



**SUMMARY OF CONSULTATION
AND RECOMMENDED ACTION**



NSW MARITIME

Summary of Consultation and Recommended Action

Purpose of this paper

The purpose of this paper is to provide:

- a summary of the results of the consultation on proposed changes to extend the rules for compulsory wearing of lifejackets while boating in NSW;
- a summary of supporting data; and
- an outline of proposed changes.

The document was provided to both the Chief Executive of NSW Maritime and the Minister for Ports and Waterways in support of recommendations to amend the *Marine Safety General Regulation 2008*.

NSW Maritime holds the view a significant shift in the culture of wearing lifejackets will save lives and that this change would be dramatically assisted through some relatively light touch regulation backed up with a major education campaign. This is supported by a steady drive by stakeholder consultative groups over the last five years for regulatory change to require lifejackets to be worn during heightened risk situations to both save lives directly, and as a driver for cultural change amongst boaters.

Based on current drowning statistics related to boating incidents there is the serious prospect that within 5 years, and with a coordinated campaign of regulation and education, boating fatalities in NSW could be reduced by up to a third, or up to 5 out of the average 14.4 recreational boating fatalities each year. This is NSW Maritime's goal.

As well as saving lives, changes would also save money. Based on National Marine Safety Committee research the average cost per boating fatality is \$1.5 million. The cost saving to the community would therefore be around \$7.5 million each year.

The Lifejacket Discussion Paper

A discussion paper was published on 7 November 2009, calling for public comment on proposals to extend the requirements for compulsory wearing of lifejackets while boating.

A total of 3,615 responses to the proposals were received, 3,541 through the internet and 74 through email and written submissions.

A number of submissions raised concerns the proposed changes to regulation would detract from the enjoyment of boating, that introducing regulation took away individual rights, that the proposals represented a nanny state approach, and that in some cases wearing a lifejacket could increase the risk of drowning.

All these concerns are acknowledged but NSW Maritime holds the view the benefits far outweigh the risks. This is supported by a large majority of submissions received. There was a very high level support for each proposal both from individual submissions, and from the major industry organisations.

Written submissions were received from boating organisations and the marine industry including the Boating Industry Association of NSW (BIA), the Boat Owners' Association of NSW (BOA), and Yachting NSW. These organisations supported the proposals, with the BOA calling them "revolutionary in Australian boating law because they involve common sense, assessment of risk and better education to prevent accidents".

The proposals received positive support from the leading boating industry magazine, *Afloat*, calling them "a common sense guide to lifejackets".

A number of individuals and boating groups (such as the Australian Outrigger Canoe Racing Association; the NSW Kite Board Association; Windsurfing NSW and the Windsurfer One Design Class Association of Australia) made suggestions for modifying some of the proposals. These were common sense and have been supported.

NSW Maritime analysed the submissions, and proposed minor revisions to the proposals. These were reviewed and supported by the Recreational Vessels Advisory Group (RVAG), and the Maritime Ministerial Advisory Council (MMAC). The specific results of consultation on each proposal are contained in the discussion against each proposal below.

Lifejackets

The primary purpose of wearing a lifejacket is to increase safety. A lifejacket assists the wearer to float, and ultimately to prevent them from drowning. For this to be achieved the lifejacket must be the correct size, correctly maintained, accessible, and worn.

Merely carrying a lifejacket on board does not save lives. Capsize or man-overboard situations occur suddenly and without warning. Locating and donning lifejackets once in the water can be difficult or impossible, depending on the experience of those involved and other factors such as current, weather, wave size, and water temperature.

Lifejackets are familiar to anyone who travels by plane, on a commercial vessel, or on a cruise ship. In many situations, it is a requirement for drills to be held where lifejackets are donned, and passengers go to muster stations. This reflects national and international recognition that lifejackets save lives, and is a requirement for international vessel operations.

Wearing a lifejacket does not always prevent a fatality, but even when it doesn't it can help with the recovery operation and reduce risk for emergency services. An early recovery also reduces distress for the family and friends of a missing person.

Current lifejacket requirements

Current regulations require all recreational vessels in NSW to carry an appropriate size and type of lifejacket for each person on board.

In NSW it is also compulsory to wear a lifejacket when:

- crossing a coastal bar
- riding on a personal watercraft (PWC or jetski)
- engaged in tow-in surfing; and
- in any canoe, kayak, windsurfer or kitesurfer when 400m or more from shore.

There are three different types of lifejackets :

- A type 1 lifejacket provides a high level of buoyancy and must be carried on board when a boat is in open ocean waters.
- A type 2 lifejacket offers less buoyancy and is made from high visibility material. Normally a waistcoat style.

- A type 3 lifejacket offers the same buoyancy as a type 2 lifejacket but is not made from high visibility material. Normally a waistcoat style and used for watersports.

Risk and statistics

The changes to lifejacket laws are underpinned by:

- the concept of heightened risk; and
- the statistical record of avoidable drowning events.

Heightened Risk

To be classified as heightened risk:

- a boating activity is one where either the likelihood of an incident occurring which could result in a drowning is assessed as potentially high, or
- the likelihood of an incident occurring might not be high, but if an incident did occur there is a high likelihood of a drowning.

Statistics

The National Marine Safety Committee (NMSC) commissions national boating fatalities studies. There have been two, the first covering the period 1992-1998 and the second, 1999-2004.

- They report a total of 574 fatalities (more than a third, 37% (213) occurred in NSW).
- Drowning was the stated cause in 478 fatalities. Only 10% (48) of these fatalities wore a lifejacket.
- More than 50% of fatalities involved a person falling overboard or the vessel capsizing.
- Small vessels (less than 6 metres in length) were involved in 74% of fatalities.
- The NMSC research concludes boaters double their chances of surviving a boating incident by wearing a lifejacket.

In NSW, statistics show for the period 1992 to April 2010:

- 312 people have lost their life in boating incidents in NSW navigable waters.
- Fatalities from persons falling overboard and vessel capsizing accounted for 199 (64%) of that total.
- Vessels of 5 metres or less in length were involved in 206 fatalities (66%).

Do lifejackets save lives?

The Coastal Bars experience

Compulsory wearing of lifejackets for all persons on recreational vessels crossing coastal bars was implemented in NSW in October 2003. Only 3 fatalities have occurred since the introduction of the legislation compared to 14 fatalities in the preceding 11 years (a 60% reduction). The most recent bar crossing fatality occurred in February 2010 and the victim was not wearing a lifejacket.

The Tasmanian experience

In January 2001, Tasmania introduced the compulsory wearing of lifejackets on any power driven vessel under 6 metres that is underway (but not required to be worn within a deckhouse, cabin or secure enclosed space).

Tasmania boating fatalities have fallen from an average 3.5 per year over the 15 years preceding the introduction of these rules, to an average 1.4 per year in the 9 years since.

Tasmania states that “a genuine cultural shift toward safety has been apparent in Tasmania since 2001”, when their lifejacket laws were introduced.

Marine Safety Tasmania report three separate incidents in recent years where 11 boaters wearing lifejackets survived in high risk situations because they were wearing lifejackets, where most would have otherwise been expected to perish.

The Victorian experience

Based on 53 boating related deaths over a 4 year period with most avoidable had lifejackets been worn, Victoria introduced the compulsory wearing of lifejackets. From December 2005, those required to wear lifejackets are:

- All occupants of power driven vessels up to 4.8 metres in length when underway and when in an open area of the vessel
- At times of 'heightened risk' in vessels between 4.8 metres and 12 metres in length
- Children under 10 years of age when in an open area of a vessel that is underway
- Occupants of off-the-beach sailing vessels, PWC, canoes, kayaks, rowing boats, pedal boats, fun boats, tenders
- Kitesurfers and sailboarders

The US experience

The US Coast Guard's accident statistics for 2008 indicate that of the 709 deaths over two-thirds drowned, and of those, 90% were not wearing a lifejacket.

SUMMARY OF CHANGES TO REGULATION AND DISCUSSION

The heading "lifejackets must be worn by" form the basis of the proposed changes, following consultation. There are a range of other minor and consequential changes required that will be presented for approval following review of the draft regulations and final internal consultation.

LIFEJACKETS MUST BE WORN BY:

Children less than 12 years of age must wear a lifejacket:

- **When in a vessel less than 4.8 metres in length, and**
- **when in an open area of a vessel less than 8 metres in length that is underway.**

What the discussion paper proposed:

Children less than 10 years old:

- At all times in a vessel less than 4.8 metres in length
- When underway in an open area of a vessel less than 8 metres in length.

Whilst it is common practice for vessel skippers and parents to insist children wear a lifejacket, many children are seen in high risk situations without a lifejacket on.

In the past 10 years there have been six deaths involving young children, some of which may have been prevented if a lifejacket had been worn.

The highest risk situations for children are when they are on small boats, and on larger boats when underway. These risks are significantly mitigated when a lifejacket is worn.

There are compulsory lifejacket requirements for children in:

- Queensland (under 12 years of age in vessels less than 4.8 metres in length)
- Tasmania (under 12 years of age, in any power driven vessel)
- Victoria (all children when in an open area of a power driven vessel less than 4.8 metres in length when underway, and for children under 10 years of age when in an open area of a vessel 4.8 metres or longer that is underway, as well as at all times of heightened risk)

Consultation feedback

86% of responses to this proposal expressed support for the proposal to wear a lifejacket in a vessel less than 4.8 metres; 14% disagreed.

85% supported the proposal to wear a lifejacket in an open area of a vessel less than 8 metres in length when underway; 15% disagreed.

Both MMAC and RVAG unanimously supported both proposals, including the proposed change from 10 years to 12 years. Yachting NSW and a number of other respondents supported 12 years. Adopting 12 years would be consistent with Queensland and Tasmania. In Victoria children of all ages are required to wear a lifejacket in vessels less than 4.8 metres.

LIFEJACKETS MUST BE WORN BY:

In heightened risk situations by all persons when in a vessel less than 4.8 metres:

- **At night**
- **On ocean waters**
- **On alpine lakes**
- **When boating alone**
- **When the boat is being used as a tender more than 400 metres from shore**

(PWC, Kite Board, Sailboard, Canoe or Kayak, and off the beach sail craft covered by other provisions)

What the discussion paper proposed:

When in a vessel less than 4.8 metres (15 feet) in length:

- At night
- On ocean waters
- On alpine lakes
- When boating alone
- When being used as a tender more than 400 metres from shore.

Vessels less than 6 metres in length were involved in 74% of boating fatalities. NSW boating fatality statistics for the period 1992 to March 2010 indicate that vessels of 5 metres or less in length were involved in 203 fatalities (66%).

Small vessels are more likely to capsize than larger vessels, particularly in open waters due to their lower stability which makes it more difficult to re-board after capsize.

At night, the chances of someone seeing an incident and raising the alarm, and the chances of being able to self help, are dramatically reduced.

Few people can comfortably swim more than the length of an Olympic pool when fully clothed and many do not have the skills to stay afloat for prolonged periods once they are in the water. In open waters the risk of hypothermia is high for much of the year, as is the risk of being swept away from the craft by swell and current. In these circumstances wearing a lifejacket keeps the person afloat, and increases their visible profile.

Drowning incidents in alpine lakes are overly featured in the statistics because a capsize or man over board situation is exacerbated by cold water and the rapid onset of hypothermia.

Boating alone in small tinnies features highly in the drowning statistics because of the limited capacity to self help. Vessels drift away, or continue under power; and it is almost impossible to climb aboard a small tinny when cold, exhausted and in saturated clothes.

Very small tenders are highly unstable. The further offshore, the more exposed the conditions, and the greater the risk of an incident.

Consultation feedback

There was significant support from respondents to the online survey and stakeholders for this proposal.

- At night (75% of responses to the proposal were supportive; 25% disagreed)
- On ocean waters (77% support; 23% disagree)
- On alpine lakes (73% support; 27% disagree)
- When boating alone (74% support; 26% disagree)
- When being used as a tender more than 400 metres from shore (70% support; 30% disagree)

MMAC and RVAG unanimously supported the proposals.

LIFEJACKETS MUST BE WORN BY:

By all passengers when the master of the vessel judges there is heightened risk and requires passengers to wear a lifejacket.

What the discussion paper proposed:

NSW Maritime is proposing the principle of skipper responsibility explicitly state that a skipper must use their judgement to determine when a **heightened risk** situation exists and therefore when to put on a lifejacket. As well, the skipper would be given the power to direct passengers to wear a lifejacket. A passenger who did not follow a skipper's direction would be breaking the law.

It is proposed to regulate the principle of skipper responsibility giving the master of a vessel the power to determine when a heightened risk situation exists and therefore when to require passengers to put on a lifejacket. It would be a requirement for passengers to follow a direction of a skipper.

Examples of situations where the skipper judgement and direction provision might apply include:

- When weather conditions deteriorate rapidly including periods of low visibility due to heavy rain or fog, or when strong winds or gale warning has been issued - because things can go wrong quickly and it's one less thing to worry about in an emergency
- If the vessel is broken down or assisting in a rescue - because there is potential risk to either the vessel's stability or passenger safety
- If the skipper or a passenger would be unable to assist in their own rescue - because the skipper or a passenger cannot swim or because of age, disability or other condition
- When making a journey at night - because the chances of a prompt rescue are reduced and would rely on notification of an overdue return, rather than visual signals or radio call for assistance.

Each of these scenarios features in the incident statistics.

Consultation feedback

93% of responses to this proposal were supportive; 7% disagreed.

MMAC and RVAG unanimously supported the proposal.

LIFEJACKETS MUST BE WORN BY:

All persons when being towed on the water (e.g. wakeboarding or waterskiing).

What the discussion paper proposed:

When being towed, e.g. water-skiing and wakeboarding:

Since 1992 there have been 19 fatalities in NSW involving a person being towed.

Even though it is normal practice for persons being towed behind vessels to wear a lifejacket, and most people believe it is a requirement, it is not currently law.

Water skiing is usually conducted at speed so a mishap can result in a high impact fall. A person can be rendered unconscious simply falling off at high speed without colliding with any object.

A lifejacket:

- keeps a person afloat if they are disoriented or injured
- prevents drowning if a person is knocked unconscious from the fall, or is winded
- protects the torso from the impact of a fall
- increases the visibility of the person in the water for the occupants of the towing boat and other vessels
- aids swift re-boarding, and
- reduces the potential for secondary contact injuries such as propeller strikes.

Consultation feedback

92% of responses to this proposal were supportive; 8% disagreed.

MMAC and RVAG unanimously supported the proposal.

LIFEJACKETS MUST BE WORN BY:

All persons when operating a canoe or kayak:

- **In enclosed waters, when more than 100 metres from an accessible shore**
- **In open (ocean waters) at all times.**
- **All outrigger canoes to carry lifejackets on board**
- **All persons when kite surfing alone more than 400 metres from shore.**

What the discussion paper proposed:

When operating small recreational craft such as a sailboard, kayak, canoe, kite surf or similar craft:

- In sheltered waters, when more than 100 metres from an accessible shore
- In ocean waters, at all times.

Current regulations require a lifejacket to be worn when operating more than 400 metres from shore, rather than an accessible shoreline. For the majority of people it is an insurmountable challenge to swim 400 metres, especially so in rough weather, if wearing clothes, if required to support a non-swimmer or child, and if disorientated following capsizes.

The NMSC national studies record 30 fatalities where the vessel type was canoe or kayak in the period 1992 to 2004.

All 16 fatalities related to these classes of activities in NSW since 1992 were probably avoidable drownings.

Small recreational craft use is increasing dramatically, and is considered to be high risk with that risk significantly mitigated by wearing a lifejacket.

Commercial vessel operators rate an incident involving a kayak as a high potential risk. They are small, low profile and hence difficult to see, and many kayakers have only a scant understanding of their navigation obligations.

Consultation feedback

- In sheltered waters, when more than 100 metres from an accessible shore (76% of submissions were supportive; 24% disagreed)
- In ocean waters, at all times (62% support; 38% disagree)*

MMAC and RVAG unanimously supported the revised proposal.

LIFEJACKETS MUST BE WORN BY:

All persons when operating an off-the-beach sail craft in ocean waters.

What the discussion paper proposed:

When in an “off-the-beach” vessel operating in ocean waters.

Off-the-beach craft are lightweight, un-ballasted, sail only vessels and include centerboard dinghies, skiffs and small catamarans. Many are designed to be operated by one person, can be launched from a variety of locations and can be more than a kilometre offshore in just a few minutes.

These types of vessels capsize easily and the risk of drowning is significantly mitigated when a lifejacket is worn.

More and more of these are starting to appear on ocean beaches rather than in sheltered waters. Whilst there are no drownings in the statistics, there are sufficient reports of near misses for this activity to be regarded as high risk when from an ocean beach where wave action, rips and rapid changes in weather are problematic. The proposal does not apply to sheltered waters.

Consultation feedback

84% of responses supported this proposal; 16% disagreed.

Yachting NSW supported the proposal.

MMAC and RVAG unanimously supported the proposal.

