



Hire and drive personal watercraft safety

Consultation outcomes report
April 2011

Executive summary

This report summarises consultation outcomes on regulatory options to improve safety in hire and drive personal watercraft operations after the death of Doctor Shekar in 2008 when he was driving a hire and drive personal watercraft (jet ski).

On 11 March 2010 Coroner Hutton delivered his findings into the Doctor Shekar's death after sustaining injuries when the hire and drive personal watercraft he was operating collided with the anchor chain of a vessel. The vessel was anchored adjacent to the nominated circuit on the Southport Broadwater on 28 April 2008.

Coroner Hutton's report criticised Queensland legislation that provides for the unlicensed operation of hire and drive personal watercraft. It also criticised Maritime Safety Queensland's capacity to regulate the industry. In his report Coroner Hutton made four marine safety recommendations:

- licensing of hire and drive personal watercraft drivers
- personal watercraft drivers to wear a helmet
- annual covert audits of hire and drive personal watercraft providers
- develop enforcement guidelines and facilitate information sharing between enforcement agencies.

Consultation

Maritime Safety Queensland sought the views of personal watercraft hire and drive providers and other people with an interest in this marine sector, on how to improve the safety of hire and drive personal watercraft riders in Queensland.

In November 2010 Maritime Safety Queensland released the Hire and Drive Personal Watercraft Safety Consultation Paper (the consultation paper, Attachment A) to give stakeholders an 11-week opportunity to comment.

The consultation paper analysed the safety record of the industry, made comparisons to other adventure activities and examined the notion of rider acceptance of risk.

During the consultation period, Maritime Safety Queensland with all of the 26 providers of hire and drive personal watercraft currently operating in Queensland.

Maritime Safety Queensland received 82 written responses on the consultation paper during the consultation period, which ended on 4 February 2011.

Personal watercraft providers are organising themselves into personal watercraft hire and drive safety committees on the Sunshine Coast, and expect to formalise their structure in March 2011. Providers on the Gold Coast and in Airlie Beach are discussing similar initiatives. The proactive nature of these industry-led safety committees indicates that a culture of safety is beginning to take root.

Outcomes from consultation

The majority of stakeholders who responded during consultation did not support the compulsory licensing recommendation or the recommendation for personal watercraft drivers to wear a helmet (table 1).

Respondents were however, much more favourably disposed to the four regulatory options presented in the consultation paper as an alternative to mandatory licensing. This report analyses each regulatory option separately.

Table 1: Summary table of stakeholder feedback

Coroner recommendation	Stakeholders in favour
1. Licensing	19%
1A. Regulatory options to licensing:	
• assess driver skills and abilities with an approved competency standard	65%
• engine governors	65%
• safety management plans to comply with the national leisure craft section	78%
• set up personal watercraft areas	62%
2. Mandatory helmets	9%
3. Annual provider audits	79%
4. Publish enforcement guidelines	91%

Note: 'In favour' selected either 'agree' or 'somewhat agree'.

Recommendations

In response to Coroner Hutton's four recommendations and as a result of feedback received during consultation on the *Hire and Drive Personal Watercraft Consultation Paper*, Maritime Safety Queensland proposes the following regulatory responses:

1. Not require mandatory licensing of all hire and drive personal watercraft drivers but implement ALL of the following four regulatory options:
 - Providers to assess the skills and abilities of each rider to operate a hire and drive personal watercraft against an approved competency standard and record the competency of each rider on an approved competency assessment record.
 - Providers' safety management plans to comply with the requirements of the leisure craft section of the *National Standard for Commercial Vessels* – with the exception of operating restrictions outside smooth waters and age restrictions on pillion passengers (minimum pillion passenger age is 12 under the leisure craft section, but Maritime Safety Queensland recommends a minimum of 8 years of age consistent with motorcycle requirements).
 - Require all hire and drive personal watercraft to be fitted with a device to govern power to restriction maximum speed to 30 knots within two years. In the interim Maritime Safety Queensland will gazette a general 30 knot speed limit for hire and drive personal watercraft other than in high-traffic speed zones and periods.
 - Consult with local government partners and other stakeholders to investigate the need for more personal watercraft exclusive use areas similar to those implemented for hire and drive personal watercraft 'pens' on the Sunshine Coast. Maritime Safety Queensland will also gazette a 10 knot limit for hire and drive personal watercraft in high-traffic speed zones and periods.
2. Not make helmets a mandatory requirement for use of a personal watercraft.
3. Support the coroner's recommendation for every personal watercraft hire and drive operation be audited (including covert audits) using quality assurance methods at least once in every 12 months of operation.
4. Publish enforcement guidelines for enforcement agencies as well as information sharing.

Background

On 11 March 2010 Coroner Hutton delivered his findings into the death of a driver of a hire and drive personal watercraft (or jetski). The driver, Doctor Sridhar Shekar, died from injuries sustained when the hire and drive personal watercraft he was operating collided with the anchor chain of a vessel. The vessel was anchored adjacent to the nominated circuit on the Southport Broadwater on 28 April 2008. The coroner concluded the rider's inexperience in personal watercraft operations was the primary cause of the incident.

The coroner criticised Queensland legislation that provides for the unlicensed operation of hire and drive personal watercraft. He also criticised Maritime Safety Queensland's capacity to regulate the industry. In his report Coroner Hutton made four marine safety recommendations:

- licensing of hire and drive personal watercraft riders
- all personal watercraft drivers to wear a helmet
- annual covert audits of hire and drive personal watercraft providers
- develop enforcement guidelines and facilitate information sharing between enforcement agencies.

Current Queensland regulations

The *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007* governs the operation of hire and drive personal watercraft operations in Queensland. It provides a risk based alternative to licensing for riders of hire and drive personal watercraft.

An unlicensed rider is permitted to operate a hire and drive personal watercraft if supervised by the provider or a tour guide. The standard also requires the provider to ensure the rider has sufficient skills and abilities to operate the personal watercraft safely.

The provider must ensure that the rider is briefed on the safe operation of the personal watercraft before a rider operates the craft. The briefing must include a practical demonstration of the handling of the personal watercraft while it is underway.

The practical demonstration is not required if the provider considers the rider already has sufficient skills and ability to operate the personal watercraft safely (for example, the hirer is the holder of a current personal watercraft licence).

Interstate regulations

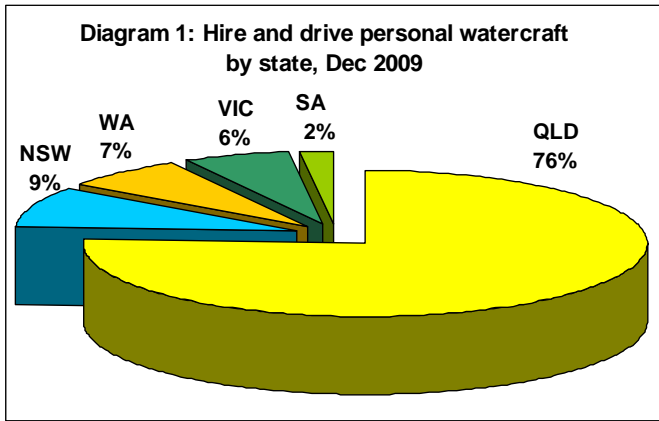
Tasmania, Victoria and New South Wales require a personal watercraft licence or endorsement on a general boating licence to hire a personal watercraft.

New South Wales has several hire and drive businesses that were operating before the licensing requirements changed in 2006. Since the requirement to hold a personal watercraft licence as a personal watercraft hirer came into effect, only one new provider has started business in that state, making a total of five providers in that state. Queensland has 26 providers of hire and drive personal watercraft.

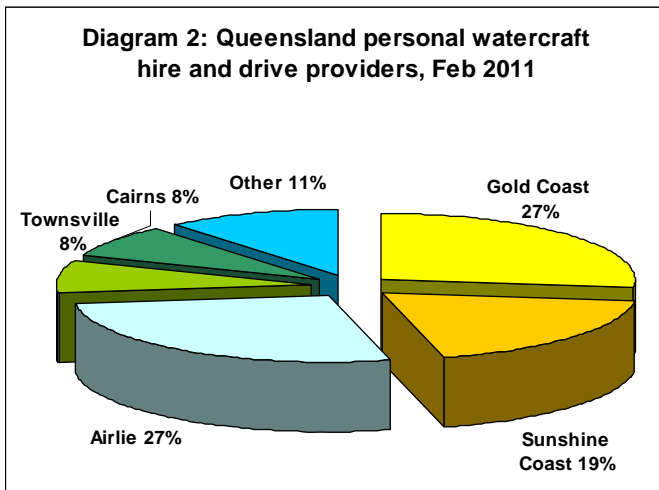
Western Australia permits unlicensed riders to hire personal watercraft provided it has a governor to limit its maximum speed to 20 knots and a remote engine cut-off switch allowing the supervisor to stop the vessel. South Australia also permits unlicensed riders to hire personal watercraft provided they have received prescribed practical instruction from the provider. There is no recreational boating or personal watercraft licensing requirements in the Northern Territory.

Industry profile

Research indicates that annual income to Queensland's tourism industry is about \$21.8 million. Queensland has the largest hire and drive personal watercraft industry in Australia. More than three quarters of Australia's hire and drive personal watercraft are registered in Queensland (diagram 1). Page 6 of the consultation paper provides a table summarising the number of hire and drive personal watercraft operating in each state and territory.



There are now 26 providers of hire and drive personal watercraft in Queensland. Provider numbers have contracted from 29 providers 12 months ago after some providers merged or closed. Diagram 2 shows the geographic breakdown of hire and drive personal watercraft operation in Queensland.



Safety record of industry

There were 29 hire and drive providers operating a total of 218 personal watercraft in Queensland as of 31 December 2009. In comparison, there were 14,730 recreational registered personal watercraft and 73,386 personal watercraft licence holders.

The consultation paper indicated for the period from 1 January 2000 to 31 December 2009, there were 84 reported marine incidents involving hire and drive personal watercraft in Queensland resulting in one fatality and 19 serious injuries resulting in hospital admission.

Personal watercraft riding is an intrinsically high-risk recreational activity. To put the safety record of the industry into perspective the figures need to be compared to other common adventure activities.

The consultation paper provided a comparison of fatal and serious injuries sustained per 100,000 hours of operation for a variety of marine sectors and other adventure activities. The table indicates the safety record of the hire and drive personal watercraft sector is similar to or better than other adventure activities.

Incident and injury reports provided by hire and drive personal watercraft providers are typically more reliable than those provided by recreational personal watercraft users generally, primarily because of the insurance implications for hire and drive providers. Marine incident and hospital admission data for personal watercraft related injuries demonstrates this point.

Comparatively, the estimated fatal and serious injury rate for unlicensed hire and drive personal watercraft operations (1.14 per 100,000 hours of operation) is significantly lower than the rate for licensed recreational personal watercraft operations determined using hospitalisation data (2.06 per 100,000 hours of operation).

Since the coroner made his recommendations there have been two serious injury incidents involving hire and drive personal watercraft. The most significant incident was when state windsurfing champion Ms Peffchier collided with a hire and drive personal watercraft on the Gold Coast Broadwater on 28 February 2011.

Consultation

On 23 November 2010 Maritime Safety Queensland released the *Hire and Drive Personal Watercraft Safety Consultation Paper* for public comment.

The consultation paper analysed the safety record of the industry, made comparisons to other high-risk recreational pursuits and examined rider acceptance of risk. It also provided a breakdown of Queensland's personal watercraft hire and drive industry.

During the 11-week consultation period, Maritime Safety Queensland sought the views of personal watercraft hire

and drive providers and other people with an interest in this marine sector, on how to improve the safety of hire and drive personal watercraft riders in Queensland. The consultation paper was available on the Maritime Safety Queensland website.

Maritime Safety Queensland consulted with stakeholders on the Gold Coast, Sunshine Coast, Airlie Beach, Cairns, Mackay, Brisbane and Hervey Bay and Townsville. All 26 personal watercraft providers currently operating in Queensland were consulted in person, except one provider from Long Island in Airlie Beach, which was consulted using teleconference facilities.

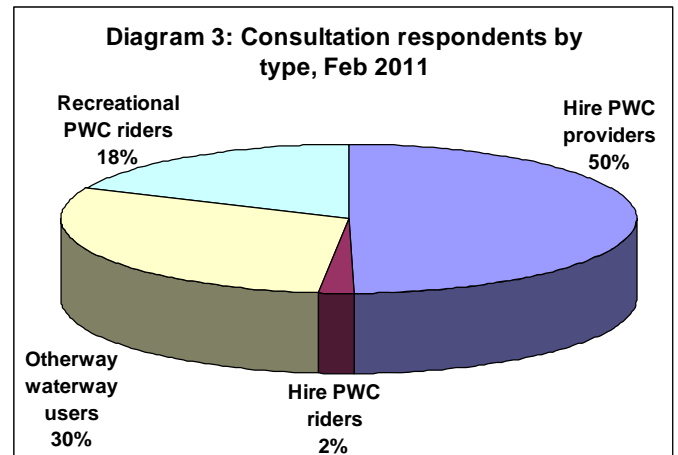
Safety committees

Shortly after the consultation meetings on the Sunshine Coast, hire and drive personal watercraft providers discussed forming the Sunshine Coast Personal Watercraft Hire and Drive Safety Committee. This industry-led proactive initiative would seek to facilitate raising safety awareness among providers as well as airing safety concerns and discussion responses. The group planned to formalise its structure in March 2011.

Providers on the Gold Coast and Airlie Beach also plan to form similar industry-led personal watercraft hire and drive safety groups. These safety committees have the potential to form a state wide network of personal watercraft hire and drive providers sharing safety best practice. The responsible and proactive nature of the personal watercraft safety committee initiatives demonstrates that a culture of safety is beginning to take root.

Who responded

The consultation period closed on 4 February 2011. Maritime Safety Queensland received 82 responses, half of which were through the Queensland government's Get Involved website.



Half of the respondents were providers of hire and drive personal watercraft. Other waterway users and recreational personal watercraft riders made up most of the other half of respondents.

Licensing

Coroner Hutton recommended:

- **that legislation be developed requiring all persons who use a personal watercraft in Queensland be licensed.**

Diagram 4 shows that only 26% of stakeholders that provided feedback support mandatory licensing of hire and drive personal watercraft drivers. Some respondents expressed concern that a requirement for a licence would reduce the volume of potential clients to levels that would threaten the financial viability of personal watercraft hire and drive businesses.

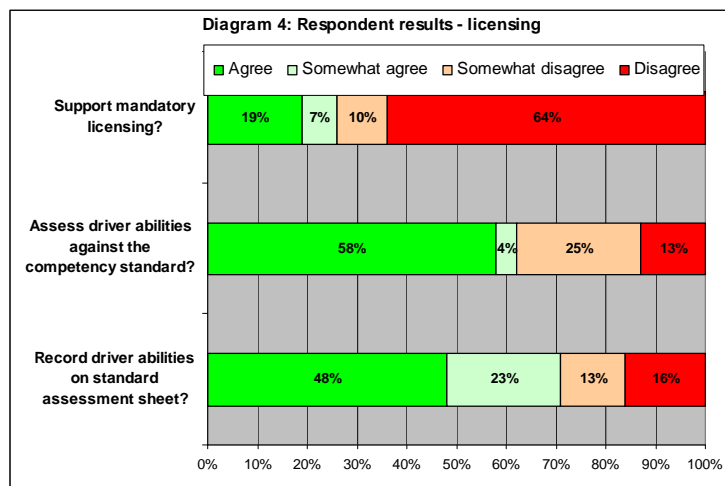
The signs of decline in the industry in New South Wales following the introduction of mandatory licence requirements to hire and drive personal watercraft demonstrate the economic impact it had in that state. There are now only five providers in New South Wales as opposed to 26 providers in Queensland.

Tourism Queensland has consistently targeted the youth and adventure tourism market in its international tourist marketing campaigns. Adventure water sports such as hire and drive of a personal watercraft contribute to Queensland's overall reputation as a fun tourist destination that offers a range of adventure activities. Requiring a licence to hire and drive a personal watercraft would severely reduce the opportunity for the overseas youth and adventure market.

Most drivers of hire and drive personal watercraft in Queensland are interstate and international tourists. Unlike Queensland, an interstate or international personal watercraft licence or equivalent can be obtained in most instances without undertaking an on-water practical assessment and has limited value as an indication that a rider can safely drive a personal watercraft. Unless a driver has at least occasionally operated a personal watercraft to develop their skills (which a driver hiring a personal watercraft is unlikely to have done) they will be no more competent than an unlicensed driver.

Providers state that licensed personal watercraft drivers that are infrequent or occasional users are often over-

confident and require the most supervision. For example, during a personal watercraft hire in favourable conditions in July 2009 at Daydream Island a licensed personal watercraft driver misjudged his trajectory over a wave causing serious injuries requiring hospitalisation for both he and his female passenger. Holding an Australian personal watercraft or international licence is not a reliable indicator of the skills of infrequent drivers.



The consultation paper indicated that administration of the *Transport Operations (Marine Safety – Hire and Drive Ships) Standard 2007* could be enhanced in several ways to achieve an equivalent level of safety to requiring riders to hold a licence when hiring and driving a personal watercraft.

These regulatory options would be effective as long as hire and drive personal watercraft providers implement them diligently. Annual audits of provider operations (covered later under enforcement and audits) will ensure providers comply.

If providers do not comply with these changes or the changes are not effective in improving the safety record of the industry, then further consideration will need to be given to implementing the coroner's recommendation that all hire and drive personal watercraft drivers be licensed.

The consultation paper outlined four regulatory options as an alternative to the coroner's mandatory licensing recommendation:

- providers assess driver skills and abilities against an approved driver competency standard and record the competency of each

rider on an approved competency assessment record

- providers' safety management plans to comply with the national leisure craft section
- providers to ensure all hire and drive personal watercraft providers are fitted with operational devices to govern engine power
- Maritime Safety Queensland to establish personal watercraft exclusive use areas

This report analyses each of these options and summarises stakeholder feedback separately.

Regulatory option to licensing 1: Driver assessment against an approved competency standard

The consultation paper considered the effectiveness of requiring providers to assess the skills and abilities of each rider to operate a hire and drive personal watercraft against an approved competency standard. It also discussed the benefits of recording the competency of each rider in an approved competency assessment record.

The competency standard benchmarks the skills and abilities that a potential driver of a hired personal watercraft must demonstrate to the provider. It outlines the skills and abilities that they must show to allow the provider to assess the driver's ability to operate the personal watercraft safely.

The competency standard requires that a practical demonstration must be undertaken by all unlicensed personal watercraft riders to satisfy the *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007*. The practical demonstration must include demonstration of the hirer's ability to start, manoeuvre and stop the personal watercraft in normal and emergency situations.

During consultation providers gave support for most of the elements of the competency standard. Some providers however, thought that there would be practical difficulties in recording driver competency at the beginning of the hire for all of the competencies.

Some providers use a two or three stage driver assessment process. The first stage assesses the driver's knowledge and understanding of the safety briefing. The second assesses the attentiveness and basic handling skills to board, start and operate the personal watercraft at 6 knots or under. The third stage completes the driver assessment on the water and requires manoeuvring and turning at speed.

Due to their location, some providers must complete their assessment at an appropriate location that is some distance from the starting point. Drivers transit in single file at 6 knots to the final driver assessment area.

Some providers support an ongoing or continual assessment of driver abilities throughout the hire period. Recording the competency of the driver would be complete at the end of the hire. The provider would record evidence of the driver's assessment to operate the hired personal watercraft safely in those conditions.

Maritime Safety Queensland supports ongoing assessment and staged assessments of the driver (in two or three stages) but requires recording competency at the completion of the driver assessment.

Providers agreed to terminate a hire during the assessment if the driver failed to perform any of the required competencies to a satisfactory level.

Some stakeholders suggested minor changes to the contents of the competency standard during consultation, including ongoing or continual assessment of driver ability. The revised competency standard is attachment A.

Diagram 4 shows that 58% of respondents agreed that providers should assess drivers using the competency standard. On the recording assessment requirement, 71% of respondents supported recording driver assessments and competency on a standard sheet. Requiring providers to use an approved assessment record to record their assessment of the skills and abilities of a rider will encourage providers to use greater diligence in these assessments. Maritime Safety Queensland will also be able to undertake more effective auditing of this aspect of a provider's operation.

Maritime Safety Queensland recommends, as the first of four regulatory options to licensing, providers of hire and drive personal watercraft must assess and record the skills and abilities of each rider against an approved competency standard

Regulatory option to licensing 2: Compliance with the leisure craft section

The National Marine Safety Committee has been developing the National Standard for Commercial Vessels (NSCV) that will gradually replace the Uniform Shipping Laws Code (USL Code). Section two of Part F of the NSCV covers hire and drive vessels. It is called the leisure craft section.

Most of the requirements in the leisure craft section are similar in thrust to the requirements in Queensland's *Transport Operations (Marine Safety – Hire and Drive Ships) Standard 2007*. The national section is more detailed and comprehensive and slightly more prescriptive. During this interim period Maritime Safety Queensland will require compliance with the leisure craft section as a condition of registration of hire and drive personal watercraft.

The national section differs from the Queensland standard in two important ways:

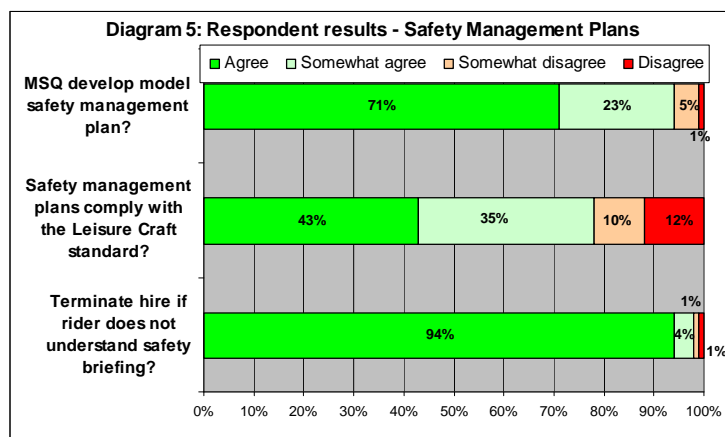
- hire and drive personal watercraft pillion passengers must be over the age of 12 but there is no age restriction in the Queensland's standard; and
- unlicensed hire and drive operations are permitted only in declared smooth waters but the Queensland standard permits unlicensed hire in declared smooth and partially smooth waters.

Most of the hire and drive personal watercraft providers in Queensland, with the exception of some of the providers in the Whitsunday Island archipelago, operate within smooth waters. Providers in the Airlie region that operate tours outside smooth waters were concerned about the restriction to smooth waters. Hire and drive personal watercraft providers in the Airlie region have, on average, a lower incidence of reported marine incidents than the rest of the state.

Under the Queensland standard, all providers of hire and drive personal watercraft must have a written safety management plan. The safety management plan must cover safety precautions for the safe operation of the personal watercraft, rescue procedures and action to take in specific emergency scenarios.

Maritime Safety Queensland has published a model safety management plan (Attachment C). Maritime Safety Queensland distributed this model safety plan as part of the consultation process with stakeholders to receive their feedback. The model safety management plan incorporates most of the requirements of the leisure craft section (excluding the two main differences - passengers under 12 and drivers without a licence in partially smooth waters).

One important element in the model safety management plan is the inclusion of a rule that one warning terminates the hire. This means that providers agree to terminate the hire if a driver intentionally or irresponsibly demonstrates unsafe operation of the personal watercraft during the hire. The provider must also terminate the hire if the prospective driver does not demonstrate understanding of the safety briefing or does not fulfil perform the driver assessment tasks.



During consultation, most providers supported the content of the leisure craft section (diagram 5), but objected to the age restriction on passengers. Many providers thought this would negatively affect their industry. Maritime Safety Queensland therefore proposes that pillion passengers must be at least 8 years old consistent with motorcycle requirements.

Maritime Safety Queensland supports the adoption of NSCV leisure craft section into personal watercraft hire and drive operator's safety management plans – with the two exceptions noted above.

Maritime Safety Queensland recommends as the second of four regulatory options to licensing, that all providers' safety management plans must comply with the requirements of the leisure craft section of the National Standard for Commercial Vessels– with the exception of operating restrictions outside smooth waters and a minimum 8 year age restriction on pillion passengers consistent with motorcycle requirements).

Regulatory option to licensing 3: Engine governors

There have been significant advances in personal watercraft design and performance in the past 20 years. Personal watercraft have evolved from pole skis, suitable for use by one person only, to current models capable of carrying three adults, towing skiers and surfers, and achieving extremely high speeds.

Imposing a requirement to govern the power output or maximum speed would improve the safety of hire and drive personal watercraft.

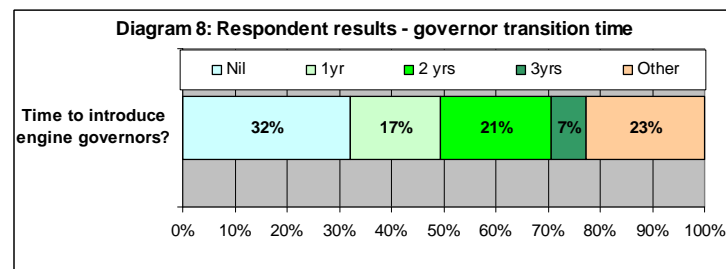
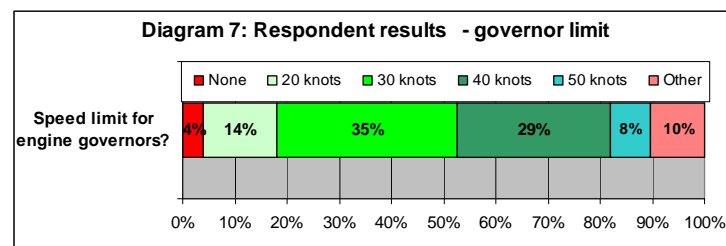
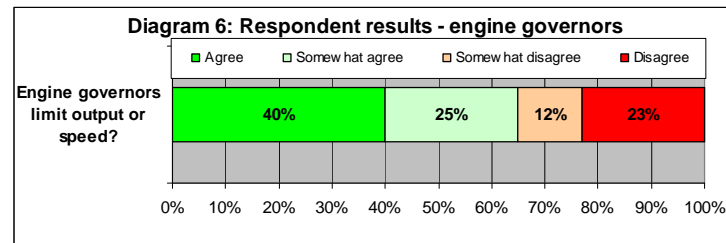
Research involving various manufacturers has revealed most personal watercraft manufacturers offer a 'learner key' which can limit engine revolutions per minute (RPM) and top speeds to about 30 knots.

Maritime Safety Queensland sought feedback to determine an appropriate maximum power output or speed and to determine an appropriate transition period for existing craft to be modified or replaced.

Most (40%) respondents agreed with engine governors as seen in diagram 6. A large proportion of personal watercraft providers that submitted feedback during consultation already use some form of learner key or engine governor.

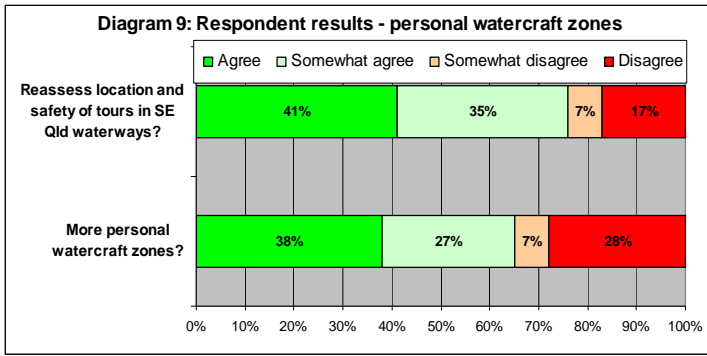
Diagram 7 shows that the most favoured speed for engine power to be governed at would be 30 knots, with a transition period of up two years, as shown in diagram 8.

The two-year transition period will allow the retirement or phasing out of existing personal watercraft. In the interim Maritime Safety Queensland will impose a general 30 knot speed limit for hire and drive personal watercraft operations in other than high traffic zones and locations.



Maritime Safety Queensland recommends, as the third of four regulatory options to licensing, to require all hire and drive personal watercraft be fitted with a device to govern power to limit to a maximum speed of 30 knots within two years – in the interim impose a general 30 knot speed limit for hire and drive personal watercraft other than in high traffic locations.

Regulatory option to licensing 4: Personal watercraft exclusive use areas and high-traffic speed zones



The national leisure craft section recommends pen and tour operations involving unlicensed riders would only be suitable in areas contained by relatively benign waters that are subject to limited maritime traffic.

Forty one percent of respondents agreed that Maritime Safety Queensland should assess existing hire and drive personal watercraft operations to determine any potential conflict with other maritime traffic and the potential for incidents involving swimmers or other craft.

Thirty eight percent of respondents supported the proposal to create hire and drive personal watercraft areas. Maritime Safety Queensland has gazetted two such areas in 2008 for hire and drive personal watercraft on the Sunshine Coast. Maritime Safety Queensland will commence consultation with local government partners and other stakeholders to gazette more areas as required.



The Gold Coast Broadwater – one of the busiest waterways in Queensland.

To improve the safety of tour operations on the crowded waterways of south-east Queensland Maritime Safety

Queensland will gazette 10 knot speed zones for hire and drive personal watercraft in high-traffic zones and periods - for example, on busy waterways such as the Gold Coast Broadwater. This is similar to the speed limit for unlicensed drivers of other hire and drive boats.

Maritime Safety Queensland will undertake consultation with local government partners and other stakeholders to create more hire and drive personal watercraft exclusive use areas as the fourth of four regulatory options to licensing.

Maritime Safety Queensland will gazette 10 knot speed limit for high and drive personal watercraft in high-traffic zones and periods.

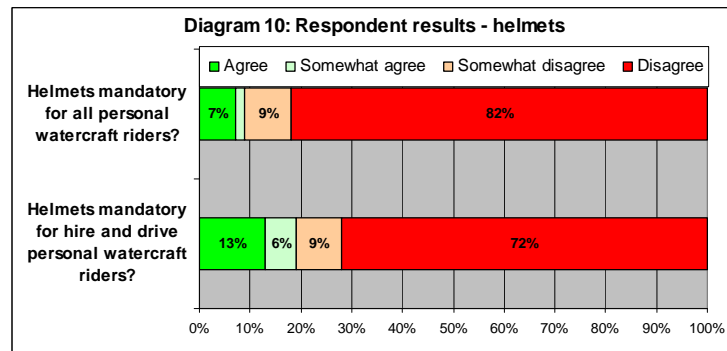
Helmets

Coroner Hutton recommended:

- **That legislation be put in place requiring all personal watercraft riders to wear appropriately designed helmets for personal watercraft.**

Maritime Safety Queensland undertook research into personal watercraft related helmet standards and safety issues to determine if sufficient evidence exists to support such a legislative requirement.

Maritime Safety Queensland was not able to identify any country that presently mandates the use of helmets by personal watercraft riders.



During consultation many personal watercraft providers opposed helmets (diagram 10), based mainly on the need for optimum peripheral vision and hearing to maintain situational awareness and the risk of injury from what is colloquially known as 'the bucketing effect'.

Independent research by a working group of the Special Commission for Sport and Pleasure Navigation within the Permanent International Association of Navigation Congresses, identified that helmet wearing by personal watercraft riders:

- caused accelerated fatigue
- reduced the rider's ability to move their head in order to use peripheral vision
- increased the risk of neck injury (compared to the more statistically remote likelihood of head injury from a collision involving personal watercraft).

Research suggest that helmets are likely to reduce the number and severity of non-facial head injuries sustained in personal watercraft related accidents, but are unlikely to substantially improve injury outcomes where facial injuries are sustained as a result of frontal impact/blunt force trauma.

The likelihood of serious neck or spinal injury from impact with the water is significantly increased for riders with helmets even at normal operating speeds.

Helmets have the potential to exacerbate non-head injuries or cause additional injuries such as neck and spinal injuries where the mechanism of injury involves the head hitting the water. Research suggests the upper neck twisting force increased 160% at 30 miles per hour for a rider wearing a full face helmet compared to the bare head.

Peripheral vision is a critical issue for personal watercraft riders in maintaining situational awareness and a proper lookout but is unlikely to be adversely impacted by most helmets currently available.

The hearing of a personal watercraft rider will be impaired to some degree dependent on the type of helmet being worn (compared with their hearing without a helmet).

While two providers, of the current 26 personal watercraft hire and drive providers, require helmets as part of their safety management procedures – only 19% of respondents supported mandatory helmets for hire and drive personal watercraft.

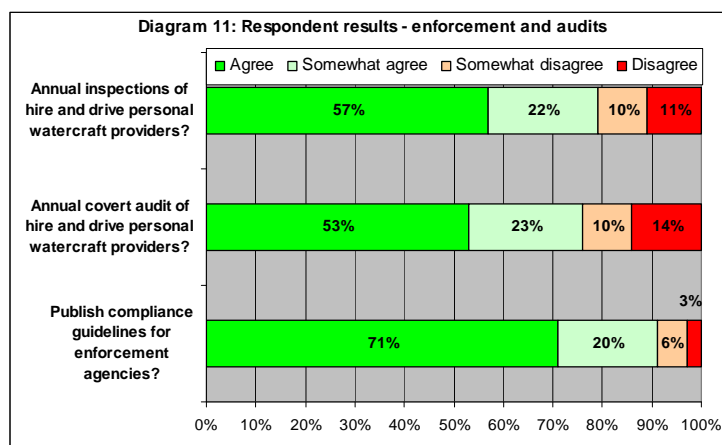
Maritime Safety Queensland does not recommend that helmets should be a requirement for use of a personal watercraft

Enforcement and audits

Coroner Hutton recommended:

- **That all personal watercraft hire and drive operations be inspected and audited on a regular basis, including at least one yearly covert audit.**
- **That full records and documentation be maintained of all interaction between Maritime Safety Queensland officers and personal watercraft hire and drive operations.**
- **That a quality assurance program for all hire and drive operations be developed.**

In 2010 Maritime Safety Queensland conducted state-wide audits of 28 hire and drive personal watercraft businesses operating in Queensland. The audit closely scrutinised compliance with safety management procedures and practices employed by hire and drive providers to assess the competency of unlicensed personal watercraft riders. The audits were not covert but were unannounced visits.



The audit team focussed on how the providers' safety management plans were being applied to the actual operation of the business. A standard template for reporting the audit encompassing operational and administrative compliance to the *Transport Operations*

(Marine Safety—Hire and Drive Ships) Standard 2007 was used.

Only one business was not audited as part of the 2010 audit program - one business at Brampton Island Resort. This business is not currently operating.

Serious non-conformances with the *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007* were detected in 26 of the 28 audits undertaken. The remaining businesses only had minor non-conformances.

The 2010-2011 Maritime Safety Queensland operational plan includes a state-wide compliance strategy that focuses on a collaborative approach with enforcement partners (Water Police and Boating and Fisheries Patrol Officers).

Enforcement initiatives with Maritime Safety Queensland and enforcement partners (joint operational plans) are already underway, with trials in the Gold Coast region in progress.

Maritime Safety Queensland evaluates incident, accident and compliance data to inform delivery of regional compliance and safety culture development programs.

Maritime Safety Queensland has developed a model Hire and Drive Safety Management Plan to assist providers. It has also developed and applied a system of auditing providers using comprehensive checklists and reporting mechanisms in accordance with quality management processes.

During consultation the providers of hire and drive supported ongoing audits of their operation. Many providers developed or reworked and substantially improved their safety management plans with the help of local Maritime Safety Queensland personnel. Diagram 11 shows that more than half of respondents (57%) supported ongoing annual audits, with a smaller percentage (53%) supporting covert audits.

Maritime Safety Queensland supports the coroner's recommendation for every personal watercraft hire and drive operation be audited using quality assurance methods (including covert audits), at least once in every 12 months of operation.

Enforcement guidelines

Coroner Hutton recommended:

- ***Maritime Safety Queensland develops guidelines for all enforcement agencies to assess compliance with the Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007 and facilitate the sharing of information between enforcement agencies.***

Since the incident that gave rise to the coroner's recommendations, Maritime Safety Queensland has established an enforcement guideline (in 2008) which is consistent with the compliance and enforcement policies of our safety enforcement partners. A copy of the guideline is available on the Maritime Safety Queensland website at www.msg.qld.gov.au.

The enforcement guideline determines the enforcement action that will be taken in any given situation and, as far as possible, provide guidance on what behaviour will result in prosecution or other enforcement action.

By clearly defining the types of behaviour that demonstrate compliance with marine safety legislation, the enforcement guideline aims to ensure industry members and the wider boating community understand their obligations. This in turn will help to prevent the types of unintentional breaches that occur when people are unaware of or do not clearly understand their obligations. By identifying what is the most appropriate enforcement action in any given situation the enforcement guideline will also ensure that public resources are allocated and used in an effective and efficient manner.

Sharing the enforcement guidelines with enforcement partners made progress in the context of the state-wide compliance strategy, focussing on a collaborative approach with our enforcement partners.

During consultation a substantial 91% of respondents supported publishing compliance guidance material for enforcement agencies.

Maritime Safety Queensland supports, and has published, enforcement guidelines for enforcement agencies as well as information sharing.

Implementation

All of Maritime Safety Queensland's recommendations can be implemented without legislative change.

Maritime Safety Queensland will impose as conditions of registration (upon renewal) on each hire and drive personal watercraft operating in Queensland that:

- providers must assess the skills and abilities of each rider to operate a hire and drive personal watercraft against an approved competency standard and record the competency of each rider on an approved competency assessment record;
- providers' safety management plans must comply with the more comprehensive requirements of the new leisure craft section of the National Standard for Commercial Vessels (with the two exceptions noted above); and
- all hire and drive personal watercraft must be fitted with a device to govern maximum speed to 30 knots within 2 years.

Maritime Safety Queensland, through its regional offices, will consult with local government partners and other stakeholders to determine the location of further personal watercraft exclusive use areas and the high traffic speed zones and periods for which a 10 knot limit should be gazetted.

Maritime Safety Queensland will continue to conduct annual audits (including covert audits) of hire and drive personal watercraft at least once every 12 months of operation, including joint compliance and enforcement activities with enforcement partners.

This will assess ongoing compliance with and the effectiveness of these changes. If providers do not comply with these changes or the changes are not effective in improving the safety record of the industry then further consideration will need to be given to implementing the coroner's recommendation that all hire and drive personal watercraft drivers to be licensed.

An implementation plan (Attachment E) provides further detail of the proposed timeframes and responsibilities.

Attachment A: PERSONAL WATERCRAFT HIRE AND DRIVE

Location: _____ Hire date/time: _____ Expected return:: _____ : Actual return: _____

Driver's name: _____ Age: _____ Emergency contact: _____

Address: _____ Phone: _____

Licence(s): **RMDL/PWC/Coxswain/Rd vehicle** (circle) number(s): _____ Expiry: _____

Hired personal watercraft registration: _____ Max passengers: _____ (including driver)

Passenger(s) name: _____ Age: _____ Passenger(s) name: _____ Age: _____

Passenger(s) name: _____ Age: _____ Passenger(s) name: _____ Age: _____

PEN OPERATIONS – basic competencies	TOUR OPERATIONS – advanced competencies
Identifies main parts of a personal watercraft and its equipment	Aware of reefs, anchorages and other hazards to navigation
Wears and operates lifesaving appliances correctly	Aware of coral visibility conditions
Safety lanyard attached to hirer	Maintains required distance in tour
Understands person in water signal	Aware of relevant collision regulations
Start, stop, use kill switch and throttle	Min depth to prevent engine sand damage (600 mm for example)
Smooth and controlled departure	Identifies potential hazards
Steer at slow speed & reverse (if fitted)	Corrective procedures for hazards
User operates at six knots	Righting a capsized personal watercraft
User operates at speed	What to do if there is a fire
Stop alongside a floating object	What to do if you come off
Determine a distance of 60 metres	What to do if you collide
Crosses wakes/wash at safe speed	What to do if you lose power
Maintains situational awareness, safe speed and lookout	What to do on grounding or stranding
Steering (lack) in off-throttle situation	What to do in severe weather
Makes allowance for traffic conditions	Respond to medical emergency
Performs signal to gain assistance	Can initiate rescue from tour operator

Briefer

I delivered a safety briefing as required, gave a demonstration and observed the driver perform the competencies above.

Signed: _____ (Briefer) Briefer's licence: _____ Date: _____

Driver

I have no medical condition that is likely to affect my ability to operate a personal watercraft. I received and understood the safety briefing, personal watercraft demonstration and performed the required basic/advanced competencies.

Signed _____ (Driver) Date: _____

Briefer

I provided this personal watercraft to this driver in accordance with the terms of the safety management plan.

Signed: _____ (Provider) Date: _____

Transport and Main Roads

Hire and drive personal watercraft

Model safety management plan

[Business Name]

[Effective Date]

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1. Purpose of this safety management plan

- Identify risks in the hire and drive of personal watercraft and implement ways to minimise them.
- Identify the responsibilities of the hire and drive personal watercraft provider, driver and riders, and what they should do to reduce risk of damage or injury.
- Advise staff and customers what to do in an emergency.

The personal watercraft driver manages the risk of injury or damage if they operate the craft in a way that is outside this safety management plan.

The provider manages the risks associated with developing this safety management plan. The provider may add further emergencies to the list within after undertaking a risk assessment. The provider will develop emergency response procedures.

Disclaimer: This safety management plan is a generic model only and should not be relied upon to fulfil legal requirements. Hire and drive personal watercraft business operators must assess the risk to their particular business. This model plan is a guide only.

2. Personal watercraft provider

Company and trading name: _____

Head office: _____

Managing director: _____

Phone: _____

Nearest advanced life support facility

Name: _____

Address: _____

Phone: _____

Staff meetings to raise new issues and review effectiveness of the safety management plan held at least every three months. See Annex B for a list of staff induction and ongoing training requirements.

3. Personal watercraft for hire

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Model: _____ Max power output: _____ Registration: _____ Expiry: _____

Registration conditions (if any) applicable to each vessel: _____

Rescue ship(s):

Model: _____ Registration: _____ Expiry: _____

Model: _____ Registration: _____ Expiry: _____

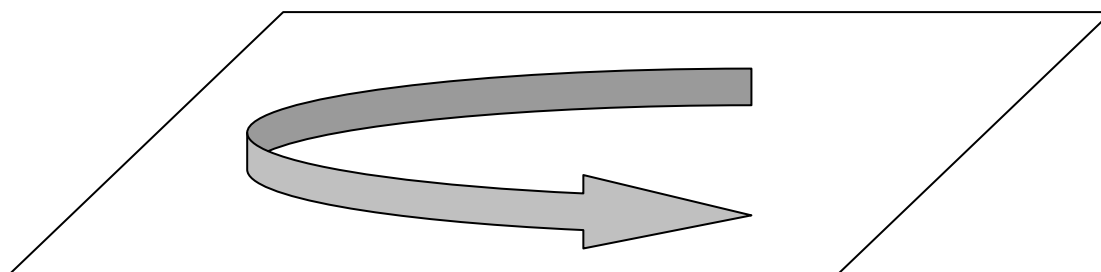
Driver must have a personal watercraft licence if they operate the craft:

- at a different place from hire
- between sunset and sunrise
- beyond smooth waters (outside a designated pen or tour plan area)
- at a speed exceeding 10 knots outside the direct line-of-sight supervision of the provider.

4. Hire area

Pen operations

- Designated cruising area that hired personal watercraft can operate in: _____ (latitude and longitude of all applicable buoys).
- Area is marked out by: _____ (number, colour, location and distance of buoys or other method).
- Area chart/detailed drawing/photo of the circuit showing direction of travel (see below).



Tour operations

- Personal watercraft provider can operate a tour that is under direct supervision of tour leaders.
- It cannot exceed 10 personal watercraft (excluding provider or tour leaders) or the maximum allowed under marine park rules.
- Tour leader(s) must monitor the safe operation of personal watercraft by participants and ensure that the provisions of this safety management plan are followed.
- Provider must have a written plan that states the operating conditions appropriate to ensure safe operation of the personal watercraft taking part.
- Provider must provide a detailed map of each tour that is embarked on.

5. Provider to check before hire

Hazard	Risk	Action	Instruction to driver
Unseaworthy personal watercraft	Failure of personal watercraft	Check seaworthiness before each hire and do not hire if unseaworthy.	
Missing safety equipment	Operation without safety equipment	Check safety equipment before each hire and do not hire if missing.	Do not operate the personal watercraft unless it has the safety equipment.
Weather conditions	Rider impact and injury	1. Assess weather conditions. 2. End hire if unsafe.	Relevant weather forecast and effect in the operating area.
Strong tide	Tide separates group	1. Assess tidal currents. 2. Keep all personal watercraft in line of sight.	Keep within 100 m of the personal watercraft in front while on tour.
Heavy surf or crossing bar	Failure to return on time	1. Assess surf or bar conditions. 2. Inform radio base servicing area of expected and actual return time.	Keep in close formation and follow all instructions if unsafe situation develops.
Reef and navigational hazards	Driver collides with reef	Record locations of sandbars, reefs and navigational hazards.	Location of sandbars, reefs, anchorages and navigation hazards in area, including coral visibility.
Congestion	Driver strays into traffic	1. Assess congestion conditions. 2. Alter tour route or area. 3. Reduce speed of tour.	Limits and markings of the planned navigation area.

Hazard	Risk	Action	Instruction to driver
Large group	Poor communication	<ol style="list-style-type: none"> 1. Assess leader to rider ratio. 2. Check tour leader has appropriate radio, phone or communications device. 	Keep in close and regular contact with the personal watercraft on the tour.
Briefer lacks experience or training	Inadequate briefing	If briefer has given less than 100 briefings, overseer holding a restricted coxswain licence or higher and a personal watercraft licence must be on call.	
Tour leader lacks experience or training	Tour leader fails to maintain safety	Check that tour leader holds: <ul style="list-style-type: none"> • restricted coxswain licence (or higher) • recreational personal watercraft licence • current first aid certificate. 	

6. Driver to tell provider before hire

Hazard	Risk	Action (provider/tour leader)	Instruction to driver
Overloaded watercraft	Difficult to control safely	Obtain driver's details and number of riders.	Provide full name and address of all riders.
Driver with medical condition	Medical episode at speed	Provide medical declaration form.	Sign a declaration that no medical condition affects ability to operate personal watercraft safely.
Driver is under 16 years old	Driver lacks maturity to drive safely	Do not hire unless the driver provides evidence they are over 16 or have a supervisor 18 years or older that can immediately take over driving.	Provide proof of age or evidence of adult supervision.
Riders 8 years old or younger	Riders fall off	Check that all riders are older than 8 years.	Do not allow children 8 years or younger to ride on the personal watercraft.
Personal watercraft too powerful	Driver loses control	Check that personal watercraft suits the needs of the driver.	Tell provider if uncomfortable driving due to craft size or power.
Inattention to instructions	Unsafe use of personal watercraft	Do not hire unless all riders understand safety briefing in English (or other language agreed).	Tell provider if briefing not understood.

7. Briefer to tell driver before hire

Hazard	Risk	Action	Briefing instructions
Driver knowledge	Driver misuses equipment or systems		All safety briefing checklist items (see Annex A).
Lack of driving skills	Driver loses control of personal watercraft	Refuse hire unless driver demonstrates competencies.	All basic competencies for pen operations and advanced competencies for tours (see Annex A).

Hazard	Risk	Action	Briefing instructions
Overloaded watercraft	Personal watercraft difficult to control safely		Maximum number of people on board while underway.
Driver unsure to return	Driver does not return		Expected time and date of departure and return.

8. Provider to demonstrate and assess

Hazard	Risk	Action	Instruction to driver
Inexperienced driver	Unsafe operation of personal watercraft	<ol style="list-style-type: none"> 1. Safety briefing demonstration 2. Assess competencies (see Annex A) 	Full safety briefing checklist (see Annex A).
Riders do not use safety equipment properly	Driver fails to wear personal flotation device properly	Demonstrate use of all safety equipment.	Correctly use and store personal flotation devices.
Emergency situation	Riders unsure what to do in an emergency	Demonstrate emergency procedures (see section 11).	Full safety briefing and demonstration and perform competencies as instructed.

9. Provider to supervise during hire

Hazard	Risk	Action	Instruction to driver
Over-confident driver	Unsafe operation of personal watercraft	Keep in line of sight to monitor safety and ensure rescue ship available.	Keep within direct line of sight of tour leader.
Congestion	Collision	<ol style="list-style-type: none"> 1. Give riders high-visibility clothing. 2. Keep direct line of sight on all drivers. 3. Ensure maximum leader-to-rider ratio of 1:5. 	10 knots maximum speed within 30 metres of another moving ship
Wash from other vessels	Danger to driver	Monitor safe wake-crossing techniques.	Safe wake-crossing procedure.
Wave jumping	Impact or back injury	Monitor safe wave-jumping techniques.	Safe size of wave to jump.
Swimmers	Collision with person in water	Monitor distance-off requirements.	Reduce speed to under 6 knots within 60 m of person in water.
Collision regulations offences	Collision	Monitor relevant collision regulation requirements.	Keep lookout at all times to assess collision risk – alter course to starboard to avoid collision.
Uncooperative group	Formation breaks	Stop the tour and regroup into a safe formation.	Wait nearby till tour regroups into the safe formation.

10. When provider must end hire

Hazard	Risk	Action	Instruction to driver
Inexperienced driver	Assistance required from personal watercraft provider	End hire	Stop personal watercraft and raise hand.
Irresponsible driver	Driver exits the designated operating pen	End hire	Return to pen area immediately.
Inattention to instructions	Unsafe use of personal watercraft	End hire	No further operation allowed.
Sharp turn or free-styling	Passenger falls off personal watercraft	End hire	Driver's obligation not to operate unsafely for safety of riders.
Intoxicated driver	Collision and/or drowning	End hire	Do not operate the personal watercraft under the influence of alcohol or drugs.

11. What to do in an emergency

Emergency	Action (provider/tour leader)	Instruction to driver
Collision	<ol style="list-style-type: none"> 1. Tour leader renders assistance as required. 	<ol style="list-style-type: none"> 1. Stop vessel and turn engine off. 2. Check for injuries or damage to vessel. 3. Alert tour leader. 4. Complete marine incident report form.
Loss of engine power	<ol style="list-style-type: none"> 1. During briefing, physically demonstrate what to do if motor does not start. 2. Assess problem and provide assistance. 	<ol style="list-style-type: none"> 1. Alert tour leader immediately by waving arm in the air. 2. Check fuel, engine water temperature and oil pressure lights on instrument panel and that lanyard is attached. 3. If engine temperature red warning light is on, switch engine off. 4. Advise tour leader and follow their instructions.
Grounding or stranding	<ol style="list-style-type: none"> 1. Assess situation. 2. Arrange rescue or tow vessel, if required. 3. Instruct driver to get off the personal watercraft, if necessary. 4. Do safety check on vessel for hull, motor or steering damage and pollutants. 5. If no damage, push personal watercraft to deeper water. 6. Ask driver if they want to reboard. 	<ol style="list-style-type: none"> 1. Turn engine off. 2. Signal for assistance. 3. Do not restart engine unless personal watercraft is in water at least knee-deep. 4. If grounding is on a coral reef or rocks, stay onboard personal watercraft to prevent injuries. 5. Follow tour leader's instruction to restart personal watercraft and continue tour. 6. In rough conditions, tour leader will report incident and request assistance to remove riders from personal watercraft safely.
Severe weather	<ol style="list-style-type: none"> 1. In severe weather, cancel tour. 2. If tour has already commenced and it is unsafe to continue, end tour and head back to office. 3. If it is not safe to continue, take refuge close to shore where it is calmer. 4. If necessary, contact rescue vessel to take drivers back. 	<ol style="list-style-type: none"> 1. Reduce speed for safe speed rules based on visibility and conditions. 2. Follow tour leader's instructions and where necessary take refuge until conditions improve.

Emergency	Action (provider/tour leader)	Instruction to driver
Medical emergency evacuation	<ol style="list-style-type: none"> 1. All staff have training to take appropriate first aid action. 2. Contact emergency services on 000. 3. Give first aid to stabilise patient. 	<ol style="list-style-type: none"> 1. Stay calm, assess situation and eliminate danger 2. Contact emergency services as required (phone 000). 3. Take appropriate first aid action. 4. Assemble group and turn off personal watercraft. 5. Wave down passing vessels for assistance, if required. 6. Return to shore. 7. Look for landmarks/buildings to identify position.
Fire		<ol style="list-style-type: none"> 1. Immediately stop personal watercraft 2. Switch engine off. 3. Do not open engine compartment or try to fix the problem. 4. Safely enter water feet first – do not dive. 5. Swim away from vessel keeping lookout for other vessels. 6. Signal to tour leader or passing vessels for assistance by waving arms in the air.
Rider falls off personal watercraft	<ol style="list-style-type: none"> 1. Collect rescue vessel 2. Turn own personal watercraft off 3. Collect driver from water 4. Take driver to their personal watercraft 	<ol style="list-style-type: none"> 1. Safety lanyard will stop personal watercraft if driver falls. 2. Any person in the water should keep one hand raised so they can be seen by other vessels. 3. Keep person in water in sight at all times. 4. Signal to tour leader by waving arms. 5. Do not jump into water after another person. 6. If person in water is close enough to personal watercraft they can swim to it. 7. Keep personal watercraft as stable as possible to prevent capsizing. 8. Reboard by the reboarding step.
Missing driver or passenger	<ol style="list-style-type: none"> 1. Initiate search and rescue for people onboard personal watercraft. 2. Tell radio base servicing operating area the time personal watercrafts returned from tour if operating in surf conditions or crossing a bar. 	<ol style="list-style-type: none"> 1. Do not operate personal watercraft against express direction of provider or tour leader, or outside operating area. 2. Remain in line of sight of supervisor or leader at all times.
Other emergency		

(Expand as required after a risk analysis to identify other emergencies requiring a response procedure.)

Annexes

A. Personal watercraft hire and drive form

Location: _____ Hire date/time: _____ Expected return: _____ Actual return: _____

Driver's name: _____ Age: ____ Emergency contact: _____

Address: _____ Phone: _____

Licence(s): RMDL / PWC / Coxswain / Road vehicle (*circle*) Number(s): _____ Expiry: _____

Hired personal watercraft registration: _____ Max riders: _____ (including driver)

Passenger name: _____ Age: _____ Passenger name: _____ Age: _____

Passenger name: _____ Age: _____ Passenger name: _____ Age: _____

Briefer name: _____ Briefing date: _____ Briefing time: _____

Safety briefing checklist (✓ check as complete)	
Instruction to rider	Instruction to rider – restrictions
Provided in English (or language all riders understand)	Do not operate personal watercraft in unsafe manner
Hire will end unless rider understands briefing	Do no operate unless safety equipment fitted
Advise if any part of briefing not understood	Do not operate while under influence of alcohol or drugs
Health and safety risks in unsafe use of personal watercraft	Do not operate at speeds causing damage to shoreline
Location of sandbars, coral, reefs, anchorages and navigation hazards	Do not wave jump, surf, freestyle or tow any craft (except rescue vessel) within 200 m of shore
Markings and boundaries of pen or tour area	Explanation to rider
Weather forecast, tide and currents and their effect	Use and storage of personal flotation devices
Wear personal flotation device type 2 or 3	Use of equipment and systems (anchor/radio if available)
Maximum number of riders while underway	Navigation within pen or tour area
Operate under 6 knots within 60 m of shore, anchored ship, structure or person in water	Signal for help
Operate under 10 knots within 30 m of moving vessel	Start, stop, turn and steer to avoid collision
Follow collision regulations – lookout all times	Physical demonstration
Emergency procedures	Use of safety equipment (including kill switch)
Follow instructions, stop if situation unsafe	Response if motor does not start
Alter course to avoid collision (starboard)	Start, stop, handle underway, steer to avoid collision
Obey speed zones and limit speed to avoid incident	Special techniques in this safety plan (all riders)

Driver competency checklist (✓ check as complete)	
Pen operation (basic)	Tour operation (advanced)
Identify main parts of craft and equipment	Aware of reefs, anchorages and other hazards
Wear and use lifesaving appliances correctly	Aware of coral visibility conditions
Attach safety lanyard	Maintain required distance in tour
Understand person in water signal	Aware of relevant collision regulations
Start, stop, use kill switch and throttle	Minimum depth to prevent engine sand damage
Smooth and controlled departure	Identify potential hazards
Steer at slow speed and in reverse (if fitted)	Corrective procedures for hazards
Operate craft at six knots	Righting a capsized personal watercraft
Operate craft at speed	Fire emergency procedure
Stop alongside a floating object	Fall emergency procedure
Determine a distance of 60 m	Collision emergency procedure
Cross wakes/wash at safe speed	Power loss emergency procedure
Aware of situation, safe speed and lookout	Grounding or stranding emergency procedure
Steer in off-throttle situation	Severe weather emergency procedure
Make allowance for traffic conditions	Medical emergency procedure
Perform signal to gain assistance	Initiate rescue by tour operator

Provider – I delivered a safety briefing as required, gave a demonstration and observed the driver perform the checked competencies above.
Signed: _____ Date: _____ Briefer's licence: _____

Driver – I have no medical condition that is likely to affect my ability to operate a personal watercraft. I received and understood the safety briefing, personal watercraft demonstration and performed the required competencies.
Signed: _____ Date: _____

Provider – I provided this personal watercraft to this driver in accordance with the safety management plan.
Signed: _____ Date: _____

B. Staff training register

Induction training for all staff (including onshore staff training) must be completed as soon as possible. It should cover the location and use of safety equipment, administrative procedures, legal obligations and the seven emergency responses below. Both induction and ongoing training must include the emergency response procedures as well as any other training identified in the risk register.

Employee	Bill Jones	Janice Jones		
Date started	12 January 2011			
Qualifications and expiry	Personal watercraft licence, Restricted Coxswain			
Training completed (date and sign for induction and ongoing training)				
Rider fall from personal watercraft (every three months)	13 January 2011 <i>Bill Jones</i> (Induction)			
Fire (every six months)	13 January 2011 <i>Bill Jones</i> (Induction)			
Collision (every three months)	13 January 2011 <i>Bill Jones</i> (Induction)			
Loss of engine power (every six months)	13 January 2011 <i>Bill Jones</i> (Induction)			
Beaching or grounding (every six months)	15 January 2011 <i>Bill Jones</i> (Induction)			
Bad weather (every six months)	15 January 2011 <i>Bill Jones</i> (Induction)			
Medical emergency evacuation (every six months)	15 January 2011 <i>Bill Jones</i> (Induction)			
(Other training – add as necessary, example below)				
Tsunami warning (every 12 months)	15 January 2011 <i>Bill Jones</i> (Induction)			

MARITIME SAFETY QUEENSLAND ENFORCEMENT GUIDELINES

Overview

Maritime activities contribute significantly to both the economy and lifestyle of Queensland, and therefore it is essential that the environmental and safety risks associated with these activities are effectively managed. In recognition of this, Maritime Safety Queensland (MSQ) seeks to identify and manage the types of risks that are not or cannot be managed by operators and members of the community. In particular, Maritime Safety Queensland manages and influences the operation and use of maritime resources so that they contribute to economic development, ensure environmental sustainability and improve safety, living standards and quality of life.

Maritime Safety Queensland establishes marine safety strategies and marine pollution prevention strategies in line with the legislative requirements of the Transport Operations (Marine Safety) Act 1994 (TOMSA) and the Transport Operations (Marine Pollution) Act 1995 (TOMPA). The strategies, as identified in Maritime Safety Queensland's Strategic Plan, are consistent with the Queensland Government's priorities and also take into account international obligations and arrangements between Queensland and other states and territories and the Commonwealth.

Maritime Safety Queensland appropriately balances regulation of the marine industry and users of waterways with the provision of information and services that enable industry and private operators to effectively manage risks themselves. In addition, Maritime Safety Queensland seeks to promote voluntary compliance with marine safety regulations through the provision of education and the development of strong industry and community relationships¹. While such strategies aim to facilitate voluntary compliance with marine safety standards, Maritime Safety Queensland also acknowledges that it is sometimes in the public interest to take enforcement action.

By clearly defining the types of behaviour that demonstrate compliance with marine safety legislation, these enforcement guidelines aim to ensure industry members and the wider boating community understand their obligations. This in turn will help to prevent the types of unintentional breaches that occur when people are unaware of or do not clearly understand their obligations. These guidelines also assist Maritime Safety Queensland to determine what the most appropriate enforcement action is in any given situation, and in this way they help to ensure that public resources are allocated and utilized in an effective and efficient manner.

¹ For example, MSQ's regional industry forums educate industry members and the broader boating community about national trends affecting maritime safety and pollution and also provide them with an opportunity to voice their opinions/concerns about new initiatives

Introduction

Legislation forms the basis of a regulation framework to assist Maritime Safety Queensland with its task of protecting Queensland's waterways and the people who use them. The two central pieces of legislation that set the regulatory framework are the:

- Transport Operations (Marine Safety) Act 1994 (and Transport Operations (Marine Safety) Regulation 2004) and;
- Transport Operations (Marine Pollution) Act 1995 (and Transport Operations (Marine Pollution) Regulation 2008).

These guidelines explain how Maritime Safety Queensland determines the enforcement action it will take in any given situation and, as far as possible, they provide guidance on what behaviour will result in prosecution or other enforcement action.

Maritime Safety Queensland undertakes investigations to determine whether there have been any contraventions of marine legislation, and the results of these investigations are then used to determine what enforcement action, if any, is appropriate in the circumstances. This process illustrates that investigations are a prerequisite to implementing enforcement measures, and thus in addition to outlining our enforcement measures, these guidelines also clarify the nature and extent of our investigation activities. In summary, the investigation section describes the nature of our proactive and reactive investigation activities, and the processes we follow to ensure that the nature and scope of our investigations are appropriate in the circumstances.

The second part of the document outlines the various enforcement measures available under marine safety legislation. In particular, this section identifies and clarifies the way we determine which enforcement measures, if any, are appropriate in the circumstances, and the processes we employ to ensure that these measures are implemented in a consistent, effective and efficient manner.

Our investigation activities, enforcement measures and procedures for determining when it is appropriate to undertake these activities and measures, have all been developed in accordance with our five compliance enhancement principles². These five principles of proportionality, consistency, transparency, accountability and targeting, are described in detail below.

Proportionality - making our compliance effort commensurate to risk.

For example, our investigation resources are allocated according to the seriousness of the incident reported or detected. Specifically, all marine incidents are assigned a score which reflects the nature of the incident and the severity of the consequences resulting from the incident. These scores are then added to give the marine incident an overall rating which subsequently determines the category of the marine incident and the extent of our

² These principles were originally developed by Workplace Health and Safety Queensland (as detailed in their 2009 Compliance Enhancement Framework). We have adapted these principles in accordance with our compliance framework.

investigation. These investigations then determine the causes of the incident and consequently the type of enforcement action that will be taken.

Consistency - cases involving similar circumstances receive a similar response.

For example, we ensure that regulatory decisions are made according to policy, are justified appropriately and are audited for consistency.

Transparency – helping obligation holders to understand what is expected of them and what they should expect from us.

For example, this document outlines the general compliance framework within which we operate. By outlining the types of behaviour that will result in prosecution and other enforcement action, and by detailing the types of enforcement measures available to us, these guidelines aim to help people understand their obligations.

Accountability – being accountable to the public, in the sense of having policies and standards against which we, as an enforcing authority, can be judged.

Queensland's freedom of information legislation provides that an agency must make copies of its policy documents available for inspection and purchase by members of the public. 'Policy document' is widely defined to cover documents about how an agency proposes to administer statutory powers or administer schemes that may affect the rights or interests of members of the community. A 'policy' includes: enforcement policies, such as enforcement action philosophy and guidelines; policies about heightened levels of enforcement action (known as 'blitzes'); policies about different or altered enforcement responses for a problem class of activities; and policies about proactive compliance programs. These guidelines outline Maritime Safety Queensland's enforcement philosophy and practices, in line with the Freedom of Information Act requirements.

Targeting – the most risk-generating activities and hazards that are least well controlled are the primary focus of our compliance and enforcement activities.

For example, Maritime Safety Queensland's strategic plan 2004-2008³ outlines marine safety and pollution prevention strategies that have been developed in accordance with risk management principles.

The goal of this risk management approach is to match interventions to the nature and extent of the risk faced and the impact of the risk not being addressed. Six risk events have been identified for attention in 2008-2009, and these events have been ranked through review of history, trends and intelligence, and according to the likelihood and consequence of events. Each of these risk events are targeted through the implementation of specific risk treatment plans, which have been incorporated into the outcomes profiles of the Safety and Pollution Implementation programmes for 2008-2009.

³ Maritime Safety Queensland is in the process of developing a new strategic plan to cover the period from 2009-2013

1. Investigation policy

1.1 Introduction

Our investigation activities can be characterised as being of two types – proactive and reactive.

A proactive investigation is scheduled in advance as part of a monitoring/auditing program to monitor compliance with marine safety legislation. By contrast, a reactive investigation is commenced in response to a marine incident or when we receive notification that a contravention of marine legislation has, or may have, occurred.

Following notification of a marine incident, preliminary inquiries are made to help us decide whether an investigation is required. These inquiries may reveal that there is no need for an investigation – for example, the incident may be relatively minor and appropriate remedial actions to prevent reoccurrence may have already been taken.

In accordance with the proportionality principle, investigation resources are allocated according to the seriousness of the incident reported or detected.

1.2 Proactive Investigations

Maritime Safety Queensland undertakes proactive and targeted investigations of commercial and fishing vessels that focus on the extent to which operators have properly implemented a safety management system which ensures the safety of crew, passengers and anybody who may be affected by a ship's operations. Specifically, Maritime Safety Queensland's proactive and targeted investigation policy seeks to:

- Reinforce positive behaviour where an operator's commitment effectively minimises risk;
- Reduce the risks associated with negative behaviour by increasing the scope, depth and frequency of inspections where non-compliance is detected;
- Allow a more efficient use of Maritime Safety Queensland's resources by focusing efforts on ships and operators that are high risk, whether by their nature, history or operation.

Commercial and fishing vessels are assigned a risk index which reflects the relative risks associated with the operation of the vessel, as indicated by an ongoing review of performance and compliance. Risk indices are defined as:

- 1 Lowest risk
- 2 Lower risk
- 3 Base level
- 4 Higher risk
- 5 Highest risk

A vessel is assigned an initial risk index of 3 which is then modified up or down the risk index as indicated by monitoring over time to establish trends in safety compliance. This risk index focuses on the extent to which the owner/operator has properly implemented a systematic safety management system for the safe operation of the vessel. For example:

- Evidence of a proactive culture of compliance would be established when the operator has: initiated risk management strategies; consistently complied with legislation and standards; engaged in nil or minimal non-compliances; initiated a systematic and ordered approach to the ship's operation; and displayed managerial commitment to safety;
- Evidence of a reactive culture of compliance would be established when the operator: relies on the inspection regime to uncover non-conformances; operates on crisis management but has a reasonable willingness to correct non-compliances; and completes corrective actions as required and within stated time frames;
- A negative culture of compliance is evident where the operator: has a negative approach to the uncovering of non-compliance; displays a lack of openness to outside inspection; has a high incidence of non-compliance; fails to correct non-compliances or fails to correct within stated time frames or to the required standard; and is frequently involved in operational incidents.

When an individual risk index is adjusted, a corresponding adjustment is made to the periodic monitoring schedule to reflect the increase or decrease indicated. These adjustments reflect the quality of a ship's safety management system and work to ensure that 'good' operators/owners with sound safety management systems are scrutinized less frequently while 'poor' performers receive greater attention.

The level and frequency of commercial ship monitoring is based on:

- The ship area of operation with class B ships receiving preference over class C, C receiving preference over D, and D receiving preference over E;
- General condition (based on the documented history);
- Age (ships over 15 years may require closer attention);
- Incident reports or complaints received;
- Class 1 and Class 2 commercial ships 6 metres and over in length, with fare paying passengers, are monitored at the rate of at least one inspection per year;
- Class 2 commercial ships 6 metres and over in length, other than ships carrying fare paying passengers, and Class 3 fishing ships are monitored at the rate of at least one inspection every second year.

In any given region, ships that measure less than 6 metres in length are monitored at the rate of 20 percent per annum. However, where a random check of a ship in a fleet identifies a significant level of non-compliance, then further inspections of the fleet will be carried out.

In general, monitoring of a ship on a very frequent basis will only be carried out if the ship condition or operation appears to be unsafe and may endanger the safety of its passengers and crew.

1.2.1 Types of monitoring activities

The types of monitoring activities undertaken by Maritime Safety Queensland's shipping inspectors include:

- Checking a ship's certificates, licenses and documentation (when checking operational manuals on catamarans, inspectors make operators and owners aware of the hazards which may be encountered carrying passengers on foredecks and they also ensure procedures related to this are detailed in the ship's manual);
- Conducting interviews with a representative sample of masters and crew (in particular, the inspectors interview crew to ensure they are familiar with the ship's manuals);
- Conducting challenge testing of masters and crew on emergency response capability, preparedness (with a particular focus on business operations more likely to be exposed to a high turnover of crew) and 'person overboard' procedures;
- Inspecting the condition of a ship (this includes undertaking audits to ensure compliance with material and workmanship construction standards);
- Checking the operational procedures that a ship has in place;
- In-service monitoring of a ship (provided mainly by service agencies with their own boating facilities).

1.2.2 Levels of monitoring activities

The level of monitoring undertaken by a shipping inspector can vary from an inspection of a ship's documentation to a comprehensive inspection of the condition of a ship and the adequacy of its operational procedures. The monitoring activities may also target specific items for inspection or specific issues identified as requiring special attention.

The standards against which a ship and its operations are measured are the regulations for the TOMSA and the supporting performance and prescriptive based standards covering construction, miscellaneous safety equipment, crewing operation and maintenance.

1.2.3 Dealing with non-compliance

Non-compliances found during the proactive monitoring process are dealt with according to the severity of non-compliance. Depending on the seriousness of the breach, shipping inspectors may deal with an individual contravention of either TOMSA or TOMPA by one or a combination of the following:

- educating the offender about their obligations in relation to marine safety and/or marine pollution;

- providing written notification of the conclusion of an investigation process (acknowledgement letters, caution letters and warning letters);
- providing written notification of contraventions and describing the enforcement action that will be taken if non-compliance continues (formal non-compliance letters);
- imposing a fine for a contravention with marine legislation under the State Penalties Enforcement Act 1999 (marine infringement notices);
- cancellation, suspension or amendment of authorities such as registration or licences issued under TOMSA (administrative actions);
- commencing a proceeding by complaint and summons for an offence against marine legislation pursuant to the Justices Act 1886, either summarily or on indictment (prosecutions);
- issuing written directions, declarations and notices (collectively called directions);

Each of these options is explained in detail in the 'Enforcement Policy' section of these guidelines.

1.2.4 Other proactive monitoring activities

In addition to monitoring the operation and condition of vessels, Maritime Safety Queensland also audits accredited people such as designers, builders, surveyors and training providers.

For example, under the BoatSafe scheme, all candidates for a recreational boat licence or personal watercraft licence must complete an approved BoatSafe competency-based training and assessment program, or a Recognition of Prior Learning assessment, with an MSQ approved BoatSafe training provider.

These MSQ approved BoatSafe training organisation and providers are subject to an ongoing audit program. Prior to approving an organisation's application to become a registered BoatSafe training organisation, Maritime Safety Queensland audits the organisation to assess the adequacy of its resources, processes, systems and practices. Once an organisation is registered as a BoatSafe training organisation, they will become subject to regular scheduled compliance audits to ensure ongoing compliance with the BoatSafe scheme. Maritime Safety Queensland may also investigate, at any time, an alleged non-compliance with the terms and conditions of the BoatSafe agreement. The scope and breadth of these complaint triggered audits will depend on the nature of the complaint being investigated.

In addition to auditing recreational boat licence training providers, Maritime Safety Queensland also audits and authorises commercial marine training and assessment providers (known as Registered Training Organisations). When processing registration applications, Maritime Safety Queensland conducts a desktop evaluation of a training organisation's application and a site visit of their campus. Once authorisation is provided, audits are initiated within 12 months to ensure ongoing compliance with the Australian Quality Training Framework (AQTF) and the assessment requirements of the relevant maritime regulations.

1.3 Reactive Investigations

Reactive investigations may be defined as inquiries to establish the facts and circumstances of an event, incident or allegation, in accordance with the law and in the interests of justice. Maritime Safety Queensland reactively investigates marine incidents and events that have occurred, or allegedly occurred, as a result of, or in connection with, the operation of recreational, commercial or fishing vessels.

1.3.1 Marine Incident Management Procedure

Consistent with the compliance principle of proportionality, and in order to allow for the appropriate prioritisation of resources, all marine incidents are categorised according to their severity and urgency. Specifically, each incident is assigned three separate scores that reflect the nature of the incident, the severity of the consequences resulting from the incident and the level of public interest in the incident. These scores are then added to give the marine incident an overall rating which subsequently determines the category of the marine incident and thus the extent of Maritime Safety Queensland's investigation.

1.3.2 Incident type

The incident type score measures the level of risk associated with a particular incident, regardless of the actual consequences that have resulted from the incident. The incident type scores range from 0 to 10, where a score of 0 represents a relatively low risk incident and a score of 10 represents a relatively high risk incident. For example, an explosion on board a passenger vessel is considered to be a high risk incident, and as a result it receives an incident type score of 10. By contrast, the intentional grounding of a recreational vessel is considered to be a low risk incident, and as such it is assigned an incident type score of 1.

1.3.3 Consequence score

The consequence score rates the severity of the consequence of a marine incident from 0 to 10, with 10 being the most serious and 0 being where no adverse consequence resulted from the marine incident. Importantly, even though a marine incident can result in multiple adverse consequences only one consequence score is given to an individual marine incident. In instances where there are multiple consequences of a marine incident, the higher consequence score is selected.

1.3.4 Public interest score

The public interest score refers to either the level of public interest in a marine incident or to incidents where it is in the public's interest that steps are taken by Maritime Safety Queensland to prevent similar future incidents.

1.3.5 Marine incident categories

Once a marine incident has been assigned a score for the type of marine incident, its consequences and the public interest level, the scores are then added to produce an overall incident rating which consequently determines the marine incident category. The marine incident categories and corresponding investigation processes are listed below.

Category One

Category one marine incidents are the most serious and all available resources are directed towards conducting an extremely detailed investigation of such incidents. We commence our investigation activities as soon as we detect, or are advised of, a category one incident.

Category One- fatal

The Queensland Police Service investigates all fatal marine incidents and provides the Coroner with an investigation report. At the same time, Maritime Safety Queensland conducts a separate investigation to explore the circumstances of the marine incident and to consider whether there is a need for legislative/policy changes.

Category One - non-fatal

Category one non-fatal incidents may be investigated by another government agency such as the Queensland Police Service or Workplace Health and Safety, however, Maritime Safety Queensland contributes to these investigations by providing advice and analysing the evidence.

Category Two

Category two incidents are serious, warranting a detailed investigation as soon as practicable.

Category Three

Category three incident investigations are generally conducted to a lesser extent than the Category one and two incident investigations. Maritime Safety Queensland commences category three investigations within one month of receiving advice of an incident. Where appropriate, category three incidents may be referred to another agency for investigation.

Category Four

Category four marine incidents are generally fairly minor and require only a desk top investigation to finalise the case. Category four marine incidents are finalised within six months and commonly require no further action from Maritime Safety Queensland.

Category Five

Category five incidents are incidents that when initially reported may appear to be a marine incident; however, initial investigation may reveal that Maritime Safety Queensland does not have jurisdiction.

1.4 Investigations and enforcement action

Maritime Safety Queensland investigates all incidents as per the categorisation process outlined above. Once an investigation is completed, and in line with the enforcement approach outlined in these guidelines, the agency then determines what enforcement action is most appropriate in the circumstances.

2. Enforcement policy

2.1 Introduction

Enforcement is one of the measures used by Maritime Safety Queensland to achieve the objectives of the law, however, if an alternative to enforcement action will be more effective in achieving the objects of the legislation that is being administered, then that alternative will be considered.

In order to determine whether enforcement action will be taken, Maritime Safety Queensland will investigate all significant breaches of the law and then exercise its discretion in a consistent and logical fashion.

Maritime Safety Queensland has a wide range of enforcement measures available under marine legislation. For instance, an individual contravention of either TOMSA or TOMPA could be addressed by one or a combination of the following:

- encouraging voluntary compliance through education and self-regulation;
- conducting site and ship audits through monitoring programs;
- working with other agencies, such as the Great Barrier Reef Marine Park Authority, the Australian Marine Safety Authority or the Environmental Protection Agency;
- providing written notification of the conclusion of an investigation process (acknowledgement letters, caution letters and warning letters);
- providing written notification of contraventions and describing the enforcement action that will be taken if non-compliance continues (formal non-compliance letters);
- imposing a fine for a contravention with marine legislation under the State Penalties Enforcement Act 1999 (marine infringement notices);
- cancellation, suspension or amendment of authorities such as registration or licences issued under TOMSA (administrative actions);
- commencing a proceeding by complaint and summons for an offence against marine legislation pursuant to the Justices Act 1886, either summarily or on indictment (prosecutions);
- issuing written directions, declarations and notices (collectively called directions);
- applying to the District Court for an enforcement order or interim enforcement order;
- requesting that an offender give a written (enforceable) undertaking that they will not commit, continue to commit, or repeat the act or omission.

2.2 Encouraging voluntary compliance through marketing and education

Maritime Safety Queensland approaches the task of achieving safety outcomes by appropriately balancing regulation of the marine industry and users of the waterways with the provision of information and services that enable, and encourage, industry and private operators to effectively manage risk themselves.

The overall goal of our marketing and education strategy is to change attitudes and behaviour through education and public awareness. Some of our key strategies include:

- Developing and implementing targeted state-wide media campaigns;
- Developing and implementing generic safety campaigns such as Christmas, Easter and annual boating safety campaigns;
- Increasing awareness of Maritime Safety Queensland and boat safety through participation in and sponsorship of boating events, trade shows and expos;
- Educating the public about marine safety through the development and dissemination of recreational handbooks, information sheets, local flyers, press releases and articles about the most common localised issues;
- Developing and delivering information sessions designed to assist ship operators to recognise/discharge their general safety obligation relative to crew induction training and apply lessons learnt for the wider benefit of the maritime industry;
- Distributing packages which support shipboard induction by owners and operators. These packages include a DVD featuring fire and emergency response principles, persons overboard, capsize prevention and induction procedures;
- One of the roles of the Field Compliance Team (FCT) is to build community partnerships and encourage compliance by education and example, especially in relation to the appropriate and safe use of personal water craft. Marine inspectors in the Field Compliance Team use their discretion to decide whether education or compliance action is appropriate given the circumstances of a particular case. Education action can include distributing brochures, capacity labels, ride smart stickers and other education aides to persons intercepted and/or referring people to the MSQ website for further information and guidance material.

2.3 Safety reports

A safety report is an anonymous summary of a marine event investigation that is disseminated to members of the public for the purpose of increasing awareness of marine safety. These reports consist of a short narrative of the relevant facts, followed by a number of lessons that can be taken from the facts. Where possible, the lessons refer to additional resource material or the relevant rules and regulations, such as a provision of marine legislation or rule of the Collision Regulations

When preparing a narrative, all identifying details, such as the name and registration number of the ship(s) and the name(s) of any person(s) involved, are removed.

These safety reports are posted on the Maritime Safety Queensland website and can be accessed via the following link:

http://www.msg.qld.gov.au/Home/Publications/Safety_reports/

2.4 Prosecution reports

Maritime Safety Queensland also produces prosecution reports which detail the outcomes of criminal proceedings for contraventions of marine legislation where a conviction against a defendant (or an accused) has been recorded. These reports are a short compilation of the facts, which identify the defendant where appropriate and describe the court result.

The objective of both the safety and prosecution reports is to educate the public about the cause of and circumstances surrounding an incident, in order to prevent a similar incident from recurring. For this reason, both the safety and prosecution reports are made publicly available via the Maritime Safety Queensland website.

2.5 Closure letters

Closure letters are usually appropriate in circumstances where a relatively minor contravention has occurred. There are three different kinds of closure letters:

The acknowledgement letter - this is used when the circumstances of the case are accidental, unintended or minor, and the person or persons involved are ordinarily compliant with marine legislation. The acknowledgement letter simply acknowledges the facts and circumstances of the case and advises the persons involved that the investigation is closed and that no further action will be taken at this time.

The caution letter – this is used when the circumstances of the case are more serious or potentially more serious, and where the person or persons involved have fallen short of the standard of conduct required by marine legislation. The caution letter acknowledges the facts and circumstances of the case, identifies the particular provisions of marine legislation that have been transgressed, recommends the action required to the person or persons involved, and states that no further action will be taken at this time.

The warning letter – this is used when the circumstances of the case are very serious (or potentially very serious) and where the person or persons involved have fallen short of the standard of conduct required by marine legislation and may not ordinarily be compliant with marine legislation. Use of the warning letter is restricted to those cases where other compliance action is not otherwise practicable or there are other indicators that warrant the file being given a minor priority.

2.6 Non-compliance letters

Formal non-compliance letters are used when a contravention is considered to have a serious priority, and yet more formal enforcement action is not possible for a number of reasons, including:

- where there is insufficient evidence to support any action, but where a contravention of marine legislation is persistent or is ongoing;

- where there is doubt or confusion about the appropriate standard of conduct required under marine legislation.

In addition, it may be appropriate to issue a formal non-compliance letter:

- to clarify the involvement of the person with the operation of a ship;
- to ascertain intention with respect to a ship;
- to encourage compliant behaviour by setting out the consequences of non-compliance, such as administrative action or prosecution.

2.7 Marine infringement notices

Marine infringement notices are a simple way of dealing with common offences against marine legislation in circumstances that do not warrant a prosecution.

Many of the more straightforward offences under TOMSA, and soon some of the offences under TOMPA, may be dealt with by the issue of a marine infringement notice.

A marine infringement notice is a way of avoiding the cost, complexity and delays of the traditional legal system, whilst imposing a fine for a contravention of marine legislation. They are issued to an alleged offender because a shipping inspector reasonably believes that an offence has been committed. However, the notice does not constitute a proceeding and payment of the fine by the alleged offender does not give rise to a criminal conviction being recorded. If the fine is not paid, it is recoverable as a debt by the State Penalties Enforcement Registry.

A person served with a marine infringement notice has the right to elect a court hearing.

2.7.1 In what circumstances will a marine infringement notice be issued?

There is discretion whether or not to issue a marine infringement notice in the same way as there is discretion whether or not to commence a proceeding. When considering whether or not it is appropriate to issue a marine infringement notice, Maritime Safety Queensland officers consider the principles relating to the exercise of discretion for prosecutions.

In addition to these principles, officers also consider:

- the intention of the legislation to penalise offences that might otherwise go unpunished;
- whether it is an easily-remedied one-off offence;
- whether up to three minor offences are involved.

In such circumstances, the use of a marine infringement notice may be appropriate. In cases of multiple offences arising out of a single event, even though each offence may be relatively minor, the existence of more than three offences tends to indicate that the offences should be dealt with as a prosecution. Further, issuing successive infringement notices for a repeated offence is not appropriate. In such situations prosecution is, again, the most appropriate course of action.

2.7.2 Procedure

The persons authorised to issue marine infringement notices under TOMSA are shipping inspectors. It is envisaged that future amendments to the State Penalties Enforcement Regulation 2000 will empower authorised officers under TOMPA to issue infringement notices under that Act as well.

Shipping inspectors of the Water Police and the Queensland Boating and Fisheries Patrol are empowered to issue marine infringement notices. Shipping inspectors employed by Maritime Safety Queensland, however, are generally not empowered to issue marine infringement notices.

The relevant Shipping Inspector assesses whether a marine infringement notice is appropriate in the circumstances. Specifically, the Inspector considers:

- whether the marine infringement notice can be served on the alleged offender within six calendar months of the date of the alleged offence;
- whether the criteria for issuing a marine infringement notice, outlined above, are satisfied;
- whether the evidence and public interest tests are satisfied.

If all of these criteria are fulfilled, then a marine infringement notice may be issued. If not, a prosecution will be commenced instead, provided the evidence test and the public interest test are satisfied.

A marine infringement notice may be served personally, by registered post or, in some circumstances, on an unattended ship.

2.7.3 Withdrawal of marine infringement notices

The State Penalties Enforcement Act 1999 envisages the possibility of withdrawing a marine infringement notice after service.

A marine infringement notice will be withdrawn if:

- a more serious offence against marine legislation has been identified and therefore a prosecution is more appropriate;
- a mistake of fact was made and the marine infringement notice should not have been issued in the first place;
- some circumstance has changed such that the evidence test or the public interest test can no longer be satisfied.

The State Penalties Enforcement Regulations 2000 enable a marine infringement notice to be withdrawn even if the fine has been paid. Where a decision is made to withdraw a marine infringement notice, Maritime Safety Queensland will send a letter to the recipient of the notice, which advises of the withdrawal pursuant to the State Penalties Enforcement Regulations 2000.

2.8 Administrative actions

Administrative action is action leading to the suspension or cancellation of an individual's licence, registration, approval to establish a buoy mooring or any other authority listed under the TOMSA, in response to an individual's contravention of marine legislation.

Administrative action may be initiated in some of the following circumstances:

- for recreational marine driver licence holders, when three marine infringement notices are issued in any one calendar year, pursuant to Maritime Safety Queensland policy;
- for holders of licences to operate commercial and fishing ships, when involved in more than one serious marine incident in the past three years;
- for any licence holder, when allegations of impropriety are made concerning the issue of the licence;
- for any licence holder, when convicted of an offence against section 79 or 80 of the Transport Operations (Road Use Management) Act 1994 (drink driving related offences);
- for a marine pilot's licence, when involved in more than one serious pilotage incident in the past three years;
- for registration of any ship, when it appears that the ship is unseaworthy;
- for any other authority holder, when it appears that one or more of the grounds described in part 6 of the Transport Operations (Marine Safety) Regulation 2004 has been established.

It should be noted that this list is not intended to be exhaustive and there may be other circumstances in which administrative action is justified.

Maritime Safety Queensland will issue a licence holder with a written notice to show cause why their licence or other authority should not be suspended, cancelled or amended (a show cause letter). Once a show cause letter is sent, the offender has 30 days to show why the proposed suspension, cancellation or amendment should not be executed. At the end of the 30 day period, Maritime Safety Queensland will review the response of the licence holder, if a response is received, and make a decision as to whether or not administrative action is required. If no response is received from the licence holder, an administrative decision will be taken immediately.

2.9 Prosecutions

Generally speaking, Maritime Safety Queensland prosecutes marine safety contraventions that are the more serious in terms of consequence, risk and aggravating circumstances. The policy in relation to marine pollution offences is, however, more stringent with every provable discharge offence to be dealt with by prosecution.

The decision to commence a prosecution by complaint and summons rests solely with the complainant, whether the matter is to be dealt with summarily or on indictment. The complainant, who is often an officer external to Maritime Safety Queensland, must be satisfied that there is sufficient evidence to support a prosecution and that the public interest

is satisfied in the circumstances. In order to be satisfied about these matters, the complainant may seek advice from Crown Law.

Maritime Safety Queensland ensures that a matter forwarded for prosecution has sufficient evidence to support a charge and that a proceeding is in the public interest. Maritime Safety Queensland also considers whether Crown Law advice is necessary, and if this is the case, then the agency will obtain that advice.

2.9.1 The model litigant principles

The courts expect the highest standards of probity and fairness from the State in its handling of litigation. On the other hand, the community expects the State to deal properly with taxpayers' money and, in particular, not to spend it without due cause and due process. The balancing of these community and court expectations of fairness and firmness forms the basis of the model litigant principles.

The State and all agencies, including Maritime Safety Queensland, act as model litigants in the conduct of all litigation, by adhering to the model litigant principles of fairness and firmness.

The model litigant principles of fairness state that an agency will:

- act consistently in the handling of claims and litigation;
- deal with claims promptly and not cause unnecessary delays in the handling of claims and litigation;
- endeavour to avoid litigation, wherever possible;
- keep the costs of litigation to a minimum, where it is not possible to avoid litigation altogether;
- pay legitimate claims without litigation (for example the agency can make partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid);
- not seek to take advantage of an impecunious opponent;
- not contest matters which it accepts as correct, in particular by:
 - not requiring a party to prove a matter which the state knows to be true;
 - not relying on purely technical defences where the State will suffer no prejudice by not doing so; and
 - not contesting liability if the State knows that the dispute is really about quantum; and
 - not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

In line with community expectations, all agencies, including Maritime Safety Queensland, also adhere to the model litigant principles of firmness which state that an agency will:

- appropriately test all claims;
- contest all spurious or vexatious claims;
- claim legal professional privilege where appropriate;
- claim public interest immunity to protect confidential information, such as Cabinet papers, in appropriate cases;

- seek security for costs where appropriate and pursue costs when it is successful in litigation, which will assist in reducing the potential for vexatious proceedings to be instituted against it;
- rely on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice; and
- act properly to protect the state's interests.

Maritime Safety Queensland adopts these principles, as far as they are relevant, in relation to its conduct of prosecutions and appeals against administrative action.

2.9.2 Exercising prosecutorial discretion

MSQ exercises prosecutorial discretion when its officers make decisions that affect criminal proceedings, particularly those concerning evidence and the public interest.

In assisting a complainant in the exercise of prosecutorial discretion, Maritime Safety Queensland officers adopt the overriding principle that a prosecution must not be instituted for improper purposes.

A decision whether or not to prosecute will not be influenced by:

- any discrimination against any person based on ethnicity, nationality, race, religion, gender or political affiliations;
- any personal feelings or bias towards any person;
- any possible political advantage or disadvantage to the government or any group;
- the possible affects of the decision to prosecute on the unit officer's personal or professional circumstances.

These matters underpin and prevail over all considerations of sufficient evidence and public interest.

2.9.3 Evidence test

The basic prerequisite of any prosecution is that the available evidence appears to establish a prima facie case. The discretion to prosecute only arises once a complainant is satisfied that a prima facie case exists. This is a well established principle of law that has been enunciated in the Prosecutions Guidelines of the Queensland Office of the Director of Public Prosecutions, which says:

'The criteria which are to be applied in deciding whether to prosecute fall into two categories. First, is the evidence sufficient to justify proceedings? Second, does the public interest require a prosecution? The prosecutor must be satisfied as to the first question before moving on to the second.'

The prosecution policy and guidelines of the Director of Public Prosecutions in New South Wales further qualifies the evidence test as follows:

'Given the existence of a prima facie case it must be understood that a prosecution should not proceed if there is no reasonable prospect of a conviction being secured.... This decision requires an evaluation of how strong a case is likely to be

when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by the alleged offender, and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction.'

Maritime Safety Queensland ensures that every matter that is to be prosecuted satisfies this expanded evidence test. At the very least, there must be reliable, probative evidence to support every element of the intended charge or charges, and there must be a reasonable prospect of a conviction in all of the circumstances.

In assessing whether the evidence test has been satisfied, Maritime Safety Queensland considers the following matters:

- the admissibility of evidence;
- reliability of evidence, including identification evidence;
- the possible defences that could be raised, and whether they can be negated;
- the extent of any conflicts in evidence between witnesses;
- the competency of witnesses;
- whether the witnesses can be compelled to appear;
- any other factors that could affect the credibility of witnesses;
- the availability of witnesses;
- whether witnesses will be hostile, adverse or cooperative.

If there are any issues concerning the sufficiency of evidence, the admissibility of evidence or the availability of a defence, then Crown Law advice is obtained before a prosecution is commenced.

2.9.4 Public interest test

Sufficient evidence and the likelihood of securing a conviction are not the only factors that are considered when exercising prosecutorial discretion. Before commencing a prosecution, Maritime Safety Queensland must also be satisfied that a prosecution is in the public interest.

In terms of the public interest test, the following factors are amongst those which Maritime Safety Queensland considers before prosecution is commenced. More than one factor may be applicable to a particular file:

- the seriousness or triviality of the offences, or whether the offences are of a technical nature only;
- whether marine safety or the marine environment has been affected by the offence;
- any mitigating or aggravating circumstances;

- the personal characteristics of the person such as age, experience, health or other special characteristic;
- the degree of culpability of the person;
- the availability and effectiveness of alternatives to prosecution;
- the prevalence of the offence and the need for deterrence;
- the time elapsed since the offence occurred;
- whether there is any counter-productive feature associated with a prosecution;
- whether the offence is of public concern;
- the cost and length of a prosecution compared to the seriousness of the offence;
- any precedent which may be set by commencing or not commencing a prosecution;
- whether the consequences of a conviction would be unduly harsh or oppressive;
- whether other proceedings have been commenced arising out of the same circumstances;
- the sentencing principles set out in the Penalties and Sentences Act 1992;
- any other fact or circumstance that would indicate for or against a prosecution being commenced.

2.9.5 Selecting the appropriate defendant

Once a decision has been made to prosecute, it is imperative that the most appropriate defendant is selected. Generally, the person who was principally responsible for the offence is the appropriate defendant. That is, the person who:

- actually committed the act or made the omission that constitutes the offence;
- did or omitted to do any act for the purpose of enabling or aiding someone else to commit the offence;
- aided someone else to commit the offence;
- counselled or procured someone else to commit the offence.

Where the offence is one of strict liability, such as a discharge offence under TOMPA, the role of the person involved with the offence is considered.

Prosecution is used as part of Maritime Safety Queensland's strategy for achieving its objectives, however, if prosecution is unlikely to lead to deterrence, other measures may be considered. Each case is individually assessed to determine whether prosecution is the most appropriate regulatory response.

For offences under TOMSA and TOMPA, criminal liability is only imposed upon a person in relation to the role that the person played in the circumstances.

This is particularly significant for owners of ships. For example, an owner is responsible under marine legislation for the general safety obligations under TOMSA and for discharge offences under TOMPA. Whilst some owners of ships may have no direct involvement in a particular offence, it is their responsibility, as owners of ships, to ensure that their ships are operated safely, that the condition of their ships is safe, and that oil, garbage and sewage are not discharged from the ships. Owners of ships can be proper defendants to charges in circumstances where they have materially failed to discharge their obligations under marine legislation, even where they have no direct involvement in the commission of the offence.

Similarly, masters and crew of ships cannot use as a defence that they were acting under orders, although such matters may be taken into consideration during sentencing.

2.9.6 Withdrawal of charges

In some circumstances, it may be necessary for Maritime Safety Queensland to consider:

- withdrawing a charge;
- offering no evidence in respect of a charge, particularly when either the evidence test or the public interest test is no longer being satisfied.

When considering whether to withdraw a charge, or to offer no evidence in respect of a particular charge, Maritime Safety Queensland will ensure that:

- It makes such a decision in a timely manner; and
- Communicates that decision to the defendant and the court as soon as practicable.

2.10 Shipping inspector⁴ directions

Shipping inspector directions are useful compliance tools that allow shipping inspectors to manage:

- unsafe ships;
- movements and operations of unsafe ships;
- boardings and inspections of ships;
- unseaworthy ships, including their removal from the water; and
- contraventions of the licensing and registration requirements of the TOMSA.

The following section details the purpose and nature of written directions, declarations and notices (collectively called directions) as set out in sections 171, 172, 172AA and 172A of the TOMSA.

⁴ Shipping inspectors include officers employed by: Maritime Safety Queensland (MSQ), the Queensland Police Service (QPS) and the Queensland Boating and Fisheries Patrol (QBFP).

2.10.1 Section 171 – Direction if shipping inspector reasonable believes a ship is not safe or cannot be operated safely

Section 171 provides that a shipping inspector can require an owner or master (or a person who appears to be the master) to take an unsafe ship, or a ship that cannot be operated safely, to an anchorage, berth or mooring, to enable the ship to be further inspected and, if necessary, surveyed. Alternatively, the owner or master can be directed to keep the ship at its current anchorage, berth, mooring or place on land, for a period of time stated in the direction. A direction under this section may be given to the owner or master of any commercial, fishing or recreational ship, whether registrable or not.

Where a shipping inspector reasonably believes that life may be endangered because a ship that is being, or is intended to be, operated is not safe or is unable to be operated safely, they may issue a direction under this section.

It is important to note that the definition of 'operation' under this section is not necessarily confined to the navigation of the ship on a voyage. 'Operation' includes the commercial deployment of the ship, the technical safety and adequacy of the ship, and the choice, supervision, care and discipline of the master and crew on board the ship.

A shipping inspector may determine that a ship is not safe or cannot be operated safely when:

- critical equipment is missing or does not function;
- the condition of the hull and machinery is such that the ship is not safe;
- the ship is not appropriately crewed or equipped for its intended voyage; or
- some other factor leads the shipping inspector to believe that life may be endangered due to the condition of the ship and the intended voyage.

These directions aim to preserve life and prevent harm to the marine environment by restricting or preventing the operation of an unsafe ship or a ship that, because of its condition, cannot be operated safely. Specifically, a section 171 direction enables an inspector to prevent an unsafe ship from being placed in the water and to order that an unsafe ship be removed from the water, so that it can be properly inspected.

If a person is required to hold a licence of a particular class to operate the ship and the directed person does not hold the necessary licence, the directed person must comply with the direction by causing a person who holds the licence to take the ship to the anchorage, berth or mooring, as stated in the direction.

The maximum penalty for not complying with a direction issued under this section is 200 penalty points (currently \$22,000 for an individual and up to 5 times that amount for a corporation).

Ordinarily, a shipping inspector will utilise a direction under section 171 of the TOMSA where the condition of the ship is not hopeless; if the ship is manifestly unseaworthy and there is little or no possibility of survey or repair, then a declaration and direction under section 172AA of the TOMSA would be more appropriate.

2.10.2 Section 172 – Shipping inspector may direct that a ship be surveyed and order repairs

The directions issued under section 172 follow on from the section 171 requirement for a ship to be surveyed⁵. Under section 172, a shipping inspector may board a ship, inspect it and, if the inspector considers necessary, give a direction to the owner or master that the ship be surveyed as specified by the inspector.

In particular, if a shipping inspector is satisfied that life may be endangered because of the state of a ship, they may, by written direction, order the owner or master –

- Not to operate the ship until specified works are carried out to the ship or the ship is provided with specified equipment; or
- To operate the ship only under specified conditions that the shipping inspector considers appropriate for its safe operation.

A shipping inspector will usually only issue a direction under this section when they are sure there is a problem, but they are not entirely certain of its scope or whether other problems may exist. It is also used where a ship is intended to continue in commercial operations, but not before the full extent of the ship's problems are exposed, and the appropriate repair work performed. Where the condition of a ship or its equipment is truly hopeless, the shipping inspector will compile a report or statement that demonstrates the ship's unseaworthiness.

Under the TOMSA shipping inspectors are empowered to board ships, but they are not empowered to enter private property in order to obtain access to a ship. In some cases, a shipping inspector may need to obtain a warrant⁶ before accessing a ship through private property. Shipping inspectors also have the power to seize evidence if they believe that the object is evidence of the commission of an offence against the TOMSA.

When a shipping inspector issues a direction under this section, they will specify a date by which the ship must be surveyed. A report or certificate of compliance prepared by a marine surveyor will then be sighted by the inspector to ensure that there has been compliance with the direction.

The maximum penalty for not complying with a direction issued under this section is 500 penalty units (currently \$55,000) or one year's imprisonment. However, if a contravention of subsection (4) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or two year's imprisonment.

2.10.3 Section 172AA – shipping inspector may declare a ship is unseaworthy and must not be operated

Under section 172AA, if a shipping inspector reasonably believes that a ship is unseaworthy, they may, by written direction:

⁵ However, this section applies regardless of whether or not a direction has been issued under section 171.

⁶ *Transport Operations (Marine Safety) Act 1994*, sections 162, 163 and 164.

- Declare that the ship is unseaworthy and must not be operated, other than in a way approved by the shipping inspector;
- Require the owner or master to remove the ship from Queensland waters within a period stated in the direction and in a way approved by the shipping inspector.

A section 172AA direction enables shipping inspectors to deal with unseaworthy vessels which have the potential to cause major environmental harm or serious marine incidents.

A direction issued under this section can be used:

- to prevent unseaworthy ships from going to sea;
- to require delinquent owners of ships to remove unseaworthy ships from the water;
- as a basis for an application for an enforcement order; and
- ultimately, as a basis for Maritime Safety Queensland to remove a ship from the water and to deal with it appropriately.

A particular ship is seaworthy if it is fit and safe in all respects to meet the ordinary perils of the voyage on which it is proceeding or about to proceed. In particular, a ship is deemed to be seaworthy when it is:

- properly constructed;
- properly maintained;
- properly equipped;
- properly crewed or manned, including manned by experienced and appropriately licensed crew;
- properly supplied and its cargo and accommodation spaces are fit and safe.

Any reasonable lack of fitness of the ship in any one of these respects for the intended voyage, could render the ship unseaworthy and so warrant a direction under section 172AA of the TOMSA.

Once a ship has been declared unseaworthy, the ship should not be operated until the ship has been rendered seaworthy, unless the operation is positively required in order to render the ship seaworthy.

A maximum penalty of 200 penalty units (currently \$22,000) applies for non-compliance with a direction issued under this section. A person given a direction to remove a ship from Queensland waters will only be exempt from complying if they have a 'reasonable excuse'. If the identity of the owner or master of the ship is not known, the ship may be treated as abandoned property under section 175A of the TOMSA, and consequently sold by public auction or destroyed.

2.10.4 Section 172A – other directions

The intent of this provision is to appropriately deal with unregistered ships, contraventions of registration conditions, and unlicensed masters and crew members when ships are intercepted by shipping inspectors whilst on a voyage at sea.

Specifically, a direction may be issued by a shipping inspector under section 172A:

- where a person is operating a ship that is not registered; or
- a person is operating a ship as its master, or acting as a crew member of the ship, and the person is not appropriately licensed.

In such circumstances the shipping inspector may, by written notice, require the master of the ship:

- to take the ship to a reasonable anchorage, berth or mooring stated in the notice within the reasonable time stated in the notice; and
- to not operate the ship for any purpose other than taking it to the stated destination.

A shipping inspector may also issue a direction, under this section, where a ship is registered, but is operating in waters beyond the waters in which the ship is authorised to operate under its registration⁷.

In this case the inspector may, by written notice, require the master of the ship:

- to take the ship to waters in which it is authorised to operate under its registration (operating waters) within the reasonable time stated in the notice; and
- to not operate the ship for any purpose other than taking it to the operating waters.

A master will only be exempt from complying with a direction issued under this section if they have a reasonable excuse. The maximum penalty for failing to comply with a section 172A direction is 200 penalty units.

A direction issued under this section does not preclude other compliance action, for example, a criminal proceeding, the issue of a marine infringement notice, or administrative action. Similarly, compliance with a direction does not necessarily excuse the owner or master from any other offences that may have been committed in the circumstances, in particular, the general safety obligation against section 43 (2) (b) (i) of the TOMSA, the registration requirement under section 57 of the TOMSA and the licensing requirement under section 61 of the TOMSA. However, section 172A (5) provides that complying with the direction does not of itself constitute a contravention of section 57 of the TOMSA.

It is important to note that a direction under section 172A may only be given to the master of the ship.

⁷ This circumstance will only occur for commercial ships and fishing ships; recreational ships ordinarily do not have conditions on their registration

2.10.5 To whom can a direction be given?

If there is evidence that more than one person is the owner, or more than one person is purporting to exercise the powers of owner, then the shipping inspector will give directions to all such persons. If evidence is later provided that a particular person is not an owner of the ship, the direction may then be withdrawn.

In some circumstances it may be appropriate for the shipping inspector to issue a direction to both the ship's owner and the master in their different capacities. For instance, the master of the ship may be directed under section 171 of the TOMSA to keep the ship at its current location, for a period of time. However, the person so directed may not be the master the next day; and so to avoid issuing a direction to each new master, it may be preferable to give the same direction to the ship's owner as well.

2.10.6 When will a direction be lifted?

The issue of a certificate of compliance by an accredited marine surveyor does not of itself discharge or set aside a direction by a shipping inspector. A direction will only be lifted once the shipping inspector who issued the original direction, or another inspector who has been briefed on the facts of the case, has completed a follow-up inspection of the ship. If the follow-up inspection reveals that the ship's condition has been sufficiently improved, then the shipping inspector will issue the master/owner with a notice advising that the original direction is no longer in force.

2.11 Enforcement orders and interim enforcement orders

The chief executive, general manager or a harbour master, may apply to the District Court for an enforcement order to be issued when a person has failed to comply with any of the following –

- A direction or requirement given to the person by the general manager, a harbour master or a shipping inspector;
- An enforceable undertaking (described below) given by the person to the general manager.

The District Court may make an enforcement order, regardless of whether or not there has been a prosecution for the offence, if they are satisfied that:

- A notice offence has been committed or, unless an enforcement order is made, will be committed;
- An undertaking has been contravened or, unless an enforcement order is made, will be contravened

In situations where the District Court has not yet decided a proceeding, the Court may make an interim enforcement order on its own initiative or on application by a Maritime Safety Queensland prosecutor.

An enforcement order or interim enforcement order is issued by the District Court and may direct a person to do one or more of the following:

- To stop an activity that constitutes, or will constitute, a notice offence or a contravention of an enforceable undertaking;
- Not to start an activity that will constitute a notice offence or a contravention of an enforceable undertaking ;
- To do anything required to stop committing a notice offence or a contravention of an enforceable undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.

The District Court's power to make an enforcement order (or interim enforcement order) to stop, or not to start, an activity may be exercised whether or not –

- It appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- The person has previously engaged in an activity of the kind; or
- It appears to the court a marine incident may happen if the person engages, or continues to engage, in the activity

In addition, the District Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not –

- It appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- The person has previously failed to do a thing of the kind; or
- It appears to the court a marine incident may happen if the person fails, or continues to fail, to do the thing.

When the District Court issues an enforcement order they may also:

- direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the order; or
- make another order the court considers appropriate.

Enforcement orders (and interim enforcement orders) seek to secure compliance with marine safety legislation by providing for the legal enforcement of shipping inspector's directions and enforceable undertakings. In this way, enforcement orders and interim enforcement orders offer an alternative to prosecution and the delays and costs associated with this.

Where a respondent contravenes an enforcement order (or interim enforcement order) during the period for which the security bond was given, the District Court may order, on application by a Maritime Safety Queensland prosecutor, the forfeiture to the State of all or part of the security bond.

The maximum penalty for failing to comply with an enforcement order or interim enforcement order is 500 penalty points (currently \$55,000) or one year's imprisonment.

2.11.1 In what circumstances will an enforcement order (or interim enforcement order) be issued?

Enforcement orders and interim enforcement orders will generally be utilised in situations where:

- A contravention is ongoing;
- No other enforcement technique will prevent the ongoing contravention;
- The contravention is very serious and could have a major impact on marine safety or the marine environment in Queensland; and
- The contravention is sufficiently serious to justify the costs and inconvenience associated with obtaining the order.

2.12 Enforceable undertakings

Where the General Manager of Maritime Safety Queensland believes, on reasonable grounds, that a person has or will contravene the TOMSA, they may request that the said person give a written undertaking that they will not commit, continue to commit or repeat the act or omission. A written undertaking may cover any activity or omission for which the chief executive, general manager or harbour master has a function or power under the TOMSA.

These agreements provide an opportunity for Maritime Safety Queensland to work cooperatively with industry members, in order to facilitate positive outcomes and encourage future voluntary compliance. In many cases they also protect Queensland's marine and coastal environment from potentially irreparable harm, by preventing breaches before they occur.

When a person signs a written undertaking, they can only vary or cancel the agreement with the general manager's consent. The general manager may vary or cancel an undertaking, without the signee's consent, only if they reasonably believe:

- Before the undertaking was accepted, the person contravened the TOMSA in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the undertaking; or
- The undertaking is no longer necessary.

The District Court may issue an enforcement order to secure compliance with an undertaking, where the court is satisfied that there has been, or there will be, non-compliance unless such an order is made.

Failure to comply with an undertaking can result in a maximum penalty of 500 penalty units (currently \$55,000) or one year's imprisonment.

Conclusion

These guidelines are not intended to cover every situation comprehensively and are not intended to have legal status. They are not legally binding on Maritime Safety Queensland and do not confine, restrain or limit the discretion of Maritime Safety Queensland to take any action. They provide general guidance on how enforcement and investigation is being approached throughout Maritime Safety Queensland. More specific guidance can be obtained by reference to guidelines addressing specific pieces of legislation.

References

Environmental Protection Agency Enforcement Guidelines

Freedom of Information Act 1992

Justices Act 1886

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Maritime Safety Queensland Compliance Unit Procedures Manual, 8/04/06

Maritime Safety Queensland Registered Training Organisation (RTO) Handbook

Maritime Safety Queensland Compliance Guideline Shipping inspector directions, 14/11/07

Prosecution Guidelines of the Queensland Office of the Director of Public Prosecutions

Prosecution policy and guidelines of the Director of Public Prosecutions in New South Wales

Penalties and Sentences Act 1992

State Penalties Enforcement Act 1999

State Penalties Enforcement Regulation 2000

Transport Operations (Marine Safety) Act 1994

Transport Operations (Maine Pollution) Act 1995

Transport Operations (Road Use Management) Act 1994

Workplace Health and Safety Queensland's Compliance Enhancement Framework 2009