

2008

Regulatory Impact Statement

Marine Safety (General) Regulation 2008

This Report presents the results of an assessment of the impact of a proposal by NSW Maritime to make a Regulation titled Marine Safety (General) Regulation 2008.

The proposed Regulation is to be made under the Marine Safety Act 1998



August 2008



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Australia has a deep maritime tradition. Indigenous Australians relied on our waterways for food and trade long before European settlement. Whilst our oceans opened up Australia to the world, our coastline can be inhospitable and has claimed many lives. Over the years an international framework for maritime safety has been developed. Australia and New South Wales are a part of that. Much of the regulation we follow is based on national and international standards and a great deal of caution needs to be taken before varying them, even at a local level. It is imperative we minimise the risk of confusion for visiting vessels from elsewhere in NSW, Australia and overseas.

NSW Maritime's vision is serving our boating community, with a mission of safe waterways and support for the maritime community. Creating a culture of safe boating is our paramount aim and we take all practical steps to achieve it.

It seems every week there are calls for new, stricter regulation to make boating safer. We keep these issues under constant review whether they are related to lifejackets, vessel lighting, emerging technology, or improving our licensing system. A key part of our role is to provide a measured and appropriate response. Safety is not a static debate and we will always respond when necessary.

The challenge we face is to create a regulatory framework that promotes a safety culture, provides for appropriate penalties, but still allows people to have fun - after all that's what we're out there for. This Regulation is another step forward towards creating a safer boating culture - a renewed focus on education will follow, with more effort on critical safety issues such as skipper responsibility, wearing lifejackets and vessel lighting, and an ongoing dialogue with the boating community as we move forward.

NSW Maritime

Executive Summary

1) Purpose of the Document

This document is a Regulatory Impact Statement (RIS) of the proposed *Marine Safety (General) Regulation 2008* (the Regulation) to be made under the Marine Safety Act 1998.

This RIS seeks comment from the public on the impact of the proposed Regulation on business, recreational boating participants and other stakeholders.

2) Purpose of the Regulation

The purpose of the Regulation is to:

- (a) Adopt the International Regulations for Preventing Collisions at Sea with some modifications,
- (b) Prescribe other requirements for the safe operation of vessels in navigable waters, including requirements relating to the conduct of persons on board vessels,
- (c) Prescribe requirements in relation to the operation of vessels near persons or objects in the water and in relation to the use of personal watercraft (such as jet skis),
- (d) to require certain recreational vessels to have builders plates displaying certain safety information
- (e) Deal with matters relating to applications for certain marine safety licences and the issue, suspension and cancellation of those licences (such licences include boat driving licences and vessel registration),
- (f) Prescribe the safety equipment to be carried on recreational vessels.

3) Summary of the Regulatory Problem

The operation of power-operated recreational vessels on public waterways at speed creates a safety hazard to operators of the vessels, the vessel's passengers and other persons on the waterways. The magnitude of this hazard can be gauged by the number and severity of incidents involving such recreational vessels that have occurred each year.

Given the number of such vessels, the number of persons licensed to drive such vessels, together with the area and geographical extent of the State's navigable waterways, government intervention to support waterway safety and minimise the resulting hazard is necessary.

It is evident that the operation of recreational vessels on navigable waters creates significant hazards to life and property and thus government intervention is justified.

4) Discussion

The proposed Regulation has been found to create a net benefit. This net benefit is derived from the following:

1. The consolidation of the current suite of regulations into one single regulation will facilitate access the legislative requirements by the recreational boating community. This facilitated access will assist in understanding the requirements and, through this facilitation, increase compliance. In turn, increased compliance will reduce the probability of accidents involving recreational boating so reducing the incidence of death, personal injury and property damage.
2. The National Standard for Recreational Boat Safety Equipment with NSW variation will be implemented. The current boating safety equipment regime summarised in Figure 2 on page 40 will cease and the requirements listed in section 4.7.3(c) below on page 39 will be rescinded.
3. The national requirement that all recreational vessels (with some minor exemptions) new or imported vessels from 1 July 2006 are to have an Australian Builders Plate fitted will be implemented. The current requirements that are outdated and prescriptive in nature do not take into account international standards, high-risk activities and performance-based approaches, will cease.
4. There will be no material increase in business or personal costs to the NSW community compared to the current legislative regime.
5. The proposal does not materially restrict competition.
6. The proposal assists in implementing International and National agreements and is consistent with actions taken or planned in other Australian jurisdictions.
7. Appropriate consultation with representatives of the affected members of the community has been undertaken.

The Base Case of continuing with the current regulations will forego the benefits of the proposed Regulation, listed above. The costs to achieve the above benefits are minor. The costs are primarily qualitative and involve some increased requirements regarding operator and boat registration.

A more detailed summary of the differences between the current suite of regulations and the proposed Regulation is provided at **Attachment A**.

The Base Case of making no regulations at all (that is, allowing the current regulations to sunset under the provisions of the Subordinate Legislation Act 1989, with no replacement) creates an environment of self-regulation by the boating community. The proposed Regulation also implements the International Regulations for Preventing Collisions at Sea, harmonises national safety systems including the fixing of an Australian Builder's Plate (ABP) to recreational boats and the National Standard for Recreational Boat Safety Equipment. In the absence of the current or proposed

Regulation, these national and international standards would not be implemented in New South Wales.

As far as the International Regulations for Preventing Collisions at Sea is concerned, the inability of NSW to give effect to these Regulations would negate Australia's status as a signatory to the SOLAS Convention. It may be possible for the Commonwealth Parliament to legislate to give the Convention effect in NSW but this is uncertain.

The National Conventions would not be able to be given force in NSW in the absence of the current or proposed Regulation.

The other alternatives considered were:

1. Adopt the National Safety Equipment Standards without NSW Variation.
2. Information and Education Campaigns.
3. Persuasion.
4. Self-Regulation.

Each of these alternatives was rejected for the reasons given in section 6 below.

5) Conclusion and Recommendation

The proposal to make the proposed Regulation, the Marine Safety (General) Regulation 2008, has the greater net benefits of the alternatives considered and should be adopted.

Main Report

1. INTRODUCTION

1.1 Purpose of the Document

This document is a Regulatory Impact Statement (RIS) of the proposed *Marine Safety (General) Regulation 2008* (the Regulation) to be made under the Marine Safety Act 1998.

This RIS seeks comment from the public on the impact of the proposed Regulation on business, recreational boating participants and other stakeholders.

It is important to note at the outset that the subject Regulation has application only to recreational boating. It will be recognised that other legislation exists that provides for safety for commercial shipping in common waters occupied by both recreational and commercial vessels and that there is a degree of commonality between these various bodies of legislation. The reader is asked to keep in mind that this Regulation applies only to recreational boating despite some other statutory rules including the International Regulation for Preventing Collision at Sea that are called up within it, having dual application.

1.2 Purpose of the Regulation

The purpose of the Regulation is to:

- (a) Adopt the International Regulations for Preventing Collisions at Sea with some modifications,
- (b) Prescribe other requirements for the safe operation of vessels in navigable waters, including requirements relating to the conduct of persons on board vessels,
- (c) Prescribe requirements in relation to the operation of vessels near persons or objects in the water and in relation to the use of personal watercraft (such as jet skis),
- (d) to require certain recreational vessels to have builders plates displaying certain safety information
- (e) Deal with matters relating to applications for certain marine safety licences and the issue, suspension and cancellation of those licences (such licences include boat driving licences and vessel registration),
- (f) Prescribe the safety equipment to be carried on recreational vessels.

This Regulation is made under the Marine Safety Act 1998, including sections 10, 16, 18, 19, 29, 30, 37, 38, 83, 138 and 139 and section 137 (the general regulation-making power).

1.3 What is a Regulatory Impact Statement?

1.3.1 Required by Legislation

The preparation of Regulatory Impact Statements is required under the *Subordinate Legislation Act 1989*.

In an effort to reduce unnecessary regulation, this Act requires departments and authorities to consider the economic costs and social aspects of any new regulations and to consider optional ways of meeting the proposed new regulation's objectives. The option that produces the greatest net public good is then chosen.

The Act provides for the preparation of a Regulatory Impact Statement (RIS) and public consultation prior to making a regulation as part of the mechanism by which the option that produces the greatest net public good can be chosen.

1.3.2 Methodology

The procedures used for the development of the RIS reported herein were those contained in *NSW Guide to Better Regulation (the Guide)* issued in April 2008 by the Better Regulation Office, NSW Department of Premier and Cabinet.

1.3.3 Underlying Purpose

The purpose of the RIS procedure is to ensure that the approved Regulation is the preferred course of action in achieving a policy objective. The RIS procedure aims to ensure that:

- The Regulation is the most efficient and effective way of achieving defined policy objectives, and
- The Regulation entails minimum cost to the community or produces an outcome where the expected benefits resulting from it outweigh the expected costs to the community.

The RIS must include:

- A statement of the objectives of the Regulation and the reason for them;
- An identification of the alternative options by which those objectives can be achieved, either wholly or in part;
- An assessment of the costs and benefits of the Regulation, including the costs and benefits relating to resource allocation, administration and compliance;
- An assessment of the costs and benefits of each alternative to the making of the Regulation, including the costs and benefits relating to resource allocation, administration and compliance. This assessment must include the alternative of not proceeding with any action;
- An assessment as to which of the alternatives involves the greatest net benefit to the community;

- A statement of the consultation program to be undertaken.

The outcomes of the impact of a Regulation are expressed in terms of the results of:

- 'cost-benefit' analyses where the costs and benefits flowing from the Regulation can be measured in monetary terms, or
- 'cost-effectiveness' analyses where the benefits of the Regulation do not lend themselves to monetary quantification.

Qualitative costs and benefits may also be important as supporting benefits in both cost-benefit and cost-effectiveness analysis. Qualitative costs and benefits may involve consideration of matters affecting, for example, quality of life, environmental pollution, visual amenity, etc.

Cost-effectiveness analysis has been used in the preparation of the Regulatory Impact Statement reported herein because not all of the benefits of the proposed Regulation lend themselves to quantification.

1.3.4 The Threshold Question

In addition to compliance with the *Subordinate Legislation Act 1989* and Government guidance materials, the RIS will answer the necessary threshold question: is there a sufficient case to justify any regulatory (or other public policy) action at all? It will do this by indicating the extent of the problem which the Regulations seek to address and allowing a comparison of this with the costs (and risks) of regulating.

This threshold question is important for two reasons: Firstly, it must be recognised that, while regulation exists as one major response to market failure, 'regulatory failure' also exists. It is possible that a particular regulatory proposal will lead to regulatory failures that are greater than the market failures which it seeks to remedy.

Secondly, there are limits to the total regulatory burden that can realistically be imposed. While it is always possible to make another set of regulations, the value of doing so may be minimal if the target group becomes progressively less likely to comply because of an ever expanding, and unrealistic, total compliance burden. Thus, compliance requirements should be restricted to problems of real significance.

In particular, when replacing a sun-setting regulation, whether in similar or modified form, which is the case in this RIS, particular attention must be given to the following requirements:

- to demonstrate that the nature and extent of the problem still require a regulatory response;
- to evaluate the actual effectiveness of the regulatory regime to be reintroduced;
- to substantiate that this particular regulatory response remains the best solution; and

- to conduct the cost/benefit analysis in terms of a comparison with the environment that would exist without the proposed Regulations being re-made and referred to as the Base Case (e.g., reliance on the operation of the Act without any regulations, and with other existing market interventions) while also highlighting differences between the proposed Regulation and those sun-setting and their likely effects.

It is noted that the comparison, while often difficult to achieve in practice, is implicit in the logic of the Subordinate Legislation Act. 'Sun-setting' is the default situation to ensure the ongoing justification of pre-existing regulations will be periodically tested. As such, this comparison must be attempted.

1.4 Legislative Development History

1.4.1 Marine Safety Act

Prior to 1998, legislation relating to marine safety was contained in five separate Acts, the:

- Maritime Services Act 1935;
- Navigation Act 1901;
- Commercial Vessels Act 1979;
- Marine (Boating Safety – Alcohol and Drugs) Act 1991; and
- Marine Pilotage Act 1971.

Although each Act worked well on a stand-alone basis, it was considered that such vast ranges of legislation would make it difficult for the boating community to comprehend fully the legislative provisions with which they were required to adhere.

When the NSW Government corporatised the Sydney, Newcastle and Port Kembla port authorities and created the then Waterways Authority (now NSW Maritime) in July 1995, an opportunity was provided to consolidate each of the above Acts into a single piece of marine safety legislation.

A Marine Safety Bill was prepared and released for public comment. Following consultation, a number of amendments were made and the Bill presented to Parliament.

In November 1998, the *Marine Safety Act 1998* received assent. In June 2008 the *Marine Safety Act* was amended and its provisions will take full effect when the Marine Safety (General) Regulation 2008 is introduced.

1.4.2 NMSC National Standard for Recreational Boat Safety Equipment

Established in 1997, the National Marine Safety Committee (NMSC) is an Intergovernmental Committee created by the Council of Australian Governments (COAG) to achieve uniform marine safety legislation and practices throughout Australia. In 1999 a series of national workshops were held with key stakeholders to identify issues associated with safety equipment requirements. Following public consultation, a discussion paper was developed and released for public comment in December 2000.

On 22 September 2001 the first draft of the National Standard and the accompanying RIS was released for public comment until the end of February 2002. A reference group comprising industry and government representatives was then established in April 2002 to review comments made during public consultation and provide recommendations to the NMSC. A key recommendation from the reference group involved reviews of existing Standards for personal flotation devices (PFDs). An issues paper on PFD standards was subsequently developed and released for public comment on 1 December 2002. Again, outcomes of the public consultation process were reviewed by the reference group and recommendations made to the NMSC.

In December 2004 the National Standard for Recreational Boat Safety Equipment was released following endorsement by the Australian Transport Council (ATC).

It is anticipated that the safety equipment requirements outlined in the National Standard will become the national approach, with State and Territory agencies eventually incorporating the requirements into their marine safety legislation.

Under the national model, safety equipment for the majority of recreational vessels is divided into two (2) categories:

a) Required Equipment

The minimum equipment required on smooth, inshore and offshore waters. In this respect the equipment carried will vary depending on the individual characteristics of the recreational vessel and the area in which it operates; and

b) Additional Equipment

That is, equipment recommended to be carried above the minimum required depending on the circumstances. With respect to additional equipment, the onus is on the vessel operator to conduct a safety assessment of his or her craft and the activity to be undertaken before determining whether any other additional items are needed in order to mitigate the severity of any outcomes should an adverse event occur.

The requirements were developed following identification of those marine incident and emergency situations most likely to occur and the types of safety equipment needed to address each situation. The appropriate equipment was then aligned by vessel type and its area of operation.

For some vessels however, the types of equipment required was not considered appropriate due to inherent design characteristics. In this respect, separate equipment requirements were developed consistent with the type of vessel, the activity being undertaken and waters in which the vessel operates.

Tables detailing the NMSC's National Standard for required and additional safety equipment, safety equipment requirements for certain recreational vessels are contained in Section 4.7.4 of this RIS.

1.4.3 Boating (Safety Equipment) Regulation - NSW

Currently, regulation of safety requirements for recreational vessels is achieved through the *Boating (Safety Equipment) Regulation*-NSW under the Maritime Services Act 1935. This regulation first came into force in 1975, and has been in force with amendments since that time.

Under the Boating (Safety Equipment) Regulation-NSW, vessel operators must meet minimum safety requirements when transiting open and enclosed waters, unless exempt. These requirements are listed by Class, of which there are four in total: Class A, Class B, Class C and Class D. Definitions of each Class are as follows:

- Class A: vessels less than 5 metres in length but are not a tender, canoe, kayak or personal watercraft (PWC);
- Class B: vessels 5 metres or more in length but less than 8 metres in length and not a tender, canoe, kayak or PWC;
- Class C: vessels 8 metres or more in length but less than 12 metres in length and not a tender, canoe, kayak or PWC; and
- Class D: vessels 12 metres and greater in length.

The Regulation also establishes minimum safety requirements for tenders, canoes, kayaks and PWC and stipulates basic requirements for the hatch covers and exterior doors of vessels built on or after 1 January 1991. Additionally, the Regulation establishes requirements for the maintenance of all safety equipment and positioning of core items, with penalties established for non-compliance and the inappropriate use of distress signals.

On 1 October 2003 the *Boating (Safety Equipment) Regulation*–NSW was amended to include the requirement for every person on board a recreational vessel to wear a Type 1 lifejacket when crossing coastal surf bars in NSW. Despite extensive education campaigns in the past advocating the wearing of lifejackets whilst crossing surf bars, the high number of fatalities (n=8 pre October 2003) and reported incidents (n=90 pre October 2003) indicated the need for a more prescriptive approach. Additionally, evidence collected by NSW Maritime suggested that the majority of recreational boating fatalities on bar crossings could have been avoided if the occupant had worn a lifejacket.

Prior to the introduction of this amendment, recreational vessel operators were simply required to carry a lifejacket on board their vessel when crossing a bar.

Following consultation with the boating community, the new lifejacket provisions were introduced to increase water safety awareness and improve the safety of recreational boaters. An 'on the spot' penalty of \$200 applies for a breach of the lifejacket provisions.

NSW safety equipment requirements are contained in NSW Maritime's Boating Handbook, which is published annually.

1.4.4 Development of the Marine Safety (General) Regulation 2008

When it becomes fully operational, the *Marine Safety Act* will repeal 13 individual, current sets of regulations, each with their own general introductory sections, including relevant definitions.

1.5 The Responsible Authority: NSW Maritime

1.5.1 Overview

NSW Maritime is the State Government's maritime authority and regulator, responsible for providing safe and sustainable ports and waterways. NSW Maritime is also responsible for the appropriate development and use of wetland areas in Sydney Harbour, Botany Bay, Newcastle and Port Kembla.

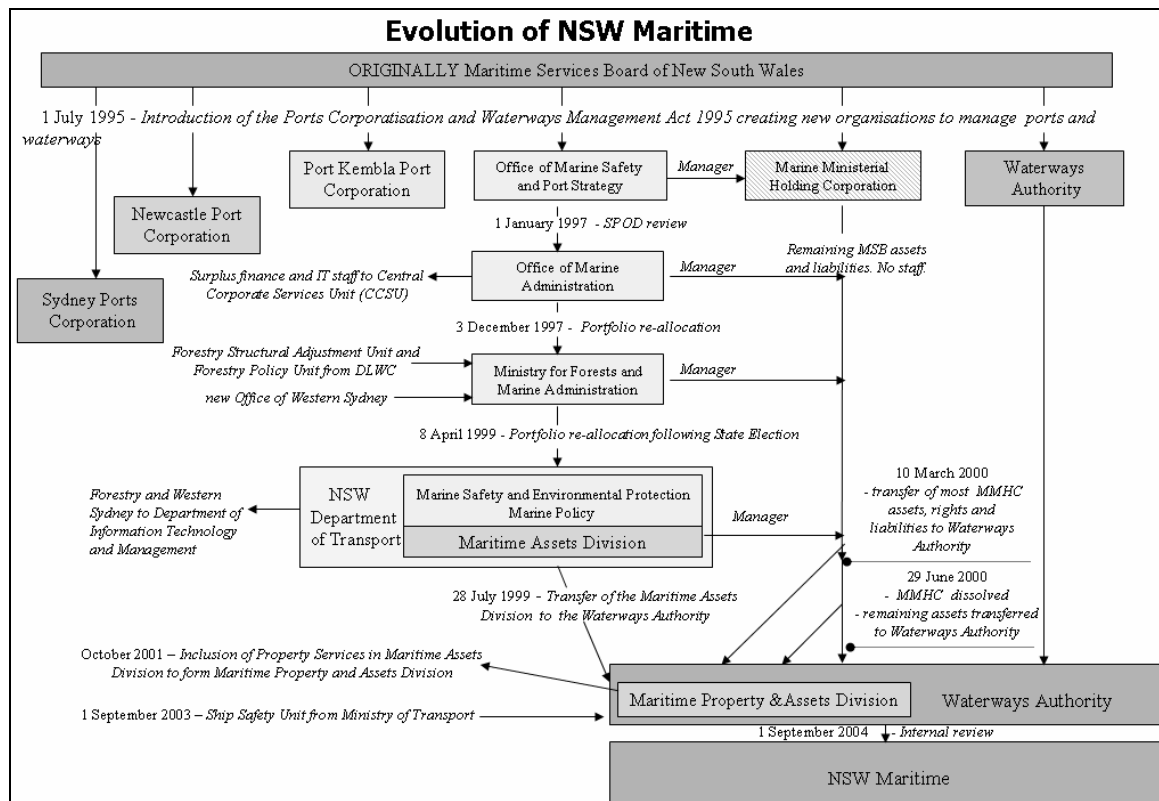
NSW Maritime delivers on these results by providing four main services:

- Safe navigation of recreational and commercial vessels;
- Safe ports;
- Protection of the marine environment; and
- Management of vested maritime properties.

1.5.2 Organisation Evolution

NSW Maritime is a government agency which has evolved following corporatisation of the main NSW Ports in 1995. The evolution is explained in the figure below.

Figure 1: Evolution of NSW Maritime



1.5.3 Results and Services Plan 2007/08

NSW Maritime’s 2007/08 Results and Services Plan (RSP) states:

“Since 1995, NSW Maritime’s role has evolved from a core focus on recreational and commercial boating safety to a broader maritime role encompassing safety regulation for all vessels in state waters, other than trading ships; oil and chemical pollution response; environmental regulation; maritime security coordination and most recently direct support for the Minister’s Office. Activities regulated by NSW Maritime involve commercial passenger vessels including ferries, commercial fishing and working vessels; recreational boats; marinas; and commuter wharves. NSW Maritime also oversees the Port Corporations’ port safety functions through the port safety operating licences (PSOLs).”

1.5.4 NSW Maritime’s Principal Objectives

The 2007/08 Results and Services Plan (RSP) outlines the following objectives of NSW Maritime:

1. provide for the safe navigation of recreational and commercial vessels,
2. provide safe ports, also secure against terrorist attack,
3. provide for the protection of the environment in state waters, and

4. manage vested maritime properties.

1.5.5 Results for the Community

These objectives are consistent with the goals of the State Plan. Particularly pertinent is NSW Maritime's challenge to:

- Facilitate the expansion of ports by the Port Corporations as a vital cog in a growing economy while meeting the reasonable expectations of the community for a safe on-water transport system;
- Facilitate safe on-water activities, including the control of antisocial behaviour;
- Provide sufficient recreational boating infrastructure; and
- Manage of the impact of boating on the environment.

In pursuit of these objectives, NSW Maritime works towards a number of results for the community, including:

1. ports to support a growing economy,
2. safe and sustainable waterways, and
3. improved infrastructure and access to waterways.

Activities undertaken by NSW Maritime to meet these objectives include monitoring compliance of persons in charge of boats for recreational purposes.

2. NATURE OF THE REGULATORY PROBLEM

2.1 Purpose of this Section of the RIS

This Section of the RIS outlines the current legislative framework, industry structures and issues that led to the development and proposed re-make of the Regulations in a consolidated form.

It is the intention that the sunseting Regulations are to be re-made, thus it is important to indicate clearly that the nature and extent of the problem are such as still to require a regulatory response.

This section, therefore, also contains an evaluation of the effectiveness of the current regulatory regime that is to be reintroduced.

2.2 Safety of Navigation

2.2.1 General

The scope of the Regulation covers recreational boating in all its forms in all navigable waters areas under the authority of NSW Maritime.

2.2.2 Scope of Recreational Boating in NSW

The following Table shows the number of boating licences and the number of recreational vessels in NSW in 2007 ¹.

Table 1: Recreational Boating Licences and Vessels (at 30/6/07)

Boating Licences	445,736
Registered Recreational Vessels	213,387
New Recreational Vessels Registered per Annum	Est 12,000

2.2.3 Needs Survey

In 2004 NSW Maritime conducted a survey of recreational boaters, comprising boat owners from each of NSW Maritime's six operational regions as well as representatives of industry associations and peak user groups. Each participant was asked a series of questions canvassing opinion on matters such as marine legislation, safety and environment, boating infrastructure and education and compliance initiatives. Findings from the survey revealed that 77% of respondents had been boating for over 10 years, with 93% engaged in recreational boating exclusively.

According to the Boating Industry Association (BIA) more than 2.5 million people enjoy recreational boating in NSW. In terms of power boating alone, approximately 445,000 of

¹ NSW Maritime Annual Report 2006-2007.

the calculated 2.5m (18%) hold a boating licence. Of those holding a NSW boating licence, 47% (n= 207,141) have had that licence for 10 years or more.

Whilst the number of years a person engages in boating, and the number of years they hold a licence, may indicate a level of knowledge, this cannot be accurately quantified as there is no data available to determine the frequency that boating activity is undertaken. For example, of the 47% that have had their boat licence for 10 or more years, only 20% may actually go boating on a regular basis with the resultant effect that the level of knowledge of that 47% may not be as high as naturally expected. Conversely, a person may have held a NSW boat licence for only two years but frequently engage in boating activity so whilst the number of years that licence is held in absolute terms is low, their level of experience could be quite substantial.

2.2.4 Safety Initiatives Undertaken

Since its inception in 1995, NSW Maritime (then the Waterways Authority) has been actively encouraging safe boating activity through various avenues. These include the:

1. production of a customer and stakeholder newsletter, entitled "Maritimes";
2. publication of more than 100 boating maps, pamphlets, booklets and information publications to assist the boating public on various aspects of marine safety such as the NSW Maritime Boating Handbook; Hypothermia brochure; Bar Crossing, Carbon Monoxide and Safety Check stickers; and go Easy on the Drink pamphlets.
3. development of the NSW Maritime website;
4. Boat Smart DVD – a compilation of four boating safety films;
5. boating seminars (more than 350 conducted state wide in 2004/05) ;
6. education and compliance campaigns;
7. toughening of recreational boat licence tests in 1 October 2005; and
8. introduction of a compulsory Boating Safety Course for people wanting to obtain a recreational boat licence on 1 October 2006.

With a complement of 57 Boating Officers located at strategic areas throughout the State, NSW Maritime conducted approximately 42,000 on water safety checks in 2006/07 with a 88% compliance rate including personal water craft (PWC). These checks are often run in tandem with compliance campaigns which focus on various issues such as safety equipment, bar crossings, capsizes, hypothermia and alcohol.

Almost a quarter of all infringements issued during the 2006/07 safety checks were for non-compliance with lifejacket regulations. These included the failure to carry the required number of lifejackets, lifejackets in poor condition and not wearing lifejackets when crossing coastal bars or operating a personal watercraft.

2.2.5 Fatal Recreational Vessel Incidents in NSW

Over the last 10 years (1996/97 to 2005/06 to date), 144 people have been killed in 122 fatal recreational vessel incidents on NSW waters. Analysis into fatal incidents for this period has shown that the leading fatal incident types are those where persons on board the vessel suddenly and unexpectedly enter the water through the vessel capsizing (33% of all fatal recreational vessel incidents) and persons falling overboard (21% of all fatal recreational vessel incidents).

In May 2006 NSW Maritime conducted a review of fatal recreational vessel incidents for the last five financial years (2001/02 to 2005/06 to date). During this period 60 fatal recreational incidents were reported to NSW Maritime, resulting in 69 fatalities. This is an average of 14 fatalities per year.

In developing a profile of fatal recreational vessel incidents, the review took into account factors including:

- the type of activity being undertaken;
- the age and gender of the deceased; the average length of the vessel involved;
- the role of safety equipment (i.e.: whether or not it was used); and
- in cases where safety equipment was not deployed, whether its use would have affected the outcome (i.e.: would it have prevented a fatality).

In examining the incidents for this period, the following profile emerged:

1. The majority of fatal incidents occurred whilst the vessel was underway or the occupants engaged in a fishing activity.
2. The persons most at risk were men aged between 56 to 60 years.
3. The weather conditions at the time of the incident were clear (52%) and the water conditions classified as 'calm' (30%)
4. Visibility was good in 53% of fatal incidents.
5. The majority of those killed (60%) were the operator of the vessel.
6. The average length of the vessel involved was 4.1m, and most likely to be an open runabout (53%).
7. Multiple fatalities were likely to occur in vessels averaging 4.5m in length.

Safety equipment was used in just 7% of cases. When taking into account variables such as visibility, weather conditions and water conditions, an assumption can be made that the deceased, having regard for the conditions of the time, did not believe that safety equipment was warranted. The deceased, therefore, either did not carry equipment on board or did not make a decision to wear equipment when they set out. They were thus ill prepared or did not have sufficient time to activate safety equipment when the incident occurred.

In determining whether safety equipment would have made a difference, NSW Maritime eliminated those incidents where certain other factors would have adversely affected the

outcome irrespective of whether safety equipment was used, e.g.: the victim wore a lifejacket but struck their head on the vessel's propeller resulting in a fatal injury, or instances where safety equipment was used but was either poorly maintained or past its expiry date.

These factors notwithstanding, it was estimated that if safety equipment, most notably lifejackets, had been used in 67% of the 60 reported cases, up to 47 lives (68% of all fatalities for the study period) could have been saved.

2.2.6 Serious Injury Recreational Vessel Incidents in NSW

The rate of serious injury incidents in NSW for the same period (1996/97 to 2005/06 to date) is nearly three times higher than that of fatal incidents. Over this period approximately 347 serious injury incidents, resulting in 404 serious injuries occurring, were reported to NSW Maritime. This is an average of 40 serious injuries incurred per annum.

Incident data aside, NSW Maritime believes that the boating community generally accepts the need to carry safety equipment and acknowledges its role in increasing the likelihood of surviving a boating incident. Additionally, the boating community recognises the need to accept responsibility for its own safety on the water.

2.2.7 Economic Cost of Recreational Vessel Fatalities and Injuries

The social and economic cost of losing a life is difficult to quantify.

While there is no general value of a statistical life (VOSL) in use in Australia, the NSW Roads and Traffic Authority (2002) recommends that in cost-benefit analyses a VOSL of A\$1.26 million be used for fatalities avoided. This figure includes two costs: \$862,000 for the estimated present value of loss of income and \$397,000 for non-economic costs and loss of quality of life.

In his paper titled: *The Value of Life and Health for Public Policy*, Peter Abelson from Macquarie University advises a figure of \$2.5 million representing the value of a statistical life lost of a healthy individual in middle age as follows:

“in 2002 prices, public agencies in Australia adopt:

- *a VOSL of \$2.5 million for avoiding an immediate death of a healthy individual in middle age (about 40);*
- *a constant VOLY of \$108,000 which is independent of age;*
- *age-specific VOSLs equal to the present value of future VOLYs of \$108,000 discounted by 3 per cent per annum.*

Consistent with this approach, age-specific VOSLs would equal the present value of future VOLYs of \$108,000 discounted by an appropriate discount rate,

say 3 per cent per annum. For example, with a VOLY of \$108,000, at age 60 and a life expectancy of say 20 years, VOSL would fall to \$1.6 million.”

With some 14 fatalities on average per year represented by a majority of men aged between 56 to 60 years old, the social and economic value of lives lost is estimated to be \$ 22 million per annum (\$1.6 million x 14) using Abelson’s data.

The social and economic cost of serious injuries could be a further \$829,480 per annum represented by the 40 serious injuries per annum. This value assumes each serious injury costs \$20,737 (being the average workers compensation claims cost for employment-related injuries in 2004/05 ²).

2.3 Marine Safety Licences

2.3.1 Vessel Registration and Driver Licensing

The draft Regulation aims to maintain the core of the existing licensing system.

In 1962 the then Maritime Services Board introduced the concept of vessel registration. This followed the receipt of numerous complaints from waterfront residents regarding irresponsible boat driver behaviour. The aim of introducing vessel registration was to provide a means of identifying individual vessels. This was complemented by the simultaneous introduction of a licensing system that aimed to identify individual powerboat drivers and to ensure that they had a minimum knowledge of the boating safety rules.

Given the capabilities of outboard motors, and the number of vessels on the water today, the need to identify individual vessels remains. In fact today, there are approximately 213,000 registered recreational vessels in NSW. The types of vessels targeted for registration are, generally, those which are large and powerful enough to have the potential to cause a nuisance or to inflict significant damage on persons, property and the environment.

The major reasons for legislating to identify those vessels are as follows:

- Vessels can create wash which can render the control of nearby vessels difficult and cause bank or bed erosion;
- Vessels can create noise, which has a negative impact on the environment in its own right and can also be annoying to nearby residents and other users of the waterway;
- Water pollution may result from poorly maintained engines or from the careless activities of the occupants of the vessel;
- A moored vessel can cause damage to nearby moored vessels and structures;

² WorkCover NSW Statistical Bulletin 2004/05

- Illegally moored or berthed vessels need to be identified;
- Vessels which have broken free of their moorings and are drifting need to be identified;
- A vessel in which the driver is involved in a boating incident, is speeding, or is breaking any other rules of the water, needs to be identified; and
- Vessels being driven by traders in the course of conducting their business need to be identified.

Registration fees are subsequently used by NSW Maritime to fund its core functions and activities which provide a range of facilities for, and services to, the boating community.

Stolen vessels present a further situation in which a registration system is required. To augment the vessel registration system, a hull identification numbering (HIN) scheme was introduced in NSW in 1996. This scheme, known as BOATCODE, aims to deter vessel theft and to assist vessel recovery. The problem of vessel theft was first addressed, in 1973, through the registration system when the Police Service requested that NSW maritime require owners of private vessels to quote engine and hull numbers as a condition of registration. This rudimentary system was replaced by the BOATCODE scheme which uses an internationally recognised hull numbering system to create a unique HIN for every vessel. Generally, under the existing Regulation relating to registration of vessels, it is mandatory for all new vessels and those which are undergoing a transfer of control, to become part of the BOATCODE scheme. The intended outcomes of the BOATCODE scheme are as follows:

- To deter vessel theft;
- To make stolen boats easier to identify;
- To provide security for both vessel owners and buyers of second hand boats;
- To enable vessel buyers to access the REVS system which has been successfully protecting car buyers for many years; and
- To provide security for finance and insurance companies.

If a vessel is to be fitted with a HIN, or an existing HIN requires validation, that is if it is either a new vessel or is involved in a transfer of control, a one-off BOATCODE fee applies. This fee, currently \$68 for affixing the HIN or \$34 for validation, is set at a level which covers the administrative costs of the BOATCODE Agents.

Given the abovementioned myriad of factors and situations it is considered essential for NSW Maritime, the Police and other agencies, and both the boating and non-boating public, to be able to identify vessels through a specific registration number and unique hull identification number. In doing so, the authorities are then able to enforce the boat safety rules through the issue of penalty notices and the like.

2.3.2 Australian Builders Plate

Additionally, the draft Regulation incorporates the national requirement, agreed to with the boating industry, that all new and imported recreational vessels built from 1 July 2006 are required to have affixed an Australian Builders Plate.

This plate provides vital information for owners about the capacity of the vessel such as maximum number of people and load allowed, engine rating and weight, and for vessels less than 6 metres in length, buoyancy performance.

2.3.3 Exemptions

The draft Regulation seeks to include an exemption from NSW vessel registration requirements and the need to have a Hull Identification Number (HIN) affixed for overseas visiting registrable vessels under certain conditions.

2.4 Summary of the Regulatory Problem

The operation of power-operated recreational vessels on public waterways at speed creates a safety hazard to operators of the vessels, the vessel's passengers and other persons on the waterways. The magnitude of this hazard can be gauged by the number and severity of incidents involving such recreational vessels that have occurred each year.

Given the number of such vessels, the number of persons licensed to drive such vessels, together with the area and geographical extent of the State's navigable waterways, government intervention to support waterway safety and minimise the resulting hazard is necessary.

The *Guide to Better Regulation* states that Government intervention may be justified in order to achieve social or environment objectives that would not be achieved by the market. The Guide goes on to say that such justification includes ensuring the safety of society by protecting people from crime or abusive behaviour.

It is evident that the operation of recreational vessels on navigable waters creates significant hazards to life and property and thus government intervention is justified.

3. OBJECTIVES OF THE PROPOSED REGULATION

3.1 Purpose of this Section of the RIS

The objectives have been derived from an analysis of the role of NSW Maritime in ensuring safe recreational boating activities.

3.2 The Proposed Regulatory Option

The key objectives for NSW Maritime are to minimise the potential impacts on human safety during recreational boating activity. It is considered that whilst the current system meets this objective, a number of opportunities exist for it to be made more efficient. In its revised format, the new Regulation is simpler and easier to understand and facilitates the introduction of the national model, but further tailored to suit NSW requirements.

This approach has been adopted following consultation with representatives from various sectors of the recreational boating community and is generally supported by RVAG and the NMC.

The new Regulation will deliver benefits to the community from gains made through more effective enforcement and greater safety protection. Whilst additional enforcement will not be required, the new provisions will facilitate more effective enforcement and so will likely lead to an increase in compliance. Nonetheless, an increase in the number of Penalty Infringement Notices (PINs) issued may however be experienced, particularly during the preliminary phases of the new Regulation.

No additional resources will be required to implement the new Regulation although there will be some initial costs in terms of advising boaters of the new requirements and training of Government officers. This is likely to take the form of internal correspondence, targeted mail outs, amendments to NSW Maritime's Boating Handbook and other literature, and will be backed up by information on NSW Maritime's website. In this respect, a one off transitional cost associated with the introduction of the new Regulation will be incurred at a figure of approximately \$200,000.

3.3 Statement of Objectives of the Proposed Regulations

3.3.1 General Objectives

The aim of this Regulation is thus to create and cultivate a culture of safety for recreational boating by establishing a set of minimum safety requirements which would reduce the probability of an accident occurring and increase a person's chances of survival should an accident occur.

The prime objective of the proposed Regulation is to reduce, so far as possible death, injury and property damage by helping to ensure that persons operating recreational vessels on NSW waters do so in a safe manner.

The broad objective is to be achieved through establishing safety requirements for recreational vessels to ensure that:

1. all recreational vessel operators are aware of the safety Regulations and the requirements contained within;

2. all recreational operators have on board the minimum set of safety equipment required for their vessel and its area of operation;
3. vessels have well defined exits that can be accessed in the event of an emergency.

3.3.2 Specific Objectives

Specific objectives to be achieved by safety equipment requirements are to ensure that:

- safety equipment carried meets the minimum standard required for design, manufacture and performance;
- vessel operators carry equipment that is not out of date, is well maintained and in good working order;
- each person on board is aware of where the equipment is stowed, and that it is stowed appropriately and is easily accessible in the event of an emergency;
- lifejackets are worn by persons:
 - on board specific vessels; and
 - when certain activities are being undertaken.
- emergency exits (hatches and doors) on vessels can be opened from both inside and outside the vessel.

In addition, the marine safety licence provisions aim to:

- To ensure that those vessels which have the greatest potential to cause damage or nuisance, either to persons, property or the environment, may be readily identified;
- To facilitate the implementation of a hull identification numbering system;
- To incorporate the nationally agreed Australian Builders Plate;
- To establish the situations in which vessel registration may be refused, cancelled or suspended;
- To advise of the offences which relate to vessel registration; and
- To provide mutual recognition of interstate and overseas visiting registrable vessels.

4. IMPACT ANALYSIS OF THE PROPOSED REGULATIONS

4.1 Purpose of this Section of the RIS

This section of the RIS identifies, analyses and, where possible, quantifies the impact of the proposed Regulation.

Given the size and scope of the proposed Regulation it is not feasible, nor is it necessary, to assess the impact of each clause individually. Consequently, the proposed Regulation has been appraised in terms of the Divisions of each Part. In the discussion below the provisions of the various Divisions are summarised for the purposes of identifying the material costs and benefits only. The reader is advised to examine the draft Regulation to obtain the full details of each Division.

4.2 Recognition that Costs and Benefits are *Incremental* to a Base Case

The Subordinate Legislation Act 1989 requires that it is the impact of the proposed Regulation that is the focus of this Impact Statement. Any costs and benefits created by the Act or other statutory rules must be ignored.

In accordance with normal cost-benefit analyses, the costs and benefits of the proposed Regulation are expressed incremental to a 'Base Case' and the Base Case is defined and discussed in Section 5.1 below on page 44.

4.3 Machinery Provisions

The following Parts and Schedule are machinery provisions, thus do not require appraisal and, therefore, are not referred to further herein:

Part 1: Preliminary: Name, Commencement Date and Definitions.

Part 7 Penalty Notices.

Part 8 Miscellaneous.

Schedule 1: Fees.

Schedule 7: Penalty Notices and Offences.

4.4 PART 2: Safety of Navigation

Part 2 titled "Safety of Navigation" calls up the International Regulations for Preventing Collisions at Sea together with NSW Variations to the International Regulations.

Part 2 also specifies other matters not contained in the International Regulations, aimed at improving safety of navigation in NSW navigable waters.

4.4.1 Division 1: International Regulations for Preventing Collisions at Sea or In Other Navigable Waters

4.4.1(a) General

The International Regulations for Preventing Collisions at Sea 1972 (known familiarly as the COLREGS) are published by the International Maritime Organisation (IMO). The COLREGS set out the “rules of the road” to be followed by ships and other vessels at sea.

The COLREGS were adopted by the IMO member countries on 20 October 1972 and the regulations were brought into force internationally on 15 July 1977, with subsequent revisions.

The COLREGS can also refer to the specific political line that divides inland waterways (subject to one set of navigation rules) and coastal waterways (subject to international navigation rules).

The COLREGS apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels. However, there is a NSW variation to the COLREGS that, amongst other things, extends their application to vessels in all navigable waters of the State, subject to certain exceptions.

The Marine Safety (General) Regulation 2008 is in support of the International Convention by enforcing the COLREGS, with NSW variations, in NSW navigable waters.

The question then arises as to whether it is necessary to assess the costs and benefits of that part of the proposed Regulation that calls up the International Regulations. It is noted that the *Guide to Better Regulation* states: “In some cases, regulatory proposals will implement decisions taken through external processes such as Ministerial Council decisions, decisions of the Council of Australian Governments (COAG), or processes undertaken on behalf of government by independent bodies such as IPART or the Productivity Commission. Where these processes demonstrate the elements of good quality regulatory development (including impact assessment and consultation) it is not necessary to duplicate this work when seeking approval at a NSW level”.

The International Regulations have not been subject to the external processes described above. However, Australia is a signatory to the International Convention on the Safety of Life at Sea (SOLAS) and thus it can be said that the International Regulations have been subject to international assessment and acceptance as a set of initiatives where the benefits have been shown to exceed the costs. Thus this RIS interprets the *Guide to Better Regulation* as accepting that it is not necessary to duplicate work done at this international level.

This RIS does not, therefore, assess the costs and benefits of the International Regulations for Preventing Collisions at Sea, but focuses only on the NSW Variations.

4.4.1(b) NSW Variations

The NSW Variations to the International Regulations are summarised below. Again, the reader is advised to consult the Regulation itself for the detailed descriptions of the NSW Variations:

1. Despite Rule 1 (a), these Rules extend to vessels in all navigable waters subject to specified conditions and exemptions.
2. Rule 9 applies to all channels and fairways, regardless of width
3. In addition to complying with the requirements of Rule 18, the operator of a sailing vessel must give way to, and keep a safe distance from, a vessel displaying a priority over sail signal (an orange diamond shape).
4. A power-driven vessel less than 5 metres in length may exhibit sidelights and a stern light instead of the lights prescribed by Rule 23 (a) and (c) when underway in a commuter craft zone.
5. The operator of a vessel in chains must ensure that between sunset and sunrise the vessel displays, in addition to the lights prescribed by Rule 23:
 - (a) A yellow all-round flashing light (within the meaning of Rule 21) when underway, and
 - (b) An all-round green light situated not less than 1 metre vertically above the red light at the forward end of the vessel to indicate the direction in which the vessel is proceeding when underway, and
 - (c) An all-round red light at each end of the vessel in a horizontal line at a height of not less than 3 metres above the deck of the vessel if the vessel is available to operate but is not underway.
6. Despite Rule 27, the owner and operator of a vessel engaged in diving operations, and any diver engaged in those operations from the vessel, must ensure that a replica of an International Code flag "A" that is at least 400 mm by 400 mm in size is displayed on the vessel, or on a buoy or float positioned nearby, so as to make it clearly visible. The operator of a vessel underway must maintain a safe distance from, and travel at a safe speed when in the vicinity of, an area in which a replica of an International Code flag "A" is displayed.
7. In addition to the requirements of Rule 29, a vessel engaged on pilotage duty between sunrise and sunset must exhibit when underway a flag that is of a size not less than 900 mm by 600 mm and is divided horizontally in 2 colours (the upper half being white and the lower half being red).

4.4.2 Division 2: Other Provisions Relating to Signals and Lights on Vessels

A person on board a vessel, or in the vicinity of any navigable waters, must not use distress signalling equipment or make any distress signal, except for the purpose of indicating distress. Penalties are specified for non-compliance.

4.4.3 Division 3: Conduct of Persons on Board Vessels

This Division specifies requirements for keeping all parts of the body within a vessel when underway. Penalties are specified for non-compliance.

4.4.4 Division 4: Provisions Relating to Operation and Securing of Vessels

This Division makes general provisions that apply to the operation of vessels. Requirements include that the operator of a vessel must not drive the vessel through the space provided by the lifting or lateral movement of the opening span of a bridge unless the vessel is a power-driven vessel, or is being towed or pushed by a power-driven vessel. The operator of a vessel must not cause wash that damages or impacts unreasonably.

Speed restrictions are applied where persons under the age of 18 years are on board a vessel, and the owner of a vessel must not fit the vessel with a motor that exceeds the power rating specified for the vessel by the manufacturer.

Waters in which kitesurfing and sailboarding are prohibited are specified.

Penalties are specified for non-compliance.

4.4.5 Division 5: Provisions Relating to Obstruction of Navigation

Obligations are placed on operators such as, for example, if vessels cause an obstruction to navigation. The operator of a vessel must ensure that adequate warning is given to other vessel operators of any potential obstruction or danger caused by that vessel or any equipment associated with that vessel.

Penalties are specified for non-compliance.

4.4.6 Division 6: Requirements Relating to Distances Between Vessels and Other Objects

Minimum distances are to be maintained when the operator of a vessel that is travelling at a speed of 10 knots or more or that is towing a person by any means (including aerial equipment) on, over or under water, or in a swimming area.

Penalties are specified for non-compliance.

4.4.7 Division 7: Towing of Persons

There are restrictions applied to the number of persons that can be towed. Towing by remote controlled vessel is prohibited and Observer requirements are specified.

Penalties are specified for non-compliance.

4.4.8 Division 8: Personal Watercraft

The owner of a personal watercraft must ensure that the watercraft is not operated by any person unless it has a behaviour label ³ firmly affixed to it.

Personal watercraft are excluded from Sydney Harbour and its tributaries.

A person must not operate a personal watercraft in an irregular manner on any navigable waters in the personal watercraft restriction zone that are within 200 metres of a riverbank or shore.

A person must not operate a personal watercraft in navigable waters between sunset and sunrise.

Penalties are specified for non-compliance.

4.4.9 Division 9: Safe Loading of Vessels

The owner of vessel must ensure that a safety label is secured to the vessel, subject to exceptions.

Penalties are specified for non-compliance.

4.4.10 PART 2: Summary of Costs and Benefits

4.4.10(a) Part 2 Costs

No monetary costs are created by Part 2 except insofar as restrictions on operations may reduce revenues otherwise generated by vessels' commercial operations. However, in light of the fact that the primary thrust of these Regulations is directed to recreational boating, it is not expected that such monetary costs would be material.

Qualitative costs are primarily related to restricting the freedom of operators of craft to use the craft in any way they wish so as to ensure that safety requirements are met.

³ A "behaviour label" is a label that contains a description of certain requirements to be complied with under the Act or this Regulation

4.4.10(b) Part 2 Benefits

It can be expected that compliance with the Regulation will reduce the probability of death, injury and property damage occurring through the maintenance of safety of navigation. It was recorded above in section 2.2.7 on page 13 that with some 14 fatalities on average per year represented by a majority of men aged between 56 to 60 years old, the social and economic value of lives lost is estimated to be \$ 22 million per annum (\$1.6 million x 14).

The social and economic cost of serious injuries could be a further \$829,480 per annum represented by the 40 serious injuries per annum. This value assumes each serious injury costs \$20,737 (being the average workers compensation claims cost for employment-related injuries in 2004/05).

The benefits of Part 2 of the proposed Regulation are also qualitative in the form of a reduction of stress and trauma on persons suffering property damage and personal injury, their immediate family, and the immediate family of persons killed.

4.4.10(c) Discussion

The benefits of Part 2 of the proposed Regulation arise from a reduction in the costs of the injury and death of persons who might otherwise be involved in boating accidents. Savings in costs also result from a reduction in property damage.

These benefits are seen to outweigh the costs of Part 2 of the proposed Regulation that stem primarily from a restriction on the freedom of use of vessels.

Given that the costs of this Part of the proposed Regulation are qualitative, data is not available that would enable a quantitative cost-benefit to be calculated.

4.5 PART 3: Requirements Relating to Builders Plates for Certain Classes of Vessels

4.5.1 Implementation of National Standard

A review of marine safety arrangements was carried out in 1995 and 1996, which ultimately led to the establishment of the National Marine Safety Committee (NMSC).

The review identified significant deficiencies in the coordination of legislation and administrative policies and procedures at the State/Territory level, and that these deficiencies imposed substantial costs on administrations, industry and users (Thompson Clark 1995). As a result, a National Marine Safety Strategy to address the deficiencies was developed against an agreed framework of goals and objectives for marine safety administration (NMSC 1998). The strategy was endorsed by Ministers of the Australian Transport Council (ATC) in 1998, following a draft in 1997 that was subject to wide consultation.

The National Marine Safety Strategy is aimed at domestic commercial vessels and recreational boats, which come under the control of the States and the Northern

Territory. The NMSC is responsible for the coordination of the implementation of the Strategy; it was established under an Intergovernmental Agreement (IGA) signed by the Prime Minister, Premiers and the Chief Minister of the Northern Territory in November 1997.

The objective of the Strategy is to establish and sustain a harmonised national system which has as its principal aim the protection of life in Australian waters. With respect to recreational boats, three core areas that need to be addressed were identified:

1. the safety of the operator
2. the safety of the boat; and
3. the level of safety equipment required to be carried.

Four projects to address these core areas were commenced.

A Regulatory Impact Statement assessed the fixing of an Australian Builder's Plate (ABP) to recreational boats, which covering information about the standards to which boats are built. The standards and information covered such things as engine power, loading and buoyancy, and it is intended that they will become mandatory under State and Territory marine safety legislation. The plate will, therefore, provide information to boat users to enable them to operate boats in a safe manner and will require boat builders to apply minimum safety standards for the design of recreational boats to be applied nationally.

The RIS was published in 1 May 2003 and the Standard later endorsed by the National Marine Safety Committee.

4.5.2 Conclusion

As mentioned in section 4.7.2 below on page 37 of this RIS, where a national standard has been the subject of the national RIS, it is not necessary to duplicate this work when seeking approval at a NSW level.

In light of the intention of the Marine Safety (General) Regulation 2008 to implement a National Standard, the RIS presented herein does not address those elements that comprise the National Standard.

4.6 PART 4: Marine Safety Licences

4.6.1 Overview

The current system of marine safety licensing is based on a regime whereby all registrable vessels have a registration number displayed in a prominent position and in a standardised manner. Similarly, all vessels subject to the BOATCODE scheme have hull identification number (HIN) plates affixed in a standard location. This facilitates the ready identification of vessels by the relevant authorities and by both the boating and non-

boating public. In addition, NSW Maritime (and, in the case of HINs, the Department of Fair Trading and the NSW Police) is able to maintain a database of information which enables vessels to be matched with their owners and enables a vessel's ownership history to be traced.

The benefits of this system, in terms of identifying vessels which have, say, broken free of their moorings and in identifying vessels being used irresponsibly, possibly injuring or killing other persons and/or causing damage to other vessels, structures and the environment, accrue to the entire community.

The benefits in terms of deterring vessel theft and in identifying those vessels which have, nevertheless, been stolen or recovered, largely accrue to vessel owners, to their insurance companies and to the boating industry.

The benefits arising from the administration of the registration system accrue to the boating community in terms of the funding which is available for on-water patrols, marine safety education campaigns and initiatives, funding of volunteer marine rescue agencies and the Maritime Infrastructure Program which provides waterways infrastructure for the benefit of the boating community and the marine sector.

In addition, through the registration system, NSW Maritime is able to deregister unsafe or noisy vessels or those causing other environmental damage. In this way, the registration system assists the Authority to promote marine safety and to do so in an environmentally responsible manner.

The positive impacts which have resulted from the introduction of the BOATCODE component of the registration system are exemplified in the value of insurance claims made for stolen vessels. The National Roads and Motorists Association has previously advised NSW Maritime that since BOATCODE was introduced there has been a decrease in the value of claims related to vessel theft. The benefits resulting from the introduction of the BOATCODE scheme accrue, ultimately, to all vessel owners. The benefits of the registration system are also evident in the area of marine search and rescue. The identification and rescue of vessels in distress is facilitated by the maintenance of a database of vessels, their descriptions and the names of their owners.

Furthermore, the proposed Regulation also includes the national requirement that all recreational vessels (with some minor exemptions) new or imported vessels from 1 July 2006 are to have an Australian Builders Plate fitted. This plate provides vital information for owners about the vessel's capacity such as maximum load, engine rating and weight, and for vessels less than 6 metres in length, buoyancy performance. It also provides further optional warning statements that could save lives. For example, a warning statement could detail the fact that a vessel should not be operated off-shore, or in situations where the wave height exceeds 2 metres.

When compared with the base case of no regulation there is an obvious net benefit in retaining the current requirements. Administratively for NSW there is a considerable advantage as the paper burden associated with developing and bringing the new provisions into existence is eliminated as is the time and resources required to amend existing or develop new legislation. For boaters there is a direct financial benefit as they

are not required to upgrade or purchase additional items of safety equipment in order to comply with the current Regulation.

Nonetheless the requirements as they stand are outdated and prescriptive in nature and do not take into account international standards, high-risk activities and performance based approaches.

4.6.2 Division 1: General Provisions

This Division covers the areas which are common to all marine safety licences in Part 3, including application, refusal to issue, renewal and reinstatement, suspension, cancellation, conditions, change of particulars to, loss of, return of, fees and consequences of cheating or forgery.

All matters included are in current legislation.

4.6.3 Division 2: Vessel Registration

4.6.3(a) General

Currently the registration system in NSW generally encompasses the following types of vessels:

- Those which are propelled by an engine (which has a power rating of at least 4.0 kilowatts) and capable of a speed of 10 knots or more; and
- Those which are 5.5 metres or more in length; and
- Those which are on moorings; and
- Commercial vessels.

Generally, a sailing vessel that is either 5.5 metres or more in length, or that is equipped with an engine which has a power rating of at least 4.0 kilowatts and is capable of a speed of 10 knots or more, is required to be registered. However, certain classes of 'off the beach' sailing vessels which are over 5.5 metres in length are not required to be registered as these are un-ballasted, sail-only vessels including centreboard dinghies, sailboards, skiffs and multihulls, but do not include vessels with cabins or fixed keels.

The existing Regulations specify, in considerable detail, current registration requirements including, for instance, the exact location/size of the registration number/label to be affixed to a registered vessel.

The objective of the proposed Regulation is to provide sufficient detail to the boating community to determine the following:

- The classes and types of vessels which are required to be registered;
- The vessels which are required to become part of the BOATCODE system;
- The mechanisms for obtaining registration, affixing registration numbers and labels and transferring registration;

- Vessel testing and inspecting requirements;
- The situations in which registrations may be refused, cancelled or suspended; and
- The offences which relate to registration.

The very detailed and prescriptive controls (for instance those dealing with the details as to where to affix registration numbers and the appropriate size of the numbers) which are expressed in the existing Water Traffic Regulations can be better implemented through conditions that are issued with vessel registration certificates. Not only does this approach allow the proposed Regulation to be simplified, and thus more readily understood, but it would also allow NSW Maritime to more readily respond to changes in vessel design which may require a degree of flexibility with respect to the placement of registration numbers.

Notwithstanding, the proposed Regulation does not seek to introduce any further imposts on boat owners than those which currently exist.

The proposed Regulation could have been written such that it provided no exemptions to the Marine Safety Act requirement requiring all powered vessels to be registered, unless exempted by the Regulation. However, it should be understood that pursuit of this option would capture more vessels in NSW Maritime's registration system. As these vessels are not part of the current registration system, the quantum of additional vessels that would require registration is not known.

Finally, it is intended that all 'off the beach' sailing vessels be exempted from the registration requirements. The relevant schedule to the existing Regulations, Schedule 4, is outdated and has been reviewed and expanded for the purposes of the draft Regulation.

4.6.3(b) Fees

The existing Regulations relating to the registration fees were introduced in March 1998 and these specify a sliding scale of fees based on the length of the vessel being registered. For a small vessel up to 3 metres in length, the cost of registration is currently \$45 pa. In the case of a vessel that is over 30 metres in length, the annual registration fee is \$499.40.

4.6.3(c) Mutual Recognition

The existing Regulations are silent on mutual recognition of registration of overseas visiting registrable vessels.

4.6.4 Division 3: Aquatic Licences

4.6.4(a) Overview

An aquatic licence may be issued for an aquatic activity subject to conditions, to authorise any or all of the following:

- (a) the conduct of one or more than one aquatic activity by the licence holder,
- (b) the conduct of an aquatic activity on more than one occasion,
- (c) the exclusive use of an area of navigable water for the conduct of an aquatic activity.

The Act defines an “aquatic activity” as:

- (a) a race or exhibition involving vessels or equipment that is conducted in or on any navigable waters, or
- (b) any other activity involving vessels or equipment that is conducted in or on any navigable waters and that restricts the availability of those waters for normal use by the public.

4.6.4(b) The Objectives

The objectives of the proposed Regulation, as they relate to aquatic licensing, are:

- To promote the safe conduct of organised aquatic activities;
- To specify the conditions under which aquatic licences may be cancelled; and
- To advise of the offences which apply to aquatic licensing.

4.6.4(c) Activities and Incidents

For the period 1/7/1996 to 30/6/2007 NSW Maritime has approved almost 7,000 applications for aquatic licences involving almost 225,000 aquatic events. Aquatic licences are issued throughout NSW for a wide variety of events ranging from the Sydney to Hobart Yacht Race, to water ski events, floating concerts and the like. NSW Maritime’s records indicate that, in 2006/2007, 637 aquatic licences, involving almost 19,000 aquatic events, were issued.

Within that period from 1996 to 2007 there have been 217 incidents associated with aquatic licensed events which have been recorded on NSW Maritime’s database. Considering that some 225,000 aquatic events have been licensed in that time, this incident rate is considered to be low. These incidents have resulted in 33 serious injuries and 7 fatalities and the majority of incidents have involved collisions or have occurred in water ski events. For the period 1/7/2006 to 30/6/2007 37 incidents, which resulted in 4 serious injuries, were reported.

In addition, these incidents have sometimes resulted in damage to property, generally to the vessels involved in the collisions, but occasionally to cardinal markers and the like.

4.6.4(d) Conclusions

The major conclusions that can be drawn from these statistics are as follows:

- Aquatic activities requiring an aquatic licence are popular in NSW;

- The low, overall, recorded incident rates indicate that the aquatic licensing system is achieving its main goal of promoting marine safety;
- There are further improvements that can yet be made, both in the area of participant safety and in minimising property damage.

4.6.5 Division 4: Boat Driving Licences

4.6.5(a) Overview

General Boat Driver Licences were first introduced in NSW in 1962 in response to the increasing number of boaters and the growing popularity of water sports, particularly water skiing, which brought into question the capability of the master in handling a vessel, particularly at a speed of 10 knots or more, and the issue of water safety. This was compounded by the ever increasing power of outboard motors.

Clause 63 of the Act creates an offence to operate recreational vessel without a boat driving licence.

This Division of the Regulation specifies classes of licence, requirements for applicants, licence conditions, together with vessels exempt from drivers requiring a licence. Restrictions are also specified for young adult licence holders.

4.6.5(b) Current Arrangements

Under the current Water Traffic Regulations, a recreational boat driver licence is required for people who wish to operate:

1. A mechanically propelled vessel at speeds of 10 knots or more; or
2. A personal watercraft (PWC) at any speed.

Prior to obtaining a boat driving licence an applicant must:

- produce evidence of proof of identity and age,
- pay an examination fee,
- pass an eyesight test or any medical examination required,
- undertake a compulsory Boating Safety Course, and
- either pass the licence test or have a current certificate for a course which NSW Maritime accepts as satisfying its licence testing requirements.

Licence testing is conducted by NSW Maritime as well as some external agencies, including the Roads and Traffic Authority (RTA), and volunteer marine rescue groups. A

test fee is payable for each attempt at the licence test (both general and PWC) and the fee is retained by the testing agency.

The licence test is aimed at ensuring that persons handling vessels have a minimum knowledge of safe boating principles, including those relating to vessel navigation, safety equipment, signage and safe distances to be kept from persons, vessels and objects.

NSW Maritime currently issues four specific types of recreational boating licences, based on the age of the driver and type of vessel being operated. The four categories are the General Boat Driver Licence, the Young Adult General Boat Driver Licence, the Personal Watercraft (PWC) Driver Licence and the Young Adult PWC Driver Licence.

Operating restrictions have been placed on licences issued to people between the age of 12 and 16 years so that they may gain practical experience whilst in a supervised environment and acts as a training mechanism for future advancement.

The proposed Regulation aims to maintain the existing system, as outlined above.

4.6.5(c) Objectives

The major objectives are as follows:

- to identify vessel operators;
- to ensure a minimum level of safety for all waterways users;
- to act as a deterrent against unsafe behaviour and encourage driver responsibility;
- to generate revenue which in turn is used to provide essential services in particular marine safety education campaigns, the provision of on-water patrols, customer service centres, and funding for volunteer marine rescue organisations.

Given the educational, safety and fiscal nature of the major objectives, it is considered vital for NSW Maritime, the Police and other authorised agencies to be able to identify vessel operators through a comprehensive licensing system.

4.6.5(d) Alternative Approaches

In order to achieve the objectives of the licensing of vessel operators five options were considered during the development of the proposed Regulation. The first option is to do nothing. The second is to retain the current system (prescriptive regulation). The third option is to widen the current system to include the operators of all powered boats, irrespective of the size of the vessel and its capabilities. The fourth option is to extend the current system to include the operators of all power driven and sailing vessels, and the final option is deregulation.

These alternatives are discussed below.

(a) Do Nothing

The enactment of the Marine Safety Act 1998 will automatically repeal all marine regulations including the Water Traffic Regulations, which include the boat driver licensing provisions. If nothing is done, this option will result in recreational vessel operators not being able to be identified for breaches of legislation relating to boating (e.g. in the case of vessel incidents or accidents, failing to obey navigation restrictions, such as speed zones, etc) and children will be able to operate large vessels with powerful motors at speed, even though they may have little or no knowledge of the safe operation of the vessel itself, or of the various boating rules.

A research investigation conducted by the New Zealand Water Safety Council (NZWSC), in 1994, entitled "*Evaluation of International Registration and Licensing Systems for Recreational Boating*", concluded that reduction in accidents and fatalities could be contributed to a combined effort in a variety of areas, including formalised systems such as registration of vessels and licensing of vessel operators. Given that the recreational boat licensing system, first introduced as a safety measure, has been in operation in NSW for over 45 years, it could reasonably be assumed that it has contributed to a reduction in on-water accidents and fatalities.

(b) Retaining the current system

Prescriptive legislation requires that persons, who operate any mechanically propelled vessel, at a speed of 10 knots or more or any personal watercraft (PWC) at any speed, must be in possession of a licence. A boating licence is obtained by completing a boating safety course and theory examination. From early 2009 the licensing system will include a practical component. Licence applicants will be required to demonstrate they have achieved practical competencies through either a logbook scheme or by attending a boat handling course.

The costs of maintaining the licensing system are borne by the boating community. In weighing up the benefits associated with a licensing system and the costs associated with obtaining a boating licence, the current system is considered to be both equitable and beneficial.

In the case of operator behaviour, prescriptive legislation acts as a deterrent by making licence holders accountable for their actions, which in turn, promotes safe and environmentally responsible behaviour. Where a potentially dangerous act or irresponsible behaviour occurs, the current licensing system enables NSW Maritime's Boating Service Officers to identify the offender and act accordingly by issuing a formal warning, penalty notice or court attendance notice.

There are also benefits to be gained by maintaining a licensing database. Statistical information can be accessed to determine the equitable distribution of infrastructure and funding that is relevant to the needs of the community. In addition to the financial

benefits, statistical information obtained assists safety committees and the like to target specific groups and assess the need for further training, education campaigns and resource allocation.

The social benefits far outweigh financial benefits in the case of prescriptive legislation. However, revenue raised through the licensing system enables NSW Maritime to provide essential services, including the installation and maintenance of marine safety education campaigns, the provision of on-water patrols, and customer service centres. Furthermore, funding for the volunteer marine rescue organisations would be discontinued. Without such revenue a number of the social benefits presently provided by NSW Maritime, most of which are outlined above, would no longer accrue.

(c) Widening of the current licensing system to encompass all power-driven vessels

The Marine Safety Act 1998 provides, at Section 62(1), that all “power-driven recreational vessels operating in or from State waters, other than vessels exempted by the regulations” are required to be registered. A “recreational vessel” includes a commercial vessel hired out or used for recreational or sporting purposes.

A widening of the current licensing system would mean that operators of all powered boats, irrespective of the size of the vessel and its capabilities, could be required to hold a boat driver’s licence.

Given the obvious educational and safety nature of licensing it is considered vital for NSW Maritime, the Police and other authorised agencies to be able to identify vessel operators through a comprehensive licensing system. An expanded system would improve that capacity and would capture all vessel operators of powered vessels who are currently not required by legislation to be licensed, i.e., masters of vessels which operate at speeds less than 10 knots such as dinghies and ‘tinnies’, which are also exempt from the requirements of registration if they are less than 5.5m in length.

Since 1992 some 231 fatal boating incidents (involving 268 fatalities) have been reported to NSW Maritime to end of July 2007. Of those incidents, 25% involved vessels which were known to be less than 5.5m in length. Of the 19 fatal incidents (resulting in 23 fatalities) in 2006/07, 12 involved open runabouts of which 7 were less than 5.5 metres. Many of the vessel operators of vessels less than 5.5 metres involved in fatal incidents would not have been required to be licensed. The National Marine Safety Committee has found that 76% of all vessels involved in fatal incidents were less than 6 metres in length.

The licensing component gauges retention of boating knowledge and acts as a deterrent, making holders accountable for their actions. Where a potentially dangerous act or irresponsible behaviour occurs, licensing enables NSW Maritime officers and Police to identify the offender and act accordingly through the issue of a formal warning, penalty notice or court attendance notice. The education component raises boater awareness of the maritime rules of the road along with other significant issues such as

the wearing of lifejackets when crossing bars. Combined, the two promote safe and environmentally responsible behaviour.

The licensing system could also be extended to encompass children from the age of 7 years. A junior general boat licence could be established for children from 7 years to 12 years subject to stringent conditions including that the vessel be no larger than 3.6 metres, only driven under 10 knots, and that the vessel could only be operated between sunrise and sunset.

Extension of the licensing system would allow for more comprehensive statistical analysis, enabling NSW Maritime to determine equitable distribution of resources including the need for further training and education campaigns.

The system could exempt persons hiring vessels under a Hire and Drive licence from the need to hold a recreational boat driver licence provided the following criteria are met:

1. The vessel under the hire and drive licence was not capable of being operated at 10 knots or more; and
2. The vessel operated only in the area allowed by the hire and drive licence.

As certain types of vessels operating under a hire and drive licence (e.g., houseboats) are fitted with governing devices which effectively limit their speed capabilities, an exemption from regulation would be straightforward. It should also be noted that owners of these vessels must, as a central component of the hire and drive process, provide detailed and extensive briefings to the client upon hire.

- (d) Widening of the current licensing system to encompass all power-driven vessels and sailing vessels

In 1993 several external agencies favoured the expansion of the licensing system and proposed that NSW Maritime should license all operators, citing the reason that all boat owners should contribute to the funding of the work of the Authority. Other concerns raised revolved around the need to be able to establish 'identity' and 'responsibility'. In all other states in which a licensing system applies, only operators of mechanically propelled vessels are licensed. In support of this position, the NSW Boating Incident Report 2006-07 indicates that open runabouts represent the largest group of vessels involved in incidents in that financial year.

- (e) Deregulation

Deregulation would mean that in order to achieve a minimum level of water safety the community would be relying on vessel operators to attend training and education courses that have no uniform fee.

Current practice is to award a licence to persons who have successfully gained a certificate from organisations such as Yachting Australia, Australian Boating College,

NSW Boating College, Surf Life Saving NSW and State Emergency Services. Since 2005 some 8,300 licence applicants have opted to obtain their boating licence in this way, that is, about 8% of the total licences issued.

In addition to the social implications generated through deregulation, abandoning the licensing system would severely restrict the ability of NSW Maritime to finance its core activities that include, but are not limited to, ensuring the safe and environmentally responsible use of NSW waterways.

The option of widening the licensing system to incorporate the operators of sailing vessels, dinghies and canoes would mean introducing yet another inconsistency against a national approach to licensing.

The approach which offers the greatest benefits to the community is that which offers relatively prescriptive legislation. The proposed Regulation will provide a minimum standard of knowledge for the operators of all power-driven vessels, except under a hire and drive licence under certain circumstances, resulting in safer waterways for all.

The Recreational Vessels Advisory Group, the peak industry/boating organisation in NSW, supports the prescriptive licensing system approach with an extension of the scheme to include all operators of power-driven vessels, except hire and drive vessels under certain circumstances.

4.6.5(e) Conclusion

A prescriptive regulatory licensing system is considered necessary and, so therefore are the regulations that facilitate it. An assessment of the costs and benefits of the licensing system shows that prescriptive licensing regulations provide the greatest benefit to the community. The current system should therefore continue.

4.6.6 PART 4: Summary of Costs and Benefits

4.6.6(a) Costs

Barriers to entry are created by the requirement that vessels be registered and persons and activities be licensed or otherwise certified before specified activities can be undertaken.

A further barrier is created by the need to pay fees for licenses and the registration of vessels.

Competition is thus restricted by the erection of such barriers and so the prices for services may be higher and consumer choice lower than if such restrictions did not exist. There is a potential breach, therefore, of the Australian Governments' *Competition Principles Agreement*.

It is noted, however, that restrictions on competition can be justified under that Agreement (Clause 5) where:

- the benefits to the community as a whole outweigh the costs and;
- the Government's objectives can only be achieved by restricting competition.

4.6.6(b) Benefits

Enhancement of safety will occur through control of entry to persons and vessels that meet minimum standards of adequacy and competency. This will benefit the community and it is asserted that the government's maritime safety objectives can be met in no other way than through restrictions on competition. It is further asserted that these benefits will outweigh the costs.

This assertion is supported by statements made, for example, by the NRMA that the vessel identification and registration systems have reduced theft and thus the costs of insurance.

4.6.6(c) Discussion

Barriers to entry are created by the requirement that vessels be registered and persons and activities be licensed or otherwise certified before specified activities can be undertaken.

A further barrier is created by the need to pay fees for licenses and the registration of vessels.

Barriers to entry can be justified because enhancement of safety will occur through control of entry only to persons and vessels that meet minimum standards of adequacy and competency. This will benefit the community and it is asserted that the government's maritime safety objectives can be met in no other way than through restrictions on competition created by the marine safety licensing system. It is further asserted that these benefits will outweigh the costs.

4.7 PART 5: Recreational Vessels – Safety Equipment and Facilities

4.7.1 National Standard for Recreational Boat Safety Equipment

In December 2004 the National Standard for Recreational Boat Safety Equipment was released following endorsement by the Australian Transport Council (ATC).

It was anticipated that the safety equipment requirements outlined in the National Standard would become the national approach, with State and Territory agencies eventually incorporating the requirements into their marine safety legislation.

Under the national model, safety equipment for the majority of recreational vessels is divided into two (2) categories:

- a) Required Equipment

The minimum equipment required on smooth, inshore and offshore waters is specified. In this respect the equipment carried will vary depending on the individual characteristics of the recreational vessel and the area in which it operates; and

b) Additional Equipment

Certain additional equipment is recommended to be carried over and above the minimum required depending on the circumstances. The onus is on the vessel operator to conduct a safety assessment of his or her craft and the activity to be undertaken before determining whether any other additional items are needed in order to mitigate the severity of any outcomes should an adverse event occur.

The requirements were developed following identification of those marine incidents and emergency situations most likely to occur, and the types of safety equipment needed to address each situation. The appropriate equipment was then aligned by vessel type and its area of operation.

For some vessels, however, the types of equipment required were not considered appropriate due to inherent design characteristics. In this respect, separate equipment requirements were developed consistent with the type of vessel, the activity being undertaken and waters in which the vessel operates.

4.7.2 National Regulatory Impact Statement

The National Maritime Safety Committee (NMSC) National Standard for Recreational Boat Safety Equipment was released for public comment on 22 September 2001, along with the draft Regulatory Impact Statement (RIS). Public comments were received until the end of February 2002. A reference group comprising industry and government met in April 2002 to review the public comment and provide recommendations to the NMSC.

The NMSC accepted the recommendations of the reference group on 11 June 2002 and the draft Standard and RIS were revised accordingly.

One of the recommendations of the group was that the standards for PFDs should be reviewed. Accordingly, an issues paper on PFD standards was released for public comment on 1 December 2002. The public comment was reviewed by a reference group on 15 April 2003 and recommendations made to the NMSC. The NMSC approved this version of the standard on 6 August 2003.

The Office of Regulation Review provided an assessment of the final RIS in 2004. The Australian Transport Council (ATC) endorsed this document for publication in May 2004.

It is noted that the guide to Better Regulation states on page 24:

In some cases, regulatory proposals will implement decisions taken through external processes such as Ministerial Council decisions, decisions of the Council of Australian Governments (COAG), or processes undertaken on

behalf of government by independent bodies such as IPART or the Productivity Commission. Where these processes demonstrate the elements of good quality regulatory development (including impact assessment and consultation) it is not necessary to duplicate this work when seeking approval at a NSW level.

In light of the foregoing and since the intention in the Marine Safety (General) Regulation 2008 to implement a National Standard endorsed by the ATC this RIS need not address those elements that comprise the National Standard. This RIS thus addresses only those variations to the National Standard proposed in the subject Regulation.

4.7.3 NSW Variations to the National Standard

4.7.3(a) Additional Items

NSW has adopted the NMSC's National Standard for Recreational Boat Safety Equipment, with some minor amendments. Under current NSW legislation, it is compulsory for recreational operators travelling offshore to carry an appropriate map or chart, fresh drinking water and an Orange "V" sheet on board their vessel. Additionally a sound signalling device (e.g. air horn, whistle or bell) is also required for all recreational vessels irrespective of the area of operation, that is, enclosed or open waters.

These requirements differ from the National Standard that lists an appropriate map or chart and an Orange "V" sheet as additional, recommended items (Table 1.3). Further, no reference is made in the National Standard to either the carriage of fresh drinking water on open waters or the use of suitable sound signals for vessels underway in both enclosed and open areas of operation. In the interests of safety, NSW Maritime considers it prudent these items be retained under the new Regulation as required items of safety equipment for recreational vessels.

Additionally, a differentiation that was made in the Boating (Safety Equipment) Regulation-NSW between a Class A open and Class A non-open vessel has also been removed. These two classes are now jointly referred to as vessels under 5 metres. In effect this places one additional requirement on open vessels under 5 metres. Unless otherwise exempted, these vessels will now be required to carry a portable fire extinguisher if the vessel is carrying fuel. This additional requirement is made on the recommendation of the Coroner into a fatality that resulted from a fire aboard an open vessel where an extinguisher was not carried.

4.7.3(b) Reduced Items

Conversely, NMSC's requirement for red star parachute rockets to be carried on board recreational vessels engaging in offshore operations has not been adopted by NSW on the grounds of cost.

The parachute rockets are already utilised for offshore aquatic events and their use would not be considered more beneficial than the existing orange smoke and red hand held flares.

4.7.3(c) *Rescinded Requirements*

In line with the National Standard, the following items have been rescinded from NSW legislation as compulsory items and will now be listed as additional, recommended items of safety equipment:

1. Life rafts;
2. Lifebuoy with 30 metre line; and
3. Rescue quoit with 15 metre line.

4.7.4 *Summary of Proposed Safety Equipment Requirements*

A summary of the proposed items of safety equipment to be carried compared to the National Standards and the current arrangements are provided in the Table below. It will be seen that the variations proposed to the National Standard requirements are relatively minor.

This RIS now addresses the costs and benefits of those variations only.

Figure 2: Boating Safety Equipment

ITEM	NATIONAL STANDARD				CURRENT NSW LEGISLATION								PROPOSED NSW REQUIREMENT			
	quantity	area of operation			quantity	area of operation								quantity	area of operation	
		smooth	inshore	offshore		enclosed	open	enclosed	open	enclosed	open	enclosed	open		enclosed	open
Anchor with chain and/or line	1	x	x	x	1 or 2	1	1	1	1	1	2	2	2	1	x	x
Bailer/bucket	(B1)	x	x	x	1 or 2	1	1	1	1	2	2	2	2	(B1)	x	x
Bilge pump	(B2)	x	x	x						x	x	x	x	(B2)	x	x
Compass	1			x	1		x		x		x		1			x
Distress signal - orange smoke hand held	2		x	x	2 or 3		2		2		3		3	2		x
Distress signal - red hand-held distress flare	2		x	x	2 or 3		2		2		3		3	2		x
Distress signal - red star parachute rocket	2			x										-	-	-
EPIRB	1			x	1						2nm		2nm	1		2nm
Fire bucket	1	x	x	x										1	x	x
Fire extinguisher (F1)	(F2)	x	x	x	1 or 2	1	1	1	1	2	2	2	2	(F2)	x	x
Marine radio	1			x	1		x		x		x		x	1		2nm
Navigation lights		x	x	x		x	x	x	x	x	x	x	x		x	x
Paddles or oars/rowlocks	(P1)	x	x	x		x	x	x	x					(P1)	x	x
PFD 1	(P)		x	x	(P)		x		x		x		x	(P)		x
PFD 1,2 or 3	(P)	x			(P)	x		x		x		x		(P)	x	
Waterproof torch	1	x	x	x	1	x		x		x		x		1	x	x
Lifebuoy with 30m line					1							x	x	-	-	-
Rescue coil with 15m line					1				x	x				-	-	-
Liferaft					1								x	-	-	-
Orange "V" sheet					1		x		x		x		x	1	-	x
Map or chart					1		x		x		x		x	1		x
Fresh drinking water					2 ltrs		x		x		x		x	2 ltrs		x
KEY				NATIONAL				NSW - CURRENT				NSW PROPOSED				
				(B1) a bailer/bucket to be carried where no bilge pump required. Note that a fire bucket can double as a bailer				* Bailer/bucket - min 2ltrs vessels <5m & 3ltrs vessels 5m+				* bailer/bucket - min 3 ltrs				
				(B2) to be provided on boats with covered bilges or closed under-floor compartments other than sirtight void spaces				* bilge pump - 45ltrs vessels 0-12m & 65ltr vessels 12m+				* fire extinguisher - as for F1 but add "or battery"				
				(F1) all boats with an electric start motor, gas installation or fuel stove				* EPIRB - 2nm off coast				* waterproof torch - sunset to sunrise				
				(F2) the number varies depending on potential sources of fire				* fire extinguisher - not required for open vessel <5m				* map/chart				
				(P) a PFD is to be carried for each person onboard the vessel				* marine radio - 2nm off coast				* fresh drinking water - 2ltrs/person				
				(P1) for vessels under 6m unless second means of propulsion fitted				* waterproof torch - sunset to sunrise								

4.7.5 PART 5: Summary of Costs and Benefits

4.7.5(a) Costs: Quantitative

The following Table shows the minimum requirements for safety equipment under the proposed Regulation.

Table 2: Minimum Safety Equipment Item Costs

Item	Quantity	Cost \$	Total Cost \$
Enclosed Water Requirements			
Anchor with chain/line	1	49.90 – 211.05	49.90 – 211.05
Appropriate map/chart	1	25.90	25.90
Bailer/bucket/fire bucket	1	9.95 – 13.95	9.95 - 13.95
Bilge Pump	min 1	59.90	59.90
Fire extinguisher	min 1	61.90	61.90
Life jacket (minimum of two purchased)	1 per person	66.50	133.00

Item	Quantity	Cost \$	Total Cost \$
Navigation lights	1 set	45.10 – 55.20	45.10 – 55.20
Paddles or oars/rowlocks	1 set	0 – 73.20	0 – 73.20
Sound signal	1	0.90 – 11.95	0.90 – 11.95
Waterproof torch (battery included)	1	17.90	17.90
Open Water Requirements			
Compass	1	14.95 – 49.95	14.95 – 49.95
Orange smoke hand held	2	15.50	31.00
Red hand held distress flare	2	15.50	31.00
EPIRB (406MHz)	1	569.00	569.00
Fresh drinking water	2 litres pp	-	-
Marine radio	1	199.90	199.90
Orange 'V' sheet	1	5.95	5.95
Total per vessel			1,256.25 – 1,550.75

The number of vessels required to comply in NSW are estimated to be 217,000. However, it is noted that the majority of vessels in NSW already comply with the existing legislative requirements so there should be no additional costs in respect of the existing fleet of recreational vessels.

The number of new vessels registered in NSW each year is approximately 12,000. If the proposed new NSW requirements are not made then these vessels would have had to comply with the current NSW Legislation noted in the Figure 2 above.

NSW Maritime advises that approximately 5% of recreational vessels (say 10,000) venture into open waters of which it is further estimated that some 65% (about 6,500) would be less than 8 metres in length. From Figure 2 above, the only additional safety equipment requirement for vessels under 8 metres in length is a 406 MHz EPIRB when they venture more than 2 nautical miles off shore.

At a cost of \$569 each this could result in a total of \$3.7 million (\$569 x 6,500 vessels) across the current industry and \$220,000 each year for the new vessels (12,000 x 5% x 65% x \$569).

4.7.5(b) Costs – Qualitative

It is not expected that the NSW variations to the National Standard will create any qualitative costs.

4.7.5(c) Benefits – Quantitative

It is expected that there will be reduction in costs due to property damage, injury and death each year due to the requirement that new vessels comply with the NSW variation. Data is not available that would permit these benefits to be quantified.

4.7.5(d) Benefits – Qualitative

Some qualitative benefits may result in the form of a reduction of stress and trauma on persons suffering property damage and personal injury, their immediate family, and the immediate family of persons killed.

4.7.5(e) Discussion

It is assessed that the benefits of the NSW variation to the National Standard for Recreational Boat Safety Equipment will exceed the costs.

4.8 PART 6: Alcohol and Drug Testing

This Part of the proposed Regulation deals with the security of blood and urine samples taken under Parts 2, 3, 4 and 5 of Schedule 1 to the Act.

4.8.1(a) Costs: Quantitative

There may be minor costs incurred by the need to maintain the security processes of blood and urine samples specified. It is not expected that these costs would be material.

4.8.1(b) Costs – Qualitative

It is not expected that this Part will create any qualitative costs.

4.8.1(c) Benefits – Quantitative

It is not expected that this Part will create any quantitative benefits.

4.8.1(d) Benefits – Qualitative

Qualitative benefits will be created by making clear the requirements about the security of blood samples and thus supporting the integrity of the alcohol and drug testing regime.

4.8.1(e) Discussion

It is assessed that the benefits of making clear the processes for dealing with the security of blood and urine samples will exceed the costs.

4.9 PART 7: Penalty Notices

Part 7 has not been appraised. As discussed at section 4.3 above on page 19 these are machinery provisions not required to be evaluated.

4.10 PART 8: Miscellaneous

Part 8 provides, inter alia, that a person must not falsely represent or knowingly allow another person to represent falsely that navigation is restricted by the Minister in any area, and details certain exemptions.

Penalties apply for non-compliance.

No material costs and benefits are created by this Part.

4.11 SCHEDULES

The Schedules to the proposed Regulation do not introduce additional matters that involve costs and benefits, but rather make clear certain aspects contained in the earlier parts of the Regulation. These Schedules are:

Schedule 1 Fees.

Schedule 2 International Regulations for Preventing Collisions at Sea.

Schedule 3 Areas in which kitesurfing and sailboarding prohibited.

Schedule 4 Standard of safety equipment carried on recreational vessels.

Schedule 5 Minimum safety equipment to be carried by recreational vessels.

Schedule 6 Coastal Bars.

Schedule 7 Penalty notice offences.

Schedule 8 Savings and transitional provisions.

5. THE BASE CASE

5.1 Definition of the Base Case or Status Quo

Appendix B of the Guide to Better Regulation addresses the question of non-regulatory and regulatory options and, in particular, the taking of no action or maintaining the status quo.

It is important to note that the Guide advises that the status quo can reflect an environment with no regulation or one that is already regulated.

The Guide states that the option that maintains the status quo should always be considered. Taking no action may be the best response if the cost of action would be greater than the costs of the problem. Even if it is not, exploring this option establishes a base against which other options can be compared.

A review of the current state of affairs may identify ways to improve the effectiveness of existing instruments to achieve policy objectives at low cost. It may also highlight previous regulation that has caused or exacerbated the problem. It may be possible to amend existing instruments to expand their coverage, remove flaws, improve compliance or strengthen enforcement. If a new approach is needed, the existing regulation may need to be repealed or consolidated.

Thus the 'status quo' has been defined in this RIS in the form of two 'scenarios':

1. The proposed Marine Safety (General) Regulation 2008 will replace the current Regulations and continues a regulatory regime that has been in place for many years. The costs and benefits of the proposed Regulation are here expressed as incremental to continuing the current Regulation.

The 'scenario' of continuing the current Regulation is described herein as **Scenario 1**.

2. Not remaking the Regulations. The costs and benefits of the proposed Regulation are thus expressed as incremental to having no Regulation at all.

The 'scenario' of not remaking the Regulations is described herein as **Scenario 2**.

5.2 Base Case: Scenario 1 – Continue with the Current Suite of Regulations

In general terms, little material change in the costs and benefits of the proposed Regulation will be created compared to the current suite of regulations that it is to replace. The primary benefit of consolidating these regulations into one single statutory rule will be that the requirements of the marine safety will be more accessible in one regulation, and, as a result, higher compliance and a consequential increase in marine safety is anticipated to result.

To the extent that some material changes in costs and benefits do occur from the proposed Regulation, these are summarised as follows:

1. The National Standard for Recreational Boat Safety Equipment with NSW variation would not be implemented. The current boating safety equipment regime summarised in Figure 2 on page 40 would continue and the rescinded requirements listed in section 4.7.3(c) above on page 39 would still be required.
2. The national requirement that all recreational vessels (with some minor exemptions) new or imported vessels from 1 July 2006 are to have an Australian Builders Plate fitted would not be implemented. The current requirements that are outdated and prescriptive in nature do not take into account international standards, high-risk activities and performance-based approaches, will continue.

A more detailed summary of the differences between the current suite of regulations and the proposed Regulation is provided at **Attachment A**.

5.3 Base Case: Scenario 2 – Make no Regulations

5.3.1 A Form of Self-Regulation

Under this proposal the existing Regulations would expire and effectively be replaced with a system of self-regulation.

Essentially, vessel operators would be able to make their own decisions regarding the role and necessity of, for example, safety equipment - whether it is required on board their vessel, circumstances in which it was needed and the type of safety equipment it would be.

5.3.2 The Risks

Statistics collected and analysed by NSW Maritime into boating related fatalities and injuries indicate that recreational boating does pose a risk to the individuals involved, and that the use of safety equipment can substantially reduce those risks when faced with certain environmental and situational phenomenon. If the legislative requirement for safety equipment is removed, a situation is inadvertently created exposing individuals to even greater risk in the absence of due diligence and the removal of consistencies established to control specific hazards.

Under the current Regulations, an average of 17 people die and a further 40 are seriously injured in recreational boating accidents each year in NSW. To remove the requirements in the current and proposed Regulation is likely to result in a significant increase in existing numbers, placing an even greater economic, social and environmental burden on the community and the services established to deal with search, rescue, medical emergencies, investigation and on-water trauma.

5.3.3 No Obligation to Provide a Duty of Care

Additionally, as the regulatory requirements are removed, there is no obligation on behalf of the recreational boater to provide a duty of care to those on board his or her

vessel beyond that at common law. Left to the individual's discretion, and in the event that, for example, an individual determination is made to have safety equipment on board, the absence of minimum standards for such equipment may result in the purchase of items of a quality and design that do not adequately meet the circumstances for which they were constructed. Should an incident occur, the use of such equipment is likely to prove ineffective and serve only to compound rather than lessen the likelihood of a serious outcome.

The lack of legislation would result in greater emphasis being placed on other media to instil a safety culture and fill the void left by law. In NSW this role would be largely undertaken through the recreational boat licensing process and the educational and compliance campaigns conducted by NSW Maritime throughout the year.

5.3.4 Other Sources of Education

In NSW a boat licence is required for every person wishing to operate a powered recreational vessel capable of speeds of 10 knots or more or a personal watercraft (PWC) regardless of the speed travelled.

From 1 October 2006 anyone wishing to sit for a general or PWC licence test must first complete a compulsory boating safety course.

The Boating Safety Course requirements can be met by one of the following:

- Attending a Boating Safety course conducted by NSW Maritime or the Royal Volunteer Coastal Patrol, Australian Volunteer Coast Guard or Volunteer Rescue Associations.
- By viewing the Boating Safety Course online.
- By purchasing a DVD/video for viewing at home.

After completing the Boating Safety Course the applicant must then satisfactorily complete the knowledge test comprising 40 questions (15 compulsory) for the general boat licence and an additional 15 questions (minimum of 12 correct) for the PWC licence.

An alternative to completing a Boating Safety Course for the requirement to obtain a licence and undertaking the licence test, is to successfully undertake a course conducted by one of the following NSW Maritime accredited Registered Training Organisations (RTOs) as follows:

- * ABC Licence Training Pty Ltd;
- * Boating Licence Course;
- * Defence Maritime Services;
- * Maritime and Safety Training;
- * NSW Boating College;
- * Sea School Australia;

- * Yachting Australia;
 - * National Powerboat Training Scheme;
 - * National Yacht Cruising Scheme;
 - * National Motor Cruising Scheme; and

In 2006/07 NSW Maritime conducted 7 major State-wide education and compliance campaigns and 73 regional education campaigns. These campaigns aim to deliver safety benefit outcomes by focussing on particular aspects of safety and raise awareness of and ensure compliance with legislation. Previous campaigns have included various matters of marine safety such as speed, wash, alcohol and lifejackets. Safety equipment checks are an integral part of compliance campaigns with around 42,000 checks conducted throughout the year.

With no regulation there would be greater burden on resources to conduct additional on-water campaigns to educate boat operators of the importance of safety equipment and encourage their carriage on board vessels. It is estimated that some 350 compliance campaigns, focussing solely on safety equipment, would need to be run regularly at individual costs of \$6,000 per campaign.

5.3.5 Implementation of National and International Conventions

The proposed Regulation implements the International Regulations for Preventing Collisions at Sea and harmonises national safety systems including the fixing of an Australian Builder's Plate (ABP) to recreational boats and the National Standard for Recreational Boat Safety Equipment.

In the absence of the current or proposed Regulation, these national and international standards would not be implemented in New South Wales.

As far as the International Regulations for Preventing Collisions at Sea is concerned, the inability of NSW to give effect to these Regulations would negate Australia's status as a signatory to the SOLAS Convention. It may be possible for the Commonwealth Parliament to legislate to give the Convention effect in NSW but this is uncertain.

The National Conventions would not be able to be given force in NSW in the absence of the current or proposed Regulation.

5.3.6 Other General Costs

Other general costs include:

- An increase in accidents may occur resulting in property damage, injury and death. Data is not available that would enable quantification of such costs resulting from the absence of regulation.
- A reduction in safety will occur through reduced control of entry to persons and vessels that meet minimum standards of adequacy and competency. This will

impose a general cost on the community. The absence of vessel identification and registration systems will increase theft and thus the costs of insurance.

5.3.7 Other General Benefits

Other general benefits include:

- Qualitative benefits would exist by increasing the freedom of operators of craft to use the craft in any way they wish.
- Barriers to entry are reduced by the requirement that vessels be registered and persons and activities be licensed or otherwise certified before specified activities can be undertaken.
- A further barrier is reduced by the elimination of the need to pay fees for licenses and the registration of vessels.
- In the absence of the regulations, greater freedom to operate vessels may occur and this may increase revenues generated by vessels' commercial operations. However, in light of the fact that the primary thrust of these Regulations is directed to recreational boating, it is not expected that such monetary benefits would be material.

6. OTHER ALTERNATIVES

6.1 Adopt the National Safety Equipment Standards without NSW Variation

Under this option, NSW Maritime would entirely adopt the requirements put forward by the NMSC in its National Standard. In this respect, the obvious benefits arise through the simplification and streamlining of safety requirements in NSW in accordance with the National Standard. Additionally, the current Standard of prescribing safety equipment for vessels by length is removed, alleviating any confusion and providing savings to operators of larger vessels as the quantity of equipment required may actually be reduced.

In determining the feasibility of this option, NSW Maritime consulted with the safety equipment sub-committee of its peak advisory group, RVAG, who conducted a review of the National Standard to determine its suitability and application in NSW.

Whilst the majority of items listed in the National Standard were agreed upon, safety sub-committee members were of the view that there remained various items of equipment considered critical for vessel operators when transiting open and enclosed waters but not accounted for by the National Standard in its minimum requirements. Examples include the retention of the Orange 'V' sheet for open water activity, fresh drinking water for same and the use of an appropriate sound signal for both open and enclosed water operations.

6.2 Information and Education Campaigns

When sellers have information that is not available to buyers (information asymmetry), government intervention may be justified. Without access to information, buyers may make decisions that have negative social consequences (buying dangerous cars for example, or eating an unhealthy diet or investing in businesses that are hopelessly in debt). An information-based strategy that educates rather than coerces can be the best way to remedy these kinds of problems.

One type of information-based strategy is publication by the Government. An information-based strategy preserves consumer choice. Even poorly informed consumers have a lot of information that governments do not about their preferences, their financial situation, their skills etc.

NSW Maritime has an extensive information strategy in place. Brochures and other information media are made available through its offices and through on-water patrol staff. Opportunities are taken through events such as the NSW Boat Show to promote recreational boating safety by information and education campaigns.

However, experience has shown that such information and education campaigns on their own are insufficient. They must be backed up by regulatory intervention with penalties imposed when necessary to establish and maintain a level of marine safety acceptable to the community.

6.3 Persuasion

Persuasion is a tool governments can use to encourage positive behaviour without enforcing rules directly. It is a variation on information-based strategies in which governments seek to leverage values of good citizenship, good corporate behaviour, self-preservation or peer pressure to achieve public ends.

NSW Maritime attempts such persuasion through providing information to boating groups and clubs with the intention that some members influence in a positive way the behaviour of other members.

Again, however, experience has shown that such persuasion campaigns on their own are insufficient. They must be backed up by regulatory intervention with penalties imposed when necessary to establish and maintain a level of marine safety acceptable to the community.

6.4 Self-Regulation

Self-regulation uses industry development of voluntary rules or codes of practice, with the industry in question solely responsible for compliance. The Government usually has no role under this form of regulation although in some cases it may provide information or advice.

Effective voluntary industry self-regulation can generate benefits for industry, the consumer and for regulators.

Self-regulation can be effective where there is a cohesive industry association that is representative of the industry. Compliance with the voluntary rules may be a condition of membership of the association.

Self-regulation will only be effective if the industry is committed to making it work. Where this is not the case, there will be costs imposed on the community without the offsetting benefits.

In light of the above self-regulation is not an effective strategy when dealing with general members of the public and, in the case of the subject Regulation, the recreational boating community. This community is not an industry group and there is no single source of authority outside of government that can influence behaviours and impose sanctions for non-compliance.

7. EVALUATION OF RELATIVE IMPACTS

7.1 Overall Comparison and Evaluation of Relative Net Costs/Benefits of the Proposed Regulations and Alternatives

In general, terms the proposed Regulation creates a net benefit. This net benefit is derived from the following, in summary:

1. The consolidation of the current suite of regulations into one single regulation will facilitate access the legislative requirements by the recreational boating community. This facilitated access will assist in understanding the requirements and, through this facilitation, increase compliance. In turn, increased compliance will reduce the probability of accidents involving recreational boating so reducing the incidence of death, personal injury and property damage.
2. The National Standard for Recreational Boat Safety Equipment with NSW variation will be implemented. The current boating safety equipment regime summarised in Figure 2 on page 40 will cease and the requirements listed in section 4.7.3(c) above on page 39 will be rescinded.
3. The national requirement that all recreational vessels (with some minor exemptions) new or imported vessels from 1 July 2006 are to have an Australian Builders Plate fitted will be implemented. The current requirements that are outdated and prescriptive in nature do not take into account international standards, high-risk activities and performance-based approaches, will cease.
4. There will be no material increase in business or personal costs to the NSW community compared to the current legislative regime.
5. The proposal does not materially restrict competition.
6. The proposal assists in implementing International and National agreements and is consistent with actions taken or planned in other Australian jurisdictions.
7. Appropriate consultation with representatives of the affected members of the community has been undertaken.

The Base Case of continuing with the current regulations will forego the benefits of the proposed Regulation, listed above. The costs to achieve the above benefits are minor. The costs are primarily qualitative and involve some increased requirements regarding operator and boat registration.

A more detailed summary of the differences between the current suite of regulations and the proposed Regulation is provided at **Attachment A**.

The Base Case of making no regulations at all (that is, allowing the current regulations to sunset under the provisions of the Subordinate Legislation Act 1989, with no replacement) creates an environment of self-regulation by the boating community. The proposed Regulation also implements the International Regulations for Preventing

Collisions at Sea, harmonises national safety systems including the fixing of an Australian Builder's Plate (ABP) to recreational boats and the National Standard for Recreational Boat Safety Equipment. In the absence of the current or proposed Regulation, these national and international standards would not be implemented in New South Wales.

As far as the International Regulations for Preventing Collisions at Sea is concerned, the inability of NSW to give effect to these Regulations would negate Australia's status as a signatory to the SOLAS Convention. It may be possible for the Commonwealth Parliament to legislate to give the Convention effect in NSW but this is uncertain.

The National Conventions would not be able to be given force in NSW in the absence of the current or proposed Regulation.

The other alternatives considered were:

1. Adopt the National Safety Equipment Standards without NSW Variation.
2. Information and Education Campaigns.
3. Persuasion.
4. Self-Regulation.

Each of these was rejected for the reasons given in section 6 above.

7.2 Justification for Selecting or Rejecting the Proposed Regulations

On balance, therefore, the proposal to make the proposed Regulation, the Marine Safety (General) Regulation 2008, has the greater net benefits of the alternatives considered and should be adopted.

7.3 Means and Processes of Enforcing the Proposed Regulation

7.3.1 Compliance and Enforcement Strategy

The proposed Regulation will be enforced by NSW Maritime and the NSW Water Police.

Administration of the Regulation provisions with respect to the checking of compliance with the safety equipment provisions are estimated to be funded from the existing NSW Maritime Recreational Boating Enforcement operational budget of \$34.8 million per annum.

Enforcement of the provisions of the Regulation on persons is by the imposition of monetary penalties as specified in the Regulations and ultimately any prosecution.

Actions that may be taken involve a progressive escalation depending on the seriousness and particular circumstances of the offence, and include:

- a verbal warning;
- a formal written warning;

- a penalty notice; and
- prosecution.

7.3.2 Penalties for Non-Compliance

Proceedings for an offence against the marine legislation may be brought by any person, including a police officer or an authorised member of the staff of NSW Maritime.

Penalties for non-compliance exist throughout the Regulation.

8. METHODOLOGY

8.1 Description of the Methods Used and the Assumptions Adopted in the Analysis

The method used in the preparation of the Regulatory Impact Statement reported herein was based on:

- “Guide to Better Regulation”, NSW Government Better Regulation Office;

All assumptions used throughout this RIS have been footnoted or explained in the text where relevant.

8.2 List of Data and Information Sources Used

The following documents/information sources were studied:

1. The Marine Safety Act 1989.
2. The exposure draft Marine Safety (General) Regulation 2008.
3. The NSW Maritime Annual Report 2006-2007.

8.3 Monitoring and Evaluation Strategy

The outcomes of the proposed Regulation will be monitored by NSW Maritime. Its information systems will capture accident data. This data will be used in periodic reviews of the legislation and the strategies adopted for its implementation.

Incident data will also be obtained from other agencies involved in boating safety including the NSW Police Force.

The sources of data and the channels created through boating representative groups as part of the consultation process undertaken during the development of this Regulation will also be used to obtain data on the effectiveness of the legislation.

Where necessary, proposals will be considered by NSW Maritime’s Executive Management to change implementation strategies. Where appropriate also, consideration will be given to amendment to the legislation should this be seen necessary before its five-year periodic review required by the Subordinate Legislation Act 1989.

8.4 The Consultation Process

8.4.1 Previous Consultation during the Regulation Development Process

The proposed Regulation has been developed following collaborative consultation with NSW Maritime’s peak recreational boating advisory group RVAG, membership of which comprises various segments of the boating community including the Australian Power Boat Association (APBA), Yachting Australia (YA), Volunteer Marine Rescue Organisations, NSW Rowing Association, NSW Police, BIA, Boat Owners Association, Recreational Fishing Alliance, NSW Water Ski Association, Surf Life Saving NSW, SCUBA Clubs Association of NSW and NSW DPI (Fisheries).

As previously indicated, Part 5 of the proposed Regulation is largely based on the NMSC's National Standard, itself the subject of a rigorous consultation process commencing in October 1999 with a series of workshops held in capital cities around Australia. The initial consultation process attracted approximately 150 participants from the maritime sector such as volunteer rescue organisations, boat manufacturers and retailers, education and training providers, marine authorities and boat clubs and boat owners.

Following the initial consultation process, a discussion paper was developed and released for public comment until February 2002 then a draft Standard and RIS. Following subsequent consultative processes, the National Standard was released in December 2004.

The proposed Marine Safety (General) Regulation content was presented and discussed at a number of RVAG meetings, including October 2007 when members were asked to provide comment to the RIS authors. At the date of this report, no comments have been received.

8.4.2 Public Consultation Period

The Marine Safety (General) Regulation 2008 and RIS are available for public comment. Copies of the RIS have been provided to key industry stakeholders, members of the Recreational Vessels Advisory Group (RVAG) and the Maritime Ministerial Advisory Committee (MMAC), and can be obtained by phoning Reception on 02 9563 8511 or making an email request to NSW Maritime at policy@maritime.nsw.gov.au.

NSW Maritime welcomes submissions from interested parties and will carefully consider all matters raised and make any relevant amendments to the Regulation before its scheduled commencement date of 1 October 2008.

Interested parties will be invited to provide comment on the proposed regulations and RIS during a formal 28-day period of public consultation commencing the 15 August 2008.

The availability of the RIS and Public Consultation Draft Regulation will be advertised in the following manner:

- Government Notices section of the Sydney Morning Herald newspaper;
- NSW Maritime website;
- The Boating Industry Association Logbook Newsletter, a publication widely circulated and read by the recreational boating industry; and
- by direct contact with the abovementioned industry bodies.

Submissions received following closure of the public consultation period will be reviewed by NSW Maritime and comments taken on board in finalisation of the proposed Regulation where considered necessary.

ATTACHMENT A

Comparison between Current & Proposed Regulations & National Standard:

TABLE OF CHANGES

MARINE SAFETY (GENERAL) REGULATION 2008

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
	Key : WTR – Water Traffic Regulations NSW MSA – Maritime Services Act 1935 MWLWR – Management of Waterside & Waterside Lands Regulation – NSW B(SE)R – Boating (Safety Equipment) Regulation – NSW		
Part 2 – Safety of Navigation			
5	Navigation (Collision) Regulations 1983 – NSW (Schedule 1)	Adoption of international collision regulations (COLREGS)	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
6	17 & 26 – MWWLR, and 22 B(SE)R	Restriction on use of distress signals	None
7	17B – MWWLR	Restriction on use of emergency patrol signals	None
8	5A – WTR	Bow riding	Extended to cover hanging onto swim platforms while vessel in motion etc.
9	19(4) (5) and 19(6) – MWWLR	General provision in relation to wash, dredges and bridges	Covers the effect of wash on certain vessels, rather than 'speed' (which of itself has no effect on other vessels)
10	New Clause	Under 18 speed restriction –	Formalises an existing speed restriction notified in the Gazette on 17 January 2003 following approval by the then Minister Scully of a recommendation from a review conducted by NSW Maritime. The Deputy State Coroner recommended restriction following fatality.
11	New Clause	Prohibit overpowering of vessels beyond manufacturers spec	To put beyond doubt current registration requirements relating to engines not exceeding manufacturers maximum recommended size.
12	22 – MWWLR	Safe towing	None
13	New Clause for kitesurfing	Restriction on area for kitesurfing	Formalises current guidelines developed in consultation with the Australian Kite Surfing Association that kitesurfing not be undertaken on Port Jackson

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
14	Exemption Notice	Authorised officers exempt from wash/speed restrictions when attending emergencies	None
15	Mostly covered by Clauses 8A and 14(1) of MWWLR	Obligation on operators to warn if their vessel causes an obstruction (e.g sinks)	Safety obligation on owner of object to mark obstructions without having to first be given a direction to do so as NSW Maritime may only become aware of an object after a collision with it
16	19(1) – MWWLR	Obstruction of fairways & channels	None
17	Combination of existing requirements (6 – MWWLR)	General obstruction clause	To address concerns about potential obstruction of waterway users
18	14 – MWWLR	Obstruct waters with object	None
19	8A – MWWLR	Lighting and marking to be placed on obstructions	Direction giving power to compel the maker of an obstruction to safely mark it, or NSW Maritime may do it at the persons expense.
20	13U – MSA	Disposal of obstructions	None
21	8 & 21 – MWWLR	Damage Navigation Aids etc.	None
22	12 – MWWLR	Interfere with vessels, safety equipment etc.	None
23	New Clause	Meaning of 'safe distance'	Clarification clause

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
24	6 & 15 – WTR	Minimum distances to be kept when towing etc.	None
25	6(3) – WTR	Distances from swimming areas	None
26	19(3) – MWWLR	Distances from vessel in chains	None
27	6(1) – WTR	No more than 3 persons to be towed at once	None
28	New Clause	Towing by remote control prohibited	Adds new technology and the safety risks associated with it
29	6(2) – WTR	Towing after sunset/before sunrise	None
30	6(2)(c)	Observer requirements for safety when towing	Expands the current legislation with onus on the skipper to ensure that the observer is 16 years of age or older or has a young adult boat licence and has no disability which would affect performance
31	New Clause	Responsibility for trailing equipment	Adds incidents where tow ropes etc. have caused injury and damage. Places onus on the skipper to ensure that trailing equipment (tow rope etc) does not cause danger or obstruction,
32	New Clause	Specifies minimum length for Tow Rope	Enhanced safety provision. Prevents towing activities that could cause carbon monoxide poisoning.
33	15A – WTR	Personal Watercraft behaviour label	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
34	15AAA – WTR	Personal Watercraft excluded from Sydney Harbour	The disqualification periods attached to this clause are no longer fixed, automatically imposed and unable to be reviewed, and can now be adjusted as appropriate by the Minister or by a Court.
35	15AA – WTR	Conduct of Personal Watercraft at speed	None
36	15AA(1B)	Operation of PWC at night	None
37		Application	None
38	3A – WTR	Maximum Safe Loading	Expands 'capacity plate' to become a safety label' displaying more information, in accordance with Minister's announcement on the subject on 4 June 2008
Part 3 – Requirements for Builders Plates			
39	New Clause	Definitions	Introducing the NMSC Model provisions for the Australian Builders Plate (ABP) Scheme
40	New Clause	Application	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
41	New Clause	Variation	Requires approval officer to be named on the ABP
42	New Clause	Vessel for sale must have ABP	Australian Transport Council approved the ABP Scheme for all new recreational vessels built on or after 1 July 2006
43	New Clause	Exceptions and Defences	
44	New Clause	Authorised persons	Defines persons authorised to approve ABPs
45	New Clause	Fixing of plates	Creates offences for fixing inaccurate/incorrect plates etc.
46	New Clause	Approval by Authorised Person only	Creates offence for approval other than by a person defined in clause 46
47	New Clause	Alteration	Creates offence for unauthorised alteration of ABP
48	New Clause	Registration	New vessel may not be Registered if not fitted with ABP
Part 4 – Marine Safety Licences			
49		Application	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
50	15H & 11(3) – WTR	Application for Marine Safety Licence	Incorporates the concept of a ‘Further Licence’ rather than a ‘renewal or reinstatement’ of an existing licence, but allows a discretion as to what the requirements/fees etc. are for a ‘further licence’
51	15O & 11(10) – WTR	Grounds for refusal	None
52	15O & 11(10) – WTR	Suspension & Cancellation	None
53	15P & 11(6) – WTR	Change of Particulars	None
54	15Q & 11(8) – WTR	Issue of replacement Licence	None
55	15P(b) & 11(7) – WTR	Return of Licence	None
56	New Clause	Cheating or Forgery	Creates an offence for cheating in a test or forging an application
57	2 & 13 - WTR	Exemptions from Registration	Small vessels, trade plates etc. Also preserves the current registration scheme allowed by Exemption for SES and SLSNSW
58,59,60,61	11A, 11B & 11C – WTR	Hull Identification Number (HIN) Scheme	None
62	11(6)(11)(12)&(12A) - WTR	Display of Registration Number & Label	None
63	11(3B) – WTR	Personalised Registration Numbers	None
64	11(7) – WTR	Transfer of vessel ownership	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
65	11(7) – WTR	Disposal of vessel	None
66	15E(1)	Condition of PWC Registration	Preserves the offence of 'owner allow unlicensed driver to drive PWC' by linking the responsibility of the owner to do so as a condition of registration (note – the Act does not provide a power for the original offence to be carried over)
67	New Clause	Unauthorised operation of vessel	Creates an offence similar to Road Transport legislation of taking and driving a vessel without permission
68.69	8(1) – WTR	Aquatic Licences	Expands the aquatic licensing system to capture most activities that would involve a necessary separation between the general public and participants. By controlling this interface, public safety is increased and risk of injury is reduced. Also provides an exemption for surf carnivals etc.
70	8(3)&(5) - WTR	Requirements for Applications	Ensures consideration of safety, environment and local govt. factors prior to issue of an aquatic licence
71	15D – WTR	Types of Boat Driving Licence	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
72	15E(2) - WTR	Licence not required for greater than 10 knots	None
73	15H - WTR	Application requirements	None
74	15K – WTR	Conditions of Boat Driving Licences	None
75	15F – WTR	Restrictions on Young Adults	None
76	15E(4) - WTR	Disqualifications for unlicensed PWC use	The disqualification periods attached to this clause are no longer fixed, automatically imposed and unable to be reviewed, and can now be adjusted as appropriate by the Minister or by a Court. The 'two strikes and you're out' disqualification for safety related offences previously found in Clause 15O(2),(3) and (4) of the WTR are preserved here.
Part 5 – Safety Equipment			
77		Application	None
78	3 – B(SE)R	Exempt vessels	None
79	2 – B(SE)R	Definition of 'lifejacket' and 'appropriate lifejacket'	Expanded to clear up any confusion as to what types of lifejacket are appropriate in certain circumstances

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
80	5-8, 13, 14 B(SE)R	Minimum Safety equipment	Expanded to cover not only minimum safety equipment required to be carried, but places obligation on service, maintenance etc. to keep them in working order
81	12 – B(SE)R	Lifejacket required to be worn on kayak or canoe	None
82	12B – B(SE)R	Lifejacket required to be worn when crossing coastal bar	none
83	12A – B(SE)R	Lifejacket required to be worn on Personal Watercraft	None
84	New Clause	Lifejacket required to be worn by windsurfers	Addresses current safety concerns given mostly offshore activity. Already a requirement for sailboarders
85	New Clause	General Defences for above offences	None
86	4B – B(SE)R	Hatches & Exterior Doors	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
87	4C – B(SE) R	Hatches & Exterior Doors – Locking	Expands on Clause 103 to place on obligation on the operator of a vessel that hatches are kept unlocked while underway, to facilitate escape if required
Part 6 Alcohol and Drug Testing			
88	Marine Safety Regulation 2003	Security of blood and urine samples	None
Part 7 – Penalty Notices			
89	30D - MSA	Penalty Notices	Allows for a Penalty Notice Scheme and a new 5 tier offence structure
Part 8 – Misc			
90	15L – WTR	Fees	Combines fees for various licences etc. under current legislation into a single schedule

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
91	New Clause	False Representation	Provides for an offence for falsely representing that navigation is restricted – to counter a growing trend of persons seeking to render areas of waterway their own private domain via official looking signage
92	New Clause	Reporting of Accidents	Special provision to set parameters for investigation of marine incidents which occur during the confines of an aquatic licence.
93	19A – WTR	Exemption from regulation if action taken on safety grounds	None
94	38 - MSA	General Exemption powers	None
Schedule 1		Fees (Clauses 3 & 90)	None
Schedule 2	Navigation (Collision) Regulations 1983 – NSW (Schedule 1)	COLREGS (Clause 5)	None
Schedule 3		Kiteboarding prohibited area (Clause 13)	Aligns with Personal Watercraft Exclusion Zone
Schedule 4		Minimum safety equipment table (Clause 79)	None

Marine Safety (General) Regulation Provision	Current Legislation	Purpose	Significant Changes or Departures from previous legislation
Schedule 5	Schedule 1 – B(SE)R	Applicable Standards for equipment listed in Schedule 4	Includes, inter alia, European/Canadian/US/NZ Standards for lifejackets, and 406Mhz EPIRBs Also the National Marine Safety Committee's National Standard for Recreational Boat Safety Equipment has been adopted with some very minor variations (orange "V" sheet, map/chart, and fresh drinking water have been retained and are still required for vessels travelling offshore). As a result the list of minimum safety equipment items required to be carried by many vessels has been reduced such as liferafts, lifebuoys and rescue quoits. As a result of adopting the National Standard vessels under 8 metres will now be required to carry an EPIRB when travelling 2 nautical miles or more offshore. Safety equipment changes have the full support of the RVAG.
Schedule 6	Schedule 1A – B(SE)R	List of Coastal Bars (Clause 82)	None
Schedule 7	Schedules 2 & 3 - WTR	Penalty Notice Amounts	Penalty Notices are now divided into 5 levels, in order to standardise the amounts which were previously disparate.
Schedule 8		Savings & Transitional	Preserves disqualifications issued under the old Regulations as continuing to operate.



Attachment B
National Life Jacket Compulsory Wearing Comparison

Situation	NMSC's Nat. Standard	NSW Current	NSW proposed	Tas	Vic	Qld	WA	SA	NT
Power driven vessels to 4.8m					X				
Power driven vessels <6m				X					
PWC	X	X	X	X	X	X	X	X	
Sailboard	X	>400m from shore	X		X				
Kitesurfing			X		X			X	
Canoe/kayak	X	>400m from shore	X	X	X			X	
When being towed by vessel				X	X			X	
Off the beach sailing vessels	X			X	X				
'heightened risk' situations					X				
Children (when in open area of vessel when underway)				<12yrs	<10yrs				
Crossing ocean bars		X	X		X				
Tenders					X				
Pedal boats/fun boat					X				