

# Response to the Office of the State Coroner of New South Wales

## Report into Boating Incident Dawes Point, Sydney Harbour 28 March 2007

<b>Coroner</b>	<b>Deputy State Coroner H C B Dillon</b>
<b>Date of findings</b>	<b>23 February 2010</b>
<b>Inquest location</b>	<b>Sydney Corners Court, Glebe</b>
<b>Recommendation(s)</b>	The incident was examined and reported on by the Office of the Coroner. The Coroner made 15 recommendations to NSW Maritime.
<b>Inquest</b>	Inquest into the deaths of Alan Blinn, James Engert, Morgan Innes and Simone Moore, following the collision of the Sydney Ferry Pam Burrige and the recreational motor cruiser, the Merinda.

### Response Overview

NSW Maritime has given careful consideration to all the recommendations made by the Coroner. There has been consultation with various stakeholder groups and with the boating industry to investigate the practical issues associated with certain recommendations.

The recommendations formed a substantial part of the debate at three Maritime Ministerial Advisory Council (MMAC) meetings, as well as consultation with representatives of the NSW Boating Industry Association (BIA), the Commercial Vessel Association (CVA), and the Boat Owners Association (BIA).

The MMAC comprises boating experts highly experienced across all sectors. It provides advice, expertise and a strategic perspective on maritime issues including safety, navigation, regulation, infrastructure, amenity and the development of the industry.

The recommendations and NSW Maritime's proposed response have been brought to the attention of the National Marine Safety Committee (NMSC) because of the potential impact on national safety standards. The NMSC is an Intergovernmental Committee established in 1997 to improve marine safety in Australia.

To ensure considered advice was provided to each recommendation, the MMAC and the BIA in particular, focused on identifying actions that might prevent a recurrence. Where recommendations involve a perceived risk not directly related to this specific incident, extensive discussions were held around the risk profiles of the boating activities that would be affected, and the regulatory scheme currently in place.

### **Recommendations Involving Additional Regulation**

NSW Maritime, the MMAC, other advisory bodies and the BIA all pride themselves on being proactive advocates of safe boating. There is a strong consensus that new regulations should be justifiable and based on a demonstrated need. It became clear after extensive discussions a consensus would not emerge with respect to certain recommendations. This was because neither the extensive data reviewed about boating incidents, nor the discussions around the risks of those activities by the boating experts consulted, suggested better safety outcomes from additional regulation.

There are four specific recommendations that fall into this category:

**Paragraph 586:** *“I recommend that the Marine Safety legislation and regulations be amended so as to require that operators of registered or registrable recreational vessels – vessels powered by engines with a rating of 4 kilowatts (5 h.p) or more; power-driven or sailing vessels 5.5 metres or longer; and vessels subject to mooring licences – be licensed. Note: the intention of this recommendation is to cover boats that are capable either of high speeds or of carrying significant numbers of passengers. If there is a better definition of such vessels, I recommend that it be pursued in the alternative to the above proposal.”*

**This recommendation is not supported but the issue will be kept under review.**

**Paragraph 587:** *“I recommend that the requirements for obtaining a NSW boat licence be amended so as to include comprehensive practical training in accordance with national standards developed by the National Marine Safety Committee, involving a number of lessons, including a night training session, and **culminating in an appropriate skills test** as well as a theoretical test by NSW Maritime.”*

**This recommendation is broadly supported, other than the recommendation for an appropriate skills test.**

**Paragraph 590:** *“I recommend that NSW Maritime give consideration to requiring periodic checks of navigation lights for registered boats in NSW and the optimal method of conducting such checks.”*

**Consideration was given to this recommendation, but no regulatory action is supported.**

**Paragraph 591:** *“I recommend that NSW Maritime consider making the current “50 Point safety check” that it has developed with the Boating Industry Association compulsory on a suitable periodic basis to be determined.”*

**Consideration was given to this recommendation, but no regulatory action is supported.**

## **Discussion**

The four recommendations listed relate to gaps within the current regulatory framework that in turn translate to a perception of risk. However, those perceived risks have not translated into a pattern of actual boating incidents and the expert boaters consulted have expressed a consensus view the framework of maritime safety regulation would not be enhanced by changes.

The MMAC has pointed out some unintended consequences of the recommendation to require licensing of vessels capable of high speed or of carrying large numbers of passengers. For example, a small sailing craft that can reach high speed, a vessel tender being used by passengers to travel to shore from an anchored boat and BBQ pontoons and house boats would all require licensed operators when none of them are either considered to be high risk boating, or feature in the incident statistics.

However, the boat driver licensing scheme has been improved since the Pam Burrige/Merinda incident. Regulatory changes were introduced in June 2009 with a requirement to undertake practical boat training before obtaining a boat drivers licence. The requirements are enforced through a log book scheme and are based on the NMSC's boat licence competency guidelines. The licensing process now has three compulsory steps: a practical skills component undertaken in the presence of an experienced master; a boating safety course; and a theory exam.

With respect to the issue of night time navigation, a National Boating Usage Study undertaken by the NMSC was released in June 2010. The study shows that nationally, only 3 per cent of trips occur during the peak night time operating hours between 6pm and midnight. NSW Maritime's statistics also confirm the low incidence of night time boating. The NMSC study also assessed boating incidents and recorded less than 3 per cent of boating incidents between 6pm and midnight.

A regulatory scheme around night time practical experience or training would therefore impact on a significant majority of boaters who will not boat at night.

The proposal to require night time training before a licence is issued may also create a new set of problems. The data about when people go boating suggests most masters are not experienced at night navigation because boating is primarily a day time activity. This means that if practical training was a requirement, there would be an increase in night time boat traffic involving skippers who do not have night boating experience. The potential risks of more vessels on the water at high risk times could outweigh the potential benefits.

NSW Maritime and the NSW Police Force Marine Area Command have already put considerable additional effort into night time patrols. NSW Maritime's compliance patrols are staggered. This ensures patrols occur on different days of the week and at different times to ensure regular night time boaters are eventually checked. As a result, lighting compliance rates have increased to over 95 per cent.

Under the vessel registration scheme, it is not a requirement for vessels to be fitted with navigation lights and many vessels do not have them. The regulation requires vessels being used at night to display navigation lights. It would create a major and unnecessary burden for boaters if all vessels were required to fit and maintain navigation lights in working order.

The boating industry has expressed a view to NSW Maritime that regulating periodic checks of navigation lights and regulating periodic checks of vessels would not result in a notable improvement in boating safety.

The boating industry has also pointed out to NSW Maritime that there is a lack of infrastructure in place to support such a scheme (particularly in terms of training, accreditation and audit) and that this regulatory burden and cost would outweigh any potential benefits.

The incident statistics have been analysed and there have been no identifiable trends in boating incidents resulting from mechanical or structural failure that would be resolved by regular boating safety checks.

## **Specific actions by NSW Maritime**

- The MMAC reviews the statistics about boating fatalities and serious boating incidents at every meeting and through out-of-session briefings. If concerns about trends in boating incidents emerge, these can be identified and appropriate education, enforcement or regulatory action initiated.
- NSW Maritime and the MMAC will continue to keep the licensing scheme under review and will respond to changes to risk profiles of boating activities and changes to the incident database that support reform.
- Additional effort will be put into education to alert both new licence holders and the broader boating community of the need to obtain relevant practical experience before boating at night.
- NSW Maritime will continue to support and promote voluntary regular safety checks such as the BIA's 50 point safety check. Marine Rescue NSW also provides this service for boaters.
- NSW Maritime will continue its compliance campaign targeting vessel lighting.
- NSW Maritime will hold discussions with the boating industry to encourage vessels with navigation lights to comply with the lighting regulations when sold.
- A scheme will be proposed that vessels for sale be specifically checked and identified as navigation light compliant.

## Coroner’s Recommendations and Response

Par.	Coroner’s recommendation	NSW Maritime response
585	<p>I recommend that Sydney Ports and NSW Maritime, in consultation with relevant Harbour users, consider how best to promote the practice of reporting unlit vessels to Harbour Control.</p>	<p>NSW Maritime and Sydney Ports Corporation will establish a standing working group to ensure co-operation and collaboration on all matters relating to vessel safety on Sydney Harbour.</p> <p>A reporting system for unlit vessels will be maintained by Harbour Control and participation will be actively promoted among masters of commercial vessels and ferries.</p> <p>NSW Maritime and Sydney Ports Corporation will share data related to unlit vessels identified through Sydney Ports’ proposed Vessel Traffic System to assist in monitoring and compliance of identified unlit vessels.</p>
586	<p>I recommend that the Marine Safety legislation and regulations be amended so as to require that operators of registered or registrable recreational vessels – vessels powered by engines with a rating of 4 kilowatts (5 h.p) or more; power-driven or sailing vessels 5.5 metres or longer; and vessels subject to mooring licences – be licensed. Note: the intention of this recommendation is to cover boats that are capable either of high speeds or of carrying significant numbers of passengers. If there is a better definition of such vessels, I recommend that it be pursued in the alternative to the above proposal.</p>	<p>See response overview.</p>

Par.	Coroner's recommendation	NSW Maritime response
587	I recommend that the requirements for obtaining a NSW boat licence be amended so as to include comprehensive practical training in accordance with national standards developed by the National Marine Safety Committee, involving a number of lessons, including a night training session, and culminating in an appropriate skills test as well as a theoretical test by NSW Maritime.	See response overview.
588	I recommend the inclusion in the Boating Handbook of a night lookout checklist.	Agreed. The 2009-2010 Boating Handbook contains a Navigation Lights Checklist and information on keeping a lookout at night. A night time navigation checklist will be included in the 2010-2011 edition.
589	I recommend that NSW Maritime liaise with other State maritime authorities through the National Marine Safety Committee concerning the issue of unlit vessels in busy waterways and request that they consider a unified national regulatory approach to the question whether boats of the relevant type (that is, boats which, if navigating at night would require fixed navigation lights to be illuminated) ought be required to have them fitted.	Agreed. The issue was discussed at the NMSC meeting in June 2010. The NMSC supports a national approach to lighting requirements through each jurisdiction's adoption of the International Regulations for Avoiding Collisions at Sea.
590	I recommend that NSW Maritime give consideration to requiring periodic checks of navigation lights for registered boats in NSW and the optimal method of conducting such checks.	See response overview.

Par.	Coroner's recommendation	NSW Maritime response
591	I recommend that NSW Maritime consider making the current "50 Point safety check" that it has developed with the Boating Industry Association compulsory on a suitable periodic basis to be determined.	See response overview.
592	I recommend that NSW Maritime give consideration to starting a program encouraging the fitting of radar reflectors and devices warning crews that navigation lights are not illuminated at night to vessels that carry side lights and mast head lights.	<p>NSW Maritime will promote the use of radar reflectors and appropriate lighting failure warning systems through the Boating Handbook.</p> <p>Radar reflectors are not a panacea, and there is a risk small craft may place an over-reliance on them. Studies supported by the US Coastguard show radar reflectors on kayaks are often only detectable at close range, with radar visibility seriously impaired beyond 0.5 nautical mile and in rough weather.</p> <p>Another key issue of concern is that situational awareness is likely to be significantly compromised if masters of large commercial vessels spend significant amounts of watch-keeping time looking at a radar screen while operating on the harbour. It can be a distraction from proper watch-keeping, and can impair night vision.</p> <p>NSW Maritime routinely monitors emerging technology and will promote any suitable device that can warn crews of navigation light failure noting such systems do not replace a master's obligations to ensure a vessel is operating lawfully.</p>

Par.	Coroner's recommendation	NSW Maritime response
593	I recommend that NSW Maritime consider providing an online "complaints" section to its website to enable boat operators to report serious breaches of marine rules and legislation.	Agreed. An online complaints section is under development.
594	I recommend that NSW Maritime immediately reconsider the Code of Conduct and redrafts such parts of it that require clarification. The North/South Rule is one such part.	Agreed. The code has been redrafted and consultation with stakeholders is underway.
595	I recommend that NSW Maritime give consideration to the optimal method of enforcing compliance with the Code of Conduct and implements that method.	Agreed. NSW Maritime randomly monitors compliance with the code of conduct. In respect to the North/South Rule, there has been 100 per cent compliance during monitoring events.
596	I recommend that, insofar as it is able to without diminishing its effort elsewhere, NSW Maritime increases night-time patrols, especially during times of relatively high traffic.	<p>Agreed. NSW Maritime has more than doubled the number of night time patrols on Sydney Harbour by comparison with the period leading up to the incident. As a consequence there is greater than 95 per cent compliance with lighting requirements by recreational vessels, and greater than 98 per cent compliance by commercial vessels.</p> <p>Both NSW Maritime and the NSW Police Force Marine Area Command have taken a zero tolerance approach to lighting enforcement.</p>
597	I recommend that NSW Maritime give close consideration as to the best method(s) of enforcing speed limits within Sydney Cove.	Agreed. NSW Maritime will continue to work with the NSW Police Force Marine Area Command to review technology and test speed detection devices.

Par.	Coroner's recommendation	NSW Maritime response
598	<p>I recommend that NSW Maritime give further and closer consideration to the desirability of imposing speed limits in Sydney Harbour and its tributaries such as the Parramatta River, or in certain areas of the Harbour and its tributaries, and during hours of darkness and restricted visibility.</p>	<p>Agreed. NSW Maritime will undertake a study of speed related issues including a risk assessment of high speed vessel operations as a part of the development of a Sydney Harbour Boating Safety Plan. This is included as an action under NSW Maritime's 2009-2012 Corporate Plan.</p> <p>It is noted there are already a significant number of speed limits in place in Sydney Harbour and the Parramatta River including the 15 knot zone introduced under the Sydney Harbour Bridge following this incident and further recent restrictions at The Spit and in the south Darling Harbour area.</p>
599	<p>I recommend that the Minister commission a comprehensive risk assessment of high-speed vessel operations at night on Sydney Harbour.</p>	<p>Agreed, see response to 598.</p>