl. 16	1·2 penalty units
2299	Refuse or fail to allow a vessel to be inspected	MA s. 13(3)	1·6 penalty units
2300	Operate a recreational or hire and drive vessel engaged in diving operations without exhibiting a flag indicating diver below that complies with the Notice	MA s. 15(3) Notice cl. 22	1·2 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2301	Engage in diving without a buoy or flag displayed that complies with the Notice	MA s. 15(3) Notice cl. 23	1·2 penalty units

**Equipment Offences—Recreational Vessels**

All State Waters

State Waters Other Than Inland Or Enclosed Waters

**Further Miscellaneous Offences**

2316	Permit vessel to be moored or secured to navigation marker, beacon, buoy, pole or post in contravention of the Notice	MA s. 15(3) Notice cl. 23A	1·2 penalty units
2317	Anchor vessel in a channel that is marked with beacons or buoys in contravention of the Notice	MA s. 15(3) Notice cl. 23B	1·2 penalty units

**Hire and Drive Vessel Offences**

2319	Being a person in charge of a vessel, fail to render assistance, exchange details and report accident	MA s. 20(1)	1·6 penalty units
2320	Being the owner of a vessel, fail to maintain register of contracts	MR r. 217(1)	0·8 penalty units
2321	Being the hirer of a vessel, fail to provide specified details.	MR r. 217(2)	0·8 penalty units
2322	Being the owner of a vessel, fail to produce register of contracts for inspection	MR r. 217(3)	0·8 penalty units
2323	Being the owner of a vessel, fail to notify Director of sale or disposal of hire and drive vessel	MR r. 218(1)	0·8 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2324	Being the purchaser of a vessel, fail to notify Director of purchase or acquisition of hire and drive vessel	MR r. 218(2)	0.8 penalty units
2325	Being the owner of a vessel, fail to report accident involving hire and drive vessel	MR r. 219	1.6 penalty units
2326	Being the hirer or operator of a vessel, allow improper use of equipment or permit vessel to go outside limits specified in the certificate of survey	MR r. 220	1.6 penalty units
2327	Being the owner of a vessel, fail to reasonably ensure competence of hirer	MR r. 221(1)	2 penalty units
2328	Being the owner of a vessel, fail to give hirer instructions about use of hire and drive vessel	MR r. 221(2)	2.2 penalty units
2329	Being the owner of a vessel, fail to obtain signed statement from hirer	MR r. 221(4)	2 penalty units
2330	Act in reckless, negligent or dangerous manner when operating or being towed or propelled by a hire and drive vessel	MR r. 222(1), 222(2)	2.4 penalty units
2331	Being the owner or hirer of a vessel, fail to ensure person under 10 wearing personal flotation device	MR r. 223(1), 223(2)	1.6 penalty units
2332	Being the owner, hirer or operator of a vessel, permit vessel to be refuelled at wharf etc. with passengers on board	MR r. 224(1), 224(2)	2 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2334	Being the owner of a vessel, permit appliances producing a naked flame to be installed in compartment of vessel containing motors or fuel tank	MR r. 225(1)	1·6 penalty units
2335	Permit appliances producing a naked flame to be used in compartments of a vessel containing motor or fuel tank	MR r. 225(2), 225(3)	2 penalty units
2336	Being the owner of a vessel, fail to have equipment readily accessible and in good order	MR r. 226	1·2 penalty units
2337	Being the owner or operator of a vessel, overload vessel	MR r. 227(1), 227(2)	2 penalty units

**Blood Alcohol Offences**

2338	Being a person in charge of a vessel underway with unlawful—  (a) blood alcohol level of 0·05g/100ml or more but less than 0·10g/100ml; or  (b) breath alcohol level of 0·05g/210 litres or more but less than 0·10g/210 litres—  but not being a person—  (c) under the age of 21 years; or  (d) who, by reason of section 27(1AAA) of the MA, is taken to be in charge of the vessel	MA s. 28(1)(b)	3 penalty units
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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2339	<p>Being a person in charge of a vessel underway with unlawful—</p> <p>(a) blood alcohol level of 0.10g/100ml or more but less than 0.15g/100ml; or</p> <p>(b) breath alcohol level of 0.10g/210 litres or more but less than 0.15g/210 litres—</p> <p>but not being a person—</p> <p>(c) under the age of 21 years; or</p> <p>(d) who, by reason of section 27(1AAA) of the MA, is taken to be in charge of the vessel</p>	MA s. 28(1)(b)	4.2 penalty units
<b>General Offences</b>			
2341	Being an owner of a vessel, operate, or allow the vessel to be operated, without certificate of survey	MA s. 97(1)	5 penalty units
2342	Being master of a vessel, operate the vessel without certificate of survey	MA s. 97(2)	2.5 penalty units
2343	Act as master or crew member on vessel without a certificate required by the regulations	MA s. 94(1)	2.5 penalty units
2344	Employ or engage person to act as master or crew member on vessel if person does not have a certificate required by the regulations	MA s. 94(2)	2.5 penalty units



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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
2345	Being an owner of vessel, cause or allow vessel to be operated when crewed by people without appropriate certificates	MA s. 94(3)	2.5 penalty units
2346	Fail to carry certificate, licence or exemption whilst operating a vessel covered by that certificate or licence or exemption	MR r. 321	0.8 penalty units
<b>Operation of vessels</b>			
5701	Refuse or fail to surrender a document required by a notice of suspension of operator licence under section 28C(1) of the MA	MA s. 28C(5)	1.2 penalty units
5702	Fail to comply with a notice to surrender licence within the specified time	MA s. 61BA(5)	1.2 penalty units
5703	Operate a general recreational vessel other than in accordance with an operator licence	MA s. 115(1)	2 penalty units
5704	Operate a personal watercraft other than in accordance with an operator licence endorsed to authorise such use	MA s. 115(2)	2.5 penalty units
5705	Apply for or obtain an operator licence while disqualified from doing so	MA s. 123(1)	2.5 penalty units
5706	Operate a general recreational vessel in breach of condition of an operator licence	MA s. 129(1)	2 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
5707	Operate a personal watercraft in breach of a condition of an operator licence or personal watercraft endorsement on that licence	MA s. 129(2)	2.5 penalty units
5708	Operate a regulated recreational vessel in breach of a condition of a licence or certificate issued in another State, Territory or country	MA s. 130	2 penalty units
5709	Operate regulated recreational vessel without being in possession of operator licence document	MA s. 133	0.8 penalty units
5710	Being the owner of a trading, fishing or hire and drive vessel, allow that vessel to operate without carrying on board the certificate of survey issued for that vessel or a certified copy of it	MR r. 216(1)	2.5 penalty units
5711	Being the master of a trading or fishing vessel, allow that vessel to operate without carrying and displaying on board the certificate of survey issued for that vessel or a certified copy of it	MR r. 216(2)	2.5 penalty units
5712	Fail to produce an operator licence required to operate the vessel	MA s. 19(4)(c)	1.2 penalty units
5713	Fail to produce a certificate, licence or exemption while operating a vessel covered by that certificate, licence or exemption	MA s. 19(4)(d)	1.2 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Carriage and use of safety equipment</b>			
5752	Operate vessel that is not equipped with the required type or quantity of personal flotation devices	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5753	Operate vessel that is not equipped with the required quantity of anchors, and chains or lines	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5754	Operate vessel that is not equipped with the required quantity of electric or manual bilge pumping systems.	MR r.230(1), 230(2) and 230(3) and Schedule 4, Table A	1.25 penalty units
5755	Operate vessel that is not equipped with the required quantity of bailers	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5756	Operate vessel that is not equipped with the required quantity of compasses	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5757	Operate vessel that is not equipped with the required quantity of buckets with lanyards	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5758	Operate vessel that is not equipped with the required quantity of marine radios	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5759	Operate vessel that is not equipped with the required quantity of red star parachute distress rockets	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5760	Operate vessel that is not equipped with the required quantity of hand held orange smoke signals	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
5761	Operate vessel that is not equipped with the required quantity of hand held red distress flares	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5762	Operate vessel that is not equipped with the required quantity of oars and rowlocks, pairs of oars and rowlocks, pairs of paddles or spare paddles.	MR r.230(1), 230(2) and 230(3)	1.25 penalty units
5763	Operate vessel that is not equipped with the required quantity of waterproof buoyant torches	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5764	Operate vessel that is not equipped with the required quantity of lifebuoys	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5765	Operate vessel that is not equipped with the required quantity of dinghies or liferafts	MR r. 230(1), 230(2) and 230(3)	1.25 penalty units
5766	Operate vessel without the required number of portable fire extinguishers	MR r. 231(2)(a)	1.25 penalty units
5767	Operate vessel with a portable fire extinguisher that does not have the required minimum nominal capacity	MR r. 231(2)(b)	1.25 penalty units
5768	Operate vessel with a portable fire extinguisher that has not been maintained as required	MR r. 232(1)(c)	1.25 penalty units
5769	Operate vessel with a portable fire extinguisher that has not been serviced as required	MR r. 232(1)(d)	1.25 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
5770	Fail to keep portable fire extinguishers in separate positions on vessel	MR r. 232(2)	1.25 penalty units
5771	Fail to wear required personal flotation device while in open area of vessel that is underway	MR r. 234(1)(a), 234(1)(b) and 234(1)(c).	1.25 penalty units
5772	Fail to ensure that person under 10 years of age in open area of vessel underway wears required personal flotation device	MR r. 236(a), 236(b) and 236(c)	1.25 penalty units
5773	Fail to wear required personal flotation device while being towed by vessel	MR r. 237(1)	1.25 penalty units
5774	Allow vessel to start voyage before each person on board in open area is wearing required personal flotation device	MR r. 238(1)	1.25 penalty units
5775	Allow vessel to start towing a person who is not wearing required personal flotation device	MR r. 238(3)	1.25 penalty units
5776	Operate vessel on coastal waters more than 2 nautical miles from shore without vessel being provided with registered EPIRB with operational frequency of 406MHz and that complies with specified standards including registration sticker.	MR r. 206(1)	1.25 penalty units
5777	Operate vessel on coastal waters more than 2 nautical miles from shore without carrying proof issued by AMSA that vessel is provided with EPIRB of required type.	MR r. 206(2)	1.25 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
<b>Other offences relating to trading vessels</b>			
5778	Fail to ensure, as owner, that trading vessel carrying passengers in or through Port Phillip Heads has required endorsed certificate of survey	MR r. 207(1)	5 penalty units
5779	Fail to ensure, as master, that trading vessel carrying passengers in or through Port Phillip Heads has required endorsed certificate of survey	MR r. 207(2)	5 penalty units
5780	Fail to ensure, as master of trading vessel carrying passengers, that the vessel does not enter or traverse Port Phillip Heads in specified dangerous conditions	MR r. 208(2)(a)	4 penalty units
5781	Fail to ensure, as master of trading vessel carrying passengers in or through Port Phillip Heads, that passengers and crew wear required safety items	MR r. 208(2)(b)	4 penalty units
5782	Fail to ensure, as master of trading vessel carrying passengers in or through Port Phillip Heads, that required briefing given to passengers	MR r. 208(2)(c)	4 penalty units
5783	Fail to ensure, as master of trading vessel carrying passengers in or through Port Phillip Heads, that required flag prominently flown	MR r. 208(2)(d)	4 penalty units
5784	Fail to ensure, as owner, that trading vessel carrying passengers across the Lakes Entrance Bar has required endorsed certificate of survey	MR r. 209(1)	5 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
5785	Fail to ensure, as master, that trading vessel carrying passengers across the Lakes Entrance Bar has required endorsed certificate of survey	MR r. 209(2)	5 penalty units
5786	Fail to ensure, as master of trading vessel carrying passengers, that vessel does not proceed to sea by crossing or attempting to cross the Lakes Entrance Bar if specified dangerous conditions predicted	MR r. 210(2)(a)	4 penalty units
5787	Fail to ensure, as master of trading vessel carrying passengers, that vessel does not cross or attempt to cross the Lakes Entrance Bar in specified dangerous conditions	MR r. 210(2)(b)	4 penalty units
5788	Fail to ensure, as master of trading vessel carrying passengers in or through the Lakes Entrance Bar, that passengers and crew wear required safety items	MR r. 210(2)(c)	4 penalty units
5789	Fail to ensure, as master of trading vessel carrying passengers in or through the Lakes Entrance Bar, that required briefing given to passengers	MR r. 210(2)(d)	4 penalty units
5790	Fail to ensure, as master of trading vessel carrying passengers in or through the Lakes Entrance Bar, that all passengers located in open area of vessel	MR r. 210(2)(e)	4 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Code</i>	<i>Short description of offence</i>	<i>Provision Containing Offence</i>	<i>Penalty</i>
5791	Fail to ensure, as master of trading vessel carrying passengers in or through the Lakes Entrance Bar, that required flag prominently flown	MR r. 210(2)(f)	4 penalty units
5792	Operate, as master, trading vessel carrying passengers in or through Port Phillip Heads without required endorsed certificate of competency	MR r. 304	5 penalty units
5793	Operate, as master, trading vessel carrying passengers across Lakes Entrance Bar without required endorsed certificate of competency	MR r. 307	5 penalty units



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**SCHEDULE 14**

Regulation 903

**PARTICULARS OF ALLEGED PRIOR CONVICTIONS OR  
FINDINGS OF GUILT**

Name and address of the person to whom it relates:

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<i>Name of court that convicted the person or found the person guilty</i>	<i>Date of the alleged conviction or finding of guilt</i>	<i>Short description of the alleged offence</i>	<i>Short description of the alleged penalty imposed</i>
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This document will be admissible as evidence that the person has been convicted or found guilty as alleged if—

- (a) the person does not appear in answer to the summons served with the notice; and
- (b) the person is convicted or found guilty of the marine infringement alleged in the summons.

Signature of Informant:

Date:

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**SCHEDULE 15**

Regulation 1002

**CERTIFICATE UNDER SECTION 89(6)**

The speed measuring device known as (*insert make and model number of device*) and numbered (*insert identifying number of device*) was tested by me in accordance with the Marine Regulations 2009 on (*date*).

The test confirmed that the device was operating correctly in accordance with the requirements of those Regulations.

I sealed the device in accordance with those Regulations after carrying out the test.

Date:

Signature of person issuing certificate:

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**ENDNOTES**

<sup>1</sup> Reg. 104: No. 490/1988. Reprinted to No. 153/1994.

<sup>2</sup> Reg. 1100: S.R. No 145/1999. Reprinted to S.R. No. 113/2008.

**Table of Applied, Adopted or Incorporated Matter Required by the  
Subordinate Legislation Regulations 2004**

Note that the following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2004.

<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
Regulation 104— Definition of <i>dive flag</i>	International Code of Signals 2005 International Maritime Organisation	Appendix 2 Code Flag R
Regulation 104— Definition of <i>enclosed waters</i>	Chart AUS 144 "Approaches to Port Phillip" as published by the Hydrographic Service, Royal Australian Navy on 9 November 2001  Chart AUS 150 "Western Port" as published by the Hydrographic Service, Royal Australian Navy on 22 March 1995	Whole  Whole
Regulation 104— Definitions of <i>hand held orange smoke signal</i> and <i>hand held red distress flare</i>	Uniform Shipping Laws Code  Australian Standard AS 2092–2004 Pyrotechnic Marine Distress Flares and Signals for Pleasure Craft as published by Standards Australia on 10 May 2004	Section 10 Appendix V  Whole

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<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
Regulation 104— Definition of <i>Lakes Entrance Bar</i>	Chart AUS 182 "Lakes Entrance" as published by the Hydrographic Service, Royal Australian Navy on 30 January 1998	Whole
Regulation 104— Definition of <i>length</i>	International Standard ISO 8666:2002(E) as published by the International Standards Organisation on 1 November 2002	Clauses 1, 2, 3, 4 and 5
Regulation 104— Definition of <i>lifebuoy</i>	Uniform Shipping Laws Code  Australian Standard AS 2261–1979 Rescue Buoys as published by Standards Association of Australia on 1 July 1979  Australian Standard AS 2261–1990 Rescue Buoys as published by Standards Australia on 12 March 1990	Section 10 Appendix P  Whole  Whole
Regulation 104— Definition of <i>marine radio</i>	Australian/New Zealand Standard AS/NZS 4415.2:2003 Radio Telephone Transmitters and Receivers for the Maritime Mobile Service Operating in the VHF Band—Technical Characteristics and Methods of Measurement—Major Coast Stations, Limited Coast Stations, Ship Stations and Hand Held Stations (non DSC) as published jointly by Standards Australia and Standards New Zealand on 28 January 2003	Parts 1 and 2

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Statutory Rule Provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 104— Definition of <i>portable fire extinguisher</i>	AS/NZS 1841.1 Portable Fire Extinguishers—General Requirements as published jointly by Standards Australia and Standards New Zealand on 5 April 1997 and amended on 23 February 2001 and 10 April 2003	Whole
	Australian/New Zealand Standard AS/NZS 1841.12007 Portable Fire Extinguishers—General Requirements as published jointly by Standards Australia and Standards New Zealand on 31 August 2007	Whole
	Australian/New Zealand Standard AS/NZ 1841.5:1997 Portable Fire Extinguishers—Specific Requirements for Powder Type Extinguishers as published jointly by Standards Australia and Standards New Zealand on 5 April 1997	Whole
	Australian/New Zealand Standard AS/NZ 1841.5:2007 Portable Fire Extinguishers—Specific Requirements for Powder Type Extinguishers as published jointly by Standards Australia and Standards New Zealand on 31 August 2007	Whole

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Statutory Rule Provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
	<p>Australian/New Zealand Standard AS/NZS 1850:1997 Portable Fire Extinguishers—Classification, Rating and Performance Testing as published by Standards Australia on 5 April 1997 and amended on 24 July 2001</p> <p>Australian/New Zealand Standard AS/NZS 1850:2009 Portable Fire Extinguishers—Classification, Rating and Performance Testing as published by Standards Australia on 20 March 2009</p>	<p>Whole</p> <p>Whole</p>
Regulation 104— Definition of <i>Port Phillip Heads</i>	Chart AUS 143 "Port Phillip" as published by the Hydrographic Service, Royal Australian Navy on 2 May 1973	Whole
Regulation 104— Definition of <i>red star parachute distress rocket</i>	<p>Uniform Shipping Laws Code</p> <p>Australian Standard AS 2092–2004 Pyrotechnic Marine Distress Flares and Signals for Pleasure Craft as published by Standards Australia on 10 May 2004</p>	<p>Section 10 Appendix V</p> <p>Part 7</p>

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<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
Regulation 206	Australian/New Zealand Standard AS/NZS 4280.1:2003 406 MHz Satellite Distress Beacons—Maritime Emergency Position-Indicating Radio Beacons (EPIRBs) as published jointly by Standards Australia and Standards New Zealand on 7 November 2003	Whole
Regulations 208 and 210	International Code of Signals	Appendix 2 Code Flag R
Regulation 211	Uniform Shipping Laws Code	Section 14
Regulation 212	National Standard for Commercial Vessels Part E Operational Practices published October 2008 by the National Marine Safety Committee	Part E
Regulation 214	Uniform Shipping Laws Code	Sections 5A, B, C (except clause C.15), D, E, F, G, H, I, J, K, L, M, 6, 7 (except clauses 74.4 and 74.5), 8A, B and C, 9, 10, 11, 12, 13
Regulation 215	Uniform Shipping Laws Code	Section 18 (except clauses 2.4.1, 2.5.1, 2.5.3 and Part 3 and Part 4)

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<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
Regulation 231	Australian/New Zealand Standard AS/NZS 3504:1995 Fire Blankets as published jointly by Standards Australia and Standards New Zealand on 5 January 1995	Whole
Regulation 300	National Standard for Commercial Vessels	Part D
Regulation 301	National Standard for Commercial Vessels	Part D
Regulations 302 and 303	National Standard for Commercial Vessels	Part D
Schedule 2— Definition of <i>recognised appraiser</i>	European Union Maritime Equipment Directive, Module B (MED-B) published by European Union 20 December 1996	Whole
Schedule 2— Definition of <i>personal flotation device type 1</i>	<p>Australian Standard AS 1512–1996 Personal Flotation Devices - Type 1 as published by Standards Australia on 5 January 1996</p> <p>Australian Standard AS 4758.1–2008 Personal Flotation Devices as published by Standards Australia on 2 December 2008</p> <p>Australian Maritime Safety Authority Marine Orders Part 25—SOLAS (Safety of Life at Sea) Lifejackets as published by the Australian Maritime Safety Authority on 15 February 2002</p>	<p>Whole</p> <p>Whole</p> <p>Appendix 1 Section 2</p>



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<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
	<p>Uniform Shipping Laws Code</p> <p>European Standard EN 399–1993 Lifejackets—275N as published by the European Union on 16 December 1994 and amended by EN 399/A1–1998 on 6 November 1998</p> <p>European Standard EN 396–1993 Lifejackets—150N as published by the European Union on 16 December 1994 and amended by EN 399/A1–1998 on 6 November 1998</p> <p>European Standard EN 395 – 1993 Lifejackets—100N as published by the European Union on 16 December 1994 and amended by EN 399/A1–1998 on 6 November 1998</p> <p>Canadian General Standard CAN/CGSB-65.11-M88 Personal Flotation Devices (For Adults) as published by the Canadian General Standards Board on 1 February 1988 and amended on 1 January 1997</p> <p>Canadian General Standard CAN/CGSB-65.15-M88 Personal Flotation Devices (For Children) as published by the Canadian General Standards Board on 1 February 1988 and amended on 1 January 1997</p>	<p>Section 10 Appendix R</p> <p>Whole</p> <p>Whole</p> <p>Whole</p> <p>Whole</p> <p>Whole</p> <p>Whole</p>

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<b>Statutory Rule Provision</b>	<b>Title of applied, adopted or incorporated document</b>	<b>Matter in applied, adopted or incorporated document</b>
	Underwriters Laboratories Standard UL 1180 Fully Inflatable Recreational Personal Flotation Devices as published by Underwriters Laboratories on 15 May 1995	Whole
	New Zealand Standard NZS 5823:2001 Type 401 as published by Standards New Zealand on 30 March 2001	Whole
	International Standard ISO 12402-2:2006 Personal Flotation Devices as published by the International Standards Organisation on 1 September 2006	Whole
	International Standard ISO 12402-3:2006 Personal Flotation Devices as published by the International Standards Organisation on 1 September 2006	Whole
	International Standard ISO 12402-4:2006 Personal Flotation Devices as published by the International Standards Organisation on 1 September 2006	Whole



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