



Transport
for NSW

Maritime Management Centre

Marine Safety Regulation 2015 **Regulatory Impact Statement**



July 2015

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Executive Summary

The proposed *Marine Safety Regulation 2015* (Proposed Regulation) is a remake of the *Marine Safety (General) Regulation 2009* (2009 Regulation). The Proposed Regulation is made under the *Marine Safety Act 1998* (the Act). It remakes the 2009 Regulation with a number of changes that are designed to:

- promote safety, particularly the safe operation of vessels
- reduce red tape without adversely affecting safety
- harmonise with road transport law and with the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law for domestic commercial vessels), and
- improve administrative efficiency and fairness.

Proposed changes include reforms to boat driver licensing arrangements, lifejacket wear requirements, aquatic licensing provisions and registration label requirements. Changes are also proposed to address gaps in the current rules for towing, bow riding, wake boats, personal watercraft (PWC) and safe distances. Unnecessary red tape is proposed to be removed through changes to the trade plate provisions, Emergency Position-Indicating Radio Beacon (EPIRB) sticker requirements, PWC offences and the application of the *International Regulations for Preventing Collisions at Sea 1972* (COLREGS).

This document is a Regulatory Impact Statement (RIS) for the Proposed Regulation. It considers the need for and objectives of government action, alternative options to the Proposed Regulation, and the costs and benefits of the options.

Government action, in the form of a regulation, is needed in order to improve safety, protect the amenity of waterway users, remove unnecessary red tape and improve administrative efficiency and fairness. Three options are considered by this RIS for achieving the objectives: remaking the 2009 Regulation without amendment, no regulation, and the Proposed Regulation.

Option 2 (no regulation) poses significant risks to the safety of persons and property on NSW waterways. It could also cause significant economic harm to Australia by placing commercial waterway traffic at higher risk of incident. Option 2 is not considered to be feasible due to the safety and economic implications of no regulation.

Option 3, the Proposed Regulation, represents an estimated \$38.6 million in quantified benefits to the community as a whole as compared to Option 1 (remaking the 2009 Regulation without amendment), over a five-year period in 2015 dollars. This does not include numerous unquantified benefits to property, persons on vessels and in the water, government agencies and compliance officers. Option 3 is the only option that supports all of the objectives of government action.

Public consultation on the Proposed Regulation and this RIS will occur for a period of at least four weeks in July–August 2015.

1. Introduction

This chapter provides an introduction to the Proposed Regulation and outlines the need for, and content of, this RIS.

1.1 The Marine Safety Regulation 2015

Authority for making the Proposed Regulation is granted under Sections 9R, 10, 18, 19, 37, 67, 68, 68A, 69, 83, 125M and 137 of the Act. The content of each Part of the Proposed Regulation is summarised in the following table.

Table 1 – Overview of the Proposed Regulation

Part	Content
Part 1: Preliminary	Contains the commencement provisions and definitions.
Part 2: Safety of navigation	Applies COLREGS and regulates the operation and securing of vessels, signals and lights on vessels, aids to navigation and the conduct of persons on board vessels. Includes speed limit, safe distance and towing requirements.
Part 3: Special safety requirements for certain waters and vessels	Regulates the operation of high speed thrill ride activities, vessels near Lord Howe Island and vessels in Sydney Cove.
Part 4: Requirements relating to builder's plates for certain recreational vessels	Requires specified recreational vessels to have an Australian Builders Plate.
Part 5: Marine safety licences	Includes the arrangements for: <ul style="list-style-type: none">• vessel registration• aquatic licences• boat driving licences• marine pilot licences and exemption certificates• certificates of local knowledge, and• bar crossing licences.
Part 6: Safety equipment and facilities	Contains safety equipment requirements and standards for recreational vessels, including lifejacket wear requirements.
Part 7: Public ferry wharves	Regulates the inspection and maintenance of public ferry wharves.
Part 8: Alcohol and drug testing	Contains specific requirements for undertaking drug and alcohol tests.
Part 9: Penalty notices	Sets out penalty notice levels.
Part 10: Miscellaneous	Includes: <ul style="list-style-type: none">• fees• exceptions to accident reporting requirements, and• exemption provisions.

The Proposed Regulation remakes the 2009 Regulation, with a number of changes. These proposed changes are detailed in the table below.

Table 2 – Changes proposed by the Proposed Regulation

Current requirement		Proposed changes
Part 2: Safety of navigation		
Reform #1: Application of COLREGS	COLREGS, as set out in Schedule 5 to the Regulation, is adopted with modifications (the 'NSW special rules').	COLREGS as published by the International Maritime Organisation is adopted, with the NSW special rules retained.
Reform #2: Operating safely	No current equivalent provisions.	<p>The operator of a power-driven vessel must not allow a person to be on the bow of a vessel in a position that puts the person at risk of falling overboard when the vessel is making way.</p> <p>A person on a power-driven vessel must not be on the bow of a vessel in a position that puts them at risk of falling overboard when the vessel is making way.</p>
Reform #3: National Law and Navigation Act alignment	The requirements on persons on board vessels (such as keeping body parts inside vessels and obstructing navigation) apply to all vessels in NSW waters.	The requirements on persons on board vessels (such as keeping body parts inside vessels and obstructing navigation) apply to recreational and commercial hire and drive vessels only, and do not apply to Regulated Australian Vessels and other vessel regulated under the Navigation Act 2012 (Navigation Act).
Reform #3: National Law and Navigation Act alignment	No current equivalent provisions.	New power for Roads and Maritime Services to issue directions to the operation of commercial vessels in NSW waters. The directions only relate to waterway management matters prescribed under the National Law for domestic commercial vessels.
Reform #2: Operating safely	A vessel must not exceed 60 knots if a person under the age of 18 is on board the vessel.	The restriction will also apply to situations where a person under 18 is being towed (e.g. wakeboarding or waterskiing) by the vessel.
Reform #4: Wake boats	Wake boats (powered and ballasted vessels travelling at low speed that generate a large wake or wave for wakeboarding or wake surfing activities) are currently not subject to any special requirements.	Wake boats producing a large wave or wake for wakeboarding or wake surfing may be prohibited from operating in specified areas. Signs on the water will be used to identify areas where these activities are prohibited.

Current requirement		Proposed changes
Reform #5: Safe distance requirements	Vessels operating at more than 10 knots must remain at least 60m (or a safe distance) from persons in or on the water, and at least 30m (or a safe distance) from power-driven vessels, land, structures, moored and anchored vessels and other things.	<p>The 60m (or safe distance and speed) requirement will apply to all vessels, other than parasailing vessels, and also extend to dive flags (which indicate that a diver is in the water).</p> <p>In addition, vessels travelling at 6 knots or more, or which are towing a person, must remain at least 30m (or a safe distance and speed) from power-driven vessels, land, structures, moored and anchored vessels and other things.</p>
Reform #6: Revising PWC offences	PWC cannot operate in exclusion zones. A person who breaches this provision is disqualified from holding a boat driving licence.	<p>Disqualification from holding a boat driving licence for operating a PWC in an exclusion zone will be discretionary (so that it is not mandatory that the person who has committed the offence be disqualified) and the disqualification period will be reduced:</p> <ul style="list-style-type: none"> • from two years to a maximum of one year for first offence, and • from four years to a maximum of two years for second offences, and • from a lifetime disqualification to a maximum of two years for third and subsequent offences. <p>Current disqualifications will continue to apply.</p>
Reform #2: Operating safely	No current equivalent provisions.	The owner and operator of a PWC must ensure that the maximum number of persons carried on the PWC does not exceed the maximum specified by the manufacturer.
Part 5: Marine safety licences		
Reform #3: National Law and Navigation Act alignment	Hire and drive vessels are exempt from registration requirements.	Hire and drive vessels are commercial vessels regulated under the National Law for domestic commercial vessels and as such are not subject to registration requirements under the Act.
Reform #7: Trade plates	Dealer and trader vessels must display a trade plate in order to be exempt from registration.	Trade plates will no longer be issued. The exemption from registration for dealer and trader vessels will remain, but no trade plate will be required to be displayed.

Current requirement	Proposed changes	
Reform #8: Vessel registration	<p>Registration labels must be issued and displayed on the vessel.</p> <p>Registration numbers must be displayed on the vessel in accordance with requirements specified on the Registration Certificate.</p>	<p>Registration labels do not need to be issued or displayed on the vessel.</p> <p>Registration numbers will continue to be required to be displayed. The specifications for display remain the same, but will be contained in the Regulation.</p>
Reform #3: National Law and Navigation Act alignment	<p>Hull identification numbers (HINs) must be affixed to commercial vessels.</p>	<p>Requirements for commercial vessels are now governed by National Law for domestic commercial vessels.</p>
Reform #9: Aquatic licences	<p>Aquatic licences may authorise aquatic activities and the exclusive use of areas of water, for up to 12 months.</p>	<p>Aquatic licences can only be issued for temporary events (events up to 14 days long). A licence may be issued for up to one year for more than one event.</p> <p>The Minister will have greater flexibility to identify activities that do not require aquatic licences.</p>
Reform #3: National Law and Navigation Act alignment	<p>Activities authorised by hire and drive licences are not subject to the aquatic licensing provisions.</p>	<p>References to 'hire and drive licence' will be replaced with 'certificate of operation for hire and drive vessels', to align with the National Law for domestic commercial vessels. Certified hire and drive activities will remain exempt from the aquatic licensing provisions.</p>
Reform #10: Boat driving licence reforms	<p>Boat driving licences can be suspended in certain circumstances. The suspension takes effect on the day on which written notice of the suspension is given to the licence holder, or on a later day specified.</p>	<p>Boat driving licences may be suspended immediately where an offence involves:</p> <ul style="list-style-type: none"> • the use of a vessel causing death or grievous bodily harm to another person • reckless, dangerous or negligent navigation, or • operating a vessel with a middle or high range prescribed concentration of alcohol. <p>Suspension takes effect by an authorised officer issuing a notice to the person within 48 hours of the person being served with a penalty notice or charged with an offence.</p>

Current requirement		Proposed changes
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Reform #10: Boat driving licence reforms

Four classes of boat driving licences are currently issued:

- general boat driving licence
- young adult general boat driving licence
- PWC driving licence, and
- young adult PWC driving licence.

Young adult driving licences are subject to speed and other restrictions, including:

- young adult PWC driving licence holders must be accompanied by a person who is 16 years of age or older when operating a PWC at 10 knots or more.

The young adult driving licences (general and PWC) will no longer be issued. General boat driving licences and PWC licences will be issued to persons 12 years and older.

The speed and other restrictions will continue to apply to persons under 16 years of age. However, a PWC licence holder who is under 16 years of age will be required to be accompanied by a PWC licence holder who is 18 years of age or older, even when operating a PWC at less than 10 knots.

Reform #10: Boat driving licence reforms

Boat driving licences are required to operate PWC and other power-driven vessels operating at 10 knots or more.

These requirements also apply to hire and drive PWC and other power-driven hire and drive vessels that are operated at 10 knots or more.

A new exemption will apply to persons completing practical boating training for a PWC licence, provided the training is undertaken at a Registered Training Organisation.

The operator of a hire and drive PWC must hold a PWC driving licence. The operator of other hire and drive vessels that are operated at 10 knots or more must hold a boat driving licence.

Current requirement	Proposed changes
Reform #10: Boat driving licence reforms	<p>In order to obtain a boat driving licence, the applicant must have:</p> <ul style="list-style-type: none"> • completed the general boating safety course (theory component) • practical boating training, and • passed the general boating knowledge test. <p>A new process for obtaining a boat licence will focus on practical boating training and assuring an applicant’s knowledge of boating safety through the knowledge test, rather than requiring all applicants to complete a theory based boating safety course. A new free online course will be developed and made available as an additional resource for people applying for a boat driving licence.</p> <p>Alternative ways of meeting the training and examination requirements will be recognised. This could include:</p> <ul style="list-style-type: none"> • completing an accredited course conducted by the Marine Teachers Association of NSW • completing the NSW Police Force Marine Area Command Small Boats course • holding certain Yachting Australia or Royal Yachting Association qualifications • holding an interstate boat or PWC licence • holding a Surf Life Saving NSW Inflatable Rescue Boat Certificate • holding certain State Emergency Services (SES) qualifications • holding a New Zealand Boatmaster certificate, or • holding Certain Defence force qualifications.
Reform #10: Boat driving licence reforms	<p>The 2009 Regulation does not contain any requirements for organisations providing courses or practical boating training.</p> <p>Organisations providing courses will be required to be registered with the Australian Skills Training Authority and have an agreement with Roads and Maritime Services. Trainers must comply with the National Quality Council training and assessment competencies.</p> <p>Practical boating training must comply with any guidelines issued by Roads and Maritime Services.</p>

Current requirement	Proposed changes
Reform #6: Revising PWC offences	<p>A person cannot operate a PWC without holding the required licence.</p> <p>The disqualification periods for persons who operate PWC without the required licence will be reduced:</p> <ul style="list-style-type: none"> • from two years to a maximum of one year for the first offence • from four years to a maximum of two years for second offences, and • from a lifetime disqualification to a maximum of two years for third and subsequent offences, <p>and made discretionary, so that it is not mandatory that the person who has committed the offence be disqualified.</p> <p>Current disqualification periods will continue to apply.</p>
Reform #11: Marine pilot, pilotage exemption and local knowledge certification	<p>The Port Authorities were one of the bodies with responsibility for the pilotage exemption and local knowledge certification arrangements.</p> <p>The pilotage exemption and local knowledge certification arrangements are managed only by the Harbour Masters and the responsible licensing official (the Minister).</p>
Reform #11: Marine pilot, pilotage exemption and local knowledge certification	<p>A marine pilot's licence, marine pilotage exemption certificate and a certificate of local knowledge may be cancelled under a range of circumstances, including whether the holder is physically or mentally unfit to hold the licence.</p> <p>A marine pilot's licence, marine pilotage exemption certificate and a certificate of local knowledge may also be cancelled where the holder no longer holds the relevant qualification required for the licence or certificate.</p>

Current requirement	Proposed changes
Part 6: Safety equipment and facilities	
<p>Reform #12: Lifejacket wear requirements and lifejacket standards</p> <p>Lifejackets must be worn by persons:</p> <ul style="list-style-type: none"> • on canoes and kayaks operating in specified waters • on vessels crossing coastal bars • on PWC • who are less than 12 years of age and on vessels <4.8m • who are less than 12 years of age and in an open area on vessels <8m that are underway • being towed by a vessel • on small vessels in alpine waters • on off-the-beach vessels on open water • on kiteboards • on small vessels in specified circumstances. <p>A 'Lifejacket Type 1' is required unless:</p> <p>the wearer is on a kiteboard, canoe or kayak, being towed, on enclosed waters or on alpine waters, in which case a Type 1, 2 or 3 may be worn, or</p> <p>the wearer is on an off-the-beach vessel, sailboard or PWC in open waters, in which case a Type 1 or 2 may be worn.</p> <p>Lifejackets which meet specified Australian Standards, European Standards and SOLAS are identified as meeting the Type 1, 2 and 3 requirements.</p>	<p>Each person on board a vessel <4.8m must wear a lifejacket:</p> <ul style="list-style-type: none"> • between sunset and sunrise • in open waters • when not accompanied by another person 12 years of age or more, or • in alpine waters. <p>Lifejackets must also be worn by persons:</p> <ul style="list-style-type: none"> • on vessels crossing coastal bars • on PWC • who are less than 12 years of age and on vessels <4.8m • who are less than 12 years of age and in an open area on vessels <8m that are underway, and • being towed by a vessel. <p>These lifejacket wear requirements apply to all recreational vessels (including canoes, kayaks, kiteboards and sailboards) and all hire and drive vessels in navigable waters in NSW.</p> <p>The required lifejackets are:</p> <ul style="list-style-type: none"> • for vessels operating in enclosed waters, level 50S or greater • for vessels operating in open waters, 100 or greater • for kiteboard, sailboard, canoe, kayak, PWC and off-the-beach vessels, 50S or greater. <p>A 50S lifejacket is one which meets performance level 50S, 50, 100, 150 or 275 of Australian Standard AS 4758.</p> <p>A 100 lifejacket is one which meets performance level 100, 150 or 275 of Australian Standard AS 4758.</p> <p>RMS may approve other standards as meeting the 50S or 100 requirements.</p>

Current requirement	Proposed changes
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Reform #2: Operating safely	No current equivalent provisions.	The operator of a vessel must wear a 'kill switch' (an automatic engine cut-off device) if one is fitted to the vessel and the engine is on and in gear.
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Schedule 1: Fees relating to State matters		
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Reform #10: Boat driving licence reforms	Special fees for young adult boat driving and PWC licences apply.	Fees for licence holder less than 16 years of age will be set at 50 per cent of the general licence fee for that licence class.
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Reform #10: Boat driving licence reforms	Fees for PWC licences are two to three times the fee for general boat driving licences.	Fees for PWC licences will be reduced to twice the fee for general boat driving licences.
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Reform #10: Boat driving licence reforms	Concession fees are approximately half the general fees.	Concession fees will be set at 50 per cent of the general licence fee.
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Reform #10: Boat driving licence reforms	One, three and five-year PWC and general boat driving licences may be issued.	One, three, five and 10-year PWC and general boat driving licences will be able to be issued.
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Reform #13: Fees for regulatory services	The fees set out in the Proposed Changes column are current fees, but are not included in fee schedule.	<p>The following fees will be set out in the Regulation:</p> <ul style="list-style-type: none"> • new boatcode agent establishment: \$1,208 • transfer of boatcode agency: \$317 • hull identification number plates, fee for a set of 20: \$142 • hull identification number certificates, fee for pad of 50: \$31 • fix hull identification number: \$84 • validate hull identification number: \$84 • late transfer of vessel registration: \$35 • registration numbers large (set of 2): \$21 • registration numbers small (set of 2): \$11 • registration numbers (individual): \$2.
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Current requirement	Proposed changes
<p>Reform #9: Aquatic licences</p> <p>Aquatic licence fees vary depending upon whether the event is a 'standard' or 'special' event, and do not account for the commerciality (or non-commerciality) of the activity. The current fees are:</p> <ul style="list-style-type: none"> • special event (early application) 3-day licence: \$137 • special event (early application) 12-month licence: \$364 • special event (late application) 3-day licence: \$200 • special event (late application) 12-month licence: \$427 • standard event (early application) 3-day licence: \$92 • standard event (early application) 12-month licence: \$364 • standard event (late application) 3-day licence: \$155 • standard event (late application) 12-month licence: \$427. 	<p>Aquatic licence fees will be streamlined and lower fees will apply to aquatic licences for non-commercial activities. The new fees are:</p> <ul style="list-style-type: none"> • \$373 for a commercial event • \$187 for a non-commercial event, and • an appropriate market rate for events that require exclusive use of waterways.

Schedule 2: Fees relating to National Law matters		
<p>Reform #3: National Law and Navigation Act alignment</p>	<p>Roads and Maritime Services has no power to charge fees for issuing certificates of survey under the National Law (without conducting the survey), or for accrediting and auditing Registered Training Organisations under the National Law.</p>	<p>New fees will be introduced for activities carried out under the National Law, in relation to commercial vessels. These are:</p> <ul style="list-style-type: none"> • for a certificate of survey where the survey has not been carried out by a Roads and Maritime Services surveyor (\$149) • for the accreditation of a Registered Training Organisation (\$149 per hour or part of an hour) • for the auditing of a Registered Training Organisation (\$149 per hour or part of an hour).

Current requirement		Proposed changes
Schedule 8: Standard of safety equipment carried on recreational vessels		
Reform #14: EPIRB registration stickers	EPIRBs must be registered with the Australian Maritime Safety Authority (AMSA) and have an AMSA registration sticker affixed.	EPIRBs are no longer required to have an AMSA registration sticker affixed.
Schedule 11: Penalty notice offences		
Reform #3: National Law and Navigation Act alignment	The penalty level for altering a hull identification number is level 5 (\$1,500).	The penalty level will be reduced to level 3 (\$500).
Reform #6: Revising PWC offences	The penalty level for third and subsequent offences of either operating a PWC without the required licence or operating in Sydney Harbour is currently level 5 (\$1,500).	The penalty level for second offences (level 4, \$750) will apply to third and subsequent offences.
Reform #6: Revising PWC offences	No current equivalent provision.	The penalty level for the new offence of overloading a PWC is level 3 (\$500).
Reform #2: Operating safely	No current equivalent provision.	The penalty level for the new offence of 'bow riding' is level 2 (\$250).
Reform #2: Operating safely	The penalty level for not keeping body parts inside the vessel is level 1 (\$100). This applies to the operator of the vessel and to the person who fails to keep all body parts inside the vessel.	The penalty level for not keeping body parts inside the vessel will be increased to level 2 (\$250). This applies to the operator of the vessel and to the person who fails to keep all body parts inside the vessel.
Reform #2: Operating safely	The penalty level for towing more than three persons and for towing before sunrise or after sunset is level 1 (\$100).	The penalty level for towing more than three persons and for towing before sunrise or after sunset will be increased to level 2 (\$250).
Reform #2: Operating safely	There are penalty notice offences under sections 13(1) and 14 of the Marine Safety Act 1998 (reckless, dangerous, negligent navigation and operating vessel to interfere with others use of waters). These penalties are level 3 (\$500).	These penalties for offences other than negligent navigation will be removed and these offences will be determined by a court.

Current requirement	Proposed changes	
Reform #15: Safety equipment offences	The penalty level for not carrying the appropriate safety equipment is either level 1 (\$100) or level 2 (\$250) depending on whether the offence involves one or more items of equipment or lifejackets.	The penalty level for not carrying the appropriate safety equipment will be level 2 (\$250) for all offences.
Reform #12: Lifejacket wear requirements and lifejacket standards	The penalty level for not wearing the required lifejacket is either level 1 (\$100) or level 2 (\$250) depending on the circumstances.	The penalty level for not wearing the required lifejacket will be level 2 (\$250) for all offences.
Reform #8: Vessel registration	The penalty level for operating an unregistered vessel is level 2 (\$250).	The penalty level for operating an unregistered vessel will be level 3 (\$500).

Note that all fees contained in the Proposed Regulation include a CPI increase that applies from 1 July 2015.

1.2 The Regulatory Impact Statement requirements

As the Proposed Regulation deals with matters other than repeals or commencements, the Subordinate Legislation Act requires a RIS to be prepared before the Proposed Regulation can be made.

This document is a RIS on the Proposed Regulation and is intended to meet the RIS requirements of the Subordinate Legislation Act.

1.3 Methodology for preparing this Regulatory Impact Statement

This RIS has been prepared in accordance with the Subordinate Legislation Act and the Better Regulation Office's (BRO's) *Guide to Better Regulation 2009* (Guide).

In accordance with the requirements of the Subordinate Legislation Act, this RIS includes:

- a statement of the objectives sought to be achieved and the reasons for them (Chapter 3)
- identification of the alternative options by which those objectives can be achieved (Chapter 4)
- assessment of the costs and benefits of the Proposed Regulation (Chapter 5)
- assessment of the costs and benefits of each alternative option (Chapter 5)
- an assessment as to which of the alternative options involves the greatest net benefit for or the least net cost to the community (Chapter 6), and
- a statement of the consultation program to be undertaken (Chapter 7).

Pursuant to the Subordinate Legislation Act, in order for the Proposed Regulation to be made, its objectives must be reasonable and appropriate, its anticipated benefits must outweigh its anticipated costs, and it must provide the greatest net benefit or be at the least net cost to the community as compared to the range of alternative options available and considered. This RIS considers the extent to which the Proposed Regulation discharges these threshold requirements.

The BRO acts as a regulation gatekeeper, reviewing and advising on a regulation's compliance with the Better Regulation requirements. To assist agencies with this process, the BRO produced the Guide, most recently updated in 2009. The Guide includes seven principles for better regulation, against which the Proposed Regulation must be assessed.

These are:

- Principle 1: The need for government action should be established
- Principle 2: The objective of government action should be clear
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- Principle 4: Government action should be effective and proportional
- Principle 5: Consultation with business and the community should inform regulatory development
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered, and
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.

This RIS includes an assessment of the Proposed Regulation in accordance with and against these principles.

1.4 The structure of this Regulatory Impact Statement

This RIS is structured as follows:

- Chapter 2 considers the need for government action, i.e. the problem that is addressed by the Proposed Regulation
- Chapter 3 articulates the objectives of the Proposed Regulation
- Chapter 4 identifies the alternative options to the Proposed Regulation for addressing the problem identified in Chapter 2
- Chapter 5 contains the impact analysis of the Proposed Regulation and each of the other options outlined in Chapter 4
- Chapter 6 evaluates the options and provides a clear statement of the preferred option – i.e. the option that provides the greatest net benefit for, or least net cost to, the community
- Chapter 7 outlines the consultation that has already been undertaken on the Proposed Regulation and which will be undertaken on the Proposed Regulation and this RIS, and
- Chapter 8 describes the process for implementing the preferred option, the ongoing monitoring of its impact and its periodic review.

2. The need for government action

NSW has 2,140km of coastline, with NSW state responsibilities extending to 5.5km offshore. There are more than 12,000 square kilometres of navigable waters including rivers, lakes, dams and coastal waters. Approximately 231,351 registered vessels and more than 489,000 people who hold a boat or PWC driving licence use these navigable waters, as well as large numbers of small paddle and sailcraft which are not required to be registered.

These navigable waters are diverse in their nature and use. In some high traffic areas such as Sydney Harbour, small sail craft must interact safely with commercial vessels, large private motor cruisers and ferries. Rules and regulations are necessary to promote the safe and responsible operation of vessels, protect the safety and amenity of other waterway users and ensure that everyone is able to access and enjoy the waterways in NSW.

The regulated environment is also dynamic in terms of vessel construction and technology changes and the numbers of boats and persons on the water. As a result, it is vital that the regulatory arrangements are reviewed periodically to ensure that they continue to address current safety issues without imposing unnecessary red tape.

Between 2002–03 and 2011–12, there were 167 fatalities on NSW waterways which involved a recreational or commercial vessel¹ at an estimated cost to the community of \$4.3 million per fatality.² Government action is needed in order to address current gaps in the regulatory settings which impact on safety, such as the 'safe distance' rules. Government action is also required in order to simplify boat driving licensing and lifejacket wear requirements, so that compliance levels are raised and safety outcomes improved.

Government action is also needed in order to remove unnecessary red tape and outdated requirements that do not support safety, and to allow fees to be charged for new services.

This chapter identifies the need for government action in relation to each proposed change.

Reform #1: Application of COLREGS

Government action is needed to ensure that the latest version of COLREGS applies in NSW.

Reform #2: Operating safely

Government action is needed in order to address gaps in the current requirements by:

- prohibiting persons riding on the bow of a vessel in a position that places them at risk of falling overboard when the vessel is making way
- prohibiting young persons being towed (for example, waterskiing or wakeboarding) at a speed of more than 60 knots
- prohibiting the overloading of PWC
- requiring automatic engine cut-offs (a 'kill switch') to be worn where the device has one, and
- increasing penalties for not keeping body parts inside the vessel and for towing related offences.

¹ Boating Incidents in NSW Statistical Report for the 10-year period ended 30 June 2012, Maritime Management Centre, Transport for NSW.

² Best Practice Regulation Guidance Note Value of Statistical Life, Department of Finance and Deregulation, Office of Best Practice Regulation, Australian Government. \$4.3 million is in 2015 dollars.

Reform #3: National Law and Navigation Act alignment

Government action is needed in order to remove unnecessary requirements, including identification requirements for commercial vessels that are now addressed in the National Law and operational requirements for vessels regulated by the Navigation Act, to allow directions to be issued to commercial vessels in NSW and to allow fees to be charged for services provided under the National Law.

Reform #4: Wake boats

Wake boats (powered and ballasted vessels travelling at low speed) are designed to generate a large wake or wave for wakeboarding or wake surfing activities. The large wake, however, creates a large wash which can swamp other vessels and may contribute to the erosion of river banks in some areas.

Government action is needed to prohibit the use of wake boats on areas of river where there is a significant risk of swamping other vessels or of erosion from vessel wash.

Reform #5: Safe distance requirements

Government action is needed in order to strengthen the safe distance requirements and address gaps in the rules which place persons diving at risk.

Reform #6: Revising PWC offences

Government action is needed in order to address the current disparity in treatment of offences committed by persons on PWC as compared to those committed on other vessels.

Reform #7: Trade plates

Government action is needed to remove unnecessary red tape by no longer requiring dealer and trader vessels to display trade plates in order to be exempt from registration. Dealer and trader vessels will be exempt from registration requirements without displaying a trade plate.

Reform #8: Vessel registration

Government action is needed in order to remove the requirement to display registration labels. Technology changes have made registration labels an unnecessary burden.

Government action is needed to ensure ongoing compliance with the registration requirements by increasing the penalty for operating an unregistered vessel.

Reform #9: Aquatic licences

Government action is needed to ensure that aquatic licences are issued only for temporary aquatic activities and to reduce the number of aquatic activities that require a licence. Activities that require the exclusive use of waterways for longer periods should be managed through leasing and development application processes which provide for fair and equitable processes and market-driven charging arrangements.

Government action is also needed to streamline aquatic licence fees and apply lower fees to non-commercial events.

Reform #10: Boat driving licence reforms

Government action is needed in order to:

- ensure that boat driving licences of persons charged with serious safety offences can be suspended immediately where necessary to preserve safety
- remove the use of separate licences for young adults, and set appropriate fee levels for persons under 16 years of age. (Note that the conditions and restrictions on young drivers will remain the same, except for a tightening of the requirement for a PWC licence holder who is under 16 years of age to be accompanied, so this change will not adversely impact on safety outcomes.) These changes will allow applicants to obtain licences for longer durations (reducing administrative costs).
- introduce 10-year PWC and boat driving licences
- introduce a new process for obtaining a boat driving licence that will focus on practical boating training and assuring an applicant's safety knowledge through the knowledge test rather than requiring the completion of a theory based boating safety course
- provide for the recognition of prior experience and qualifications as an alternative to completing practical boating training and the knowledge test when obtaining a boat driving licence
- specify requirements for organisations that provide courses and practical boating training for a boat driving licence
- reduce fees for PWC licences. Lower PWC licence fees would encourage more people to obtain a PWC licence (improving compliance and safety outcomes) and encourage applicants to obtain licences for longer durations (reducing administrative costs), and
- set concession licence fees at 50 per cent of general licence fees.

Reform #11: Marine pilot, pilotage exemption and local knowledge certification

Government action is needed allow marine pilot licences and pilotage exemption and local knowledge certificates to be cancelled where the required qualifications are no longer held, and to ensure that Harbour Masters and the Minister are responsible for managing the pilotage, pilotage exemption and local knowledge arrangements.

Reform #12: Lifejacket wear requirements and lifejacket standards

Long-term studies have found that, in respect of recreational boating fatalities, nine out of 10 people who drowned were not wearing a lifejacket.³ Non-lifejacket wear also contributed to almost 72 per cent of all incidents.⁴

The current lifejacket wear requirements are extremely complicated and take into account the type and size of the vessel, the age of the person and the way in which the vessel is operating. Government action is needed to simplify lifejacket wear requirements, in order to increase compliance levels and improve safety outcomes.

Government action is also needed in order to apply the latest lifejacket standards, and to simplify the lifejacket wear penalty arrangements.

Reform #13: Fees for regulatory services

Government action is required in order to legislate fees for all regulatory services related to the administration of boatcode agents, issuing HIN and vessel registration.

³ Boating Incidents in NSW Statistical Report for the 10-year period ended 30 June 2012.

⁴ Maritime Management Centre statistical analysis June 2014.

Reform #14: EPIRB registration stickers

AMSA will no longer issue EPIRB registration stickers from 1 September 2015.

Government action is required to remove the requirement to display the sticker, as it will no longer be possible to comply.

Reform #15: Safety equipment offences

Government action is needed to simplify the safety equipment penalty arrangements.

3. Objectives of the Proposed Regulation

In line with the need for government action identified in Chapter 2, the objectives of the Proposed Regulation are to:

1. improve safety and environmental outcomes by:

- addressing gaps in the current requirements for speed limits, minimum safe distances, bow riding, overloading and kill switches
- allowing boat driving licences to be suspended immediately when serious safety offences have been committed
- simplifying boat driver licensing and lifejacket wear requirements, and
- reducing the impact of vessel wake on other waterway users and river bank erosion

2. remove unnecessary red tape by:

- removing the requirement to display vessel registration labels, EPIRB registration stickers and trade plates
- no longer addressing issues covered by the National Law for domestic commercial vessels and by the Navigation Act
- recognising boating experience and competence obtained through training and qualifications achieved in other marine sectors, and
- streamlining boat driver licensing processes.

3. improve administrative efficiency and fairness by:

- ensuring that the latest version of COLREGS applies in NSW
- allowing directions to be issued to commercial vessels on NSW waters
- ensuring that aquatic licences are issued only for temporary events
- reducing disqualification periods for PWC offences
- applying the latest standards to equipment
- reducing fees where appropriate and setting concession licence fees at 50 per cent of general licence fees
- ensuring fees for all regulatory services are legislated, and
- simplifying the penalty arrangements for safety equipment requirements.

4. The alternative options

Two options have been identified as alternative options to the Proposed Regulation:

1. No regulation, and
2. Remaking the 2009 Regulation without amendment.

This chapter describes these alternative options. Option 3, the Proposed Regulation, was described above in Chapter 1 of this RIS.

4.1 Option 1: Remaking the 2009 Regulation

Option 1 involves remaking of the 2009 Regulation without amendment. This is the 'status quo' 'base case' option, against which the Proposed Regulation is compared.

The *Guide to Better Regulation 2009* recommends that the status quo be used as a base against which other options are compared. The Guide also notes that the status quo can reflect an environment that is already regulated – as is the case here.

4.2 Option 2: No regulation

This option involves the repeal of the 2009 Regulation with no regulation implemented in its place. Under this option:

- The COLREGS would not apply as a NSW law, and may apply under the Navigation Act. Importantly, the 'special rules' for NSW would not apply. These address safety issues which are not adequately covered by the COLREGS, such as giving right of way to certain non-sail vessels (commercial ferries), modified flag requirements for diving activities and additional requirements for vessels in high traffic areas.
- There would be no regulation of races, events and other activities that restrict the availability of navigable waters for normal use. The Act establishes a framework for the regulation of these activities, but relies on the Regulations to prohibit or regulate their conduct.
- Restrictions on certain activities would no longer apply, including the restriction of kite-surfers and sailboards from operating in certain areas of Sydney Harbour, and the regulation of high-speed thrill rides.
- There would be no boat driving licensing system for recreational vessels in NSW. The Act establishes a requirement for a boat driver licence but the framework for the licensing regime is contained in the Regulation.
- No construction or equipment requirements would apply to recreational vessels in NSW (there would be no requirement for an Australian Builder's Plate to be affixed to a vessel).
- Lifejacket wear requirements would not apply.
- Fees could not be charged for services provided under the Act or the National Law.

5. Impact analysis

This chapter identifies the impact (benefits and costs) of each of the options. Option 3, the Proposed Regulation, is considered first.

A summary of the impact of each option is provided in Chapter 6.

5.1 Scope of impact

The following parties will be affected by the Proposed Regulation:

- all persons operating recreational and commercial vessels on NSW waterways
- all persons in or on navigable waters in NSW, including swimmers and drivers
- persons conducting events and carrying on activities on NSW waterways that are required to be licensed
- compliance officers, including boating safety officers and Water Police
- Roads and Maritime Services
- Transport for NSW.

5.2 Methodology

Only the incremental impacts of each Option – the impacts of the Option as compared to the base case – are relevant. Option 1 (remaking the 2009 Regulation) is the ‘base case’ for the purpose of this RIS. It is the ‘status quo’ option.

In line with advice from the Office of Best Practice Regulation (OBPR), the value of life cost applied is \$4.3 million (in 2015 dollars).⁵ In 2010, AustRoads recommended to Transport Ministers that the cost of serious injury be estimated at \$440,000 in 2010 prices. A 2015 dollar figure of \$497,687.71 per serious injury has been applied. Austroads also recommended that the cost of non-serious injury be estimated to at \$17,000 in 2010 prices. A 2015 dollar figure of \$19,224.93 per non-serious injury has been applied.⁶

Work-related labour costs have been estimated at a rate of \$59.85 per hour, which includes on-costs (superannuation, payroll tax) and overhead costs (rent, electricity and so on).⁷ Leisure costs have been estimated at \$27 per hour,⁸ and student’s time has been estimated at \$17.10 per hour.⁹

Where costs and benefits can be quantified, they have been estimated over a five-year period. This reflects the fact that the Regulation is reviewed every five years. A discount rate of seven per cent per year has been applied in order to identify the 2015 cost or benefit.

A table of the assumptions used to estimate costs and benefits (where they could be quantified) is contained at Appendix A.

Importantly, this RIS is not assessing the Act itself. The RIS can only consider the costs and benefits that result from changes brought about by the Proposed Regulation and the alternative options to the Proposed Regulation.

⁵ Best Practice Regulation, Guidance Note, Value of Statistical Life, Office of Best Practice Regulation, 2014.

⁶ Guide to project evaluation: part 4: project evaluation data, AGPE04/12, Austroads 2012.

⁷ Regulatory Burden Measurement Framework, Office of Best Practice Regulation, 2014.

⁸ Ibid.

⁹ NSW Better Regulation Office advices (2012 Guidance) that for unemployed persons, a rate of \$17.10 per hour should be applied. This same figure has been applied to student time.

5.3 Option 3: The Proposed Regulation

The costs and benefits of each proposed change to the 2009 Regulation are identified below.

5.3.1. Reform #1: Application of COLREGS

The proposed change involves applying COLREGS as published by the International Maritime Organisation, rather than including the text of COLREGS in a schedule to the Regulation. The special rules for NSW (which cover issues such as giving right of way to ferries) will be retained in the schedules.

This change ensures that the latest version of COLREGS applies in NSW. This change will also reduce costs for Transport for NSW by removing the need for the Regulation to be amended when there are changes to COLREGS. However, these benefits are considered to be minor and have not been quantified for the purposes of this RIS.

There are no costs associated with this proposed change.

5.3.2. Reform #2: Operating safely

Six changes to the safe operating requirements are proposed.

Bow riding and keeping body parts inside the vessels

The first two proposed changes involve prohibiting 'bow riding' (sitting on the bow of a vessel in a position that puts the person at risk of falling overboard when the vessel is making way) and increasing the penalties for not keeping body parts inside the vessel.

As there are no rails or other protections on the bow of the vessel, a person 'bow riding' is vulnerable to falling overboard. If this occurs, they are likely to be struck by the vessel or the vessel's propeller, which can lead to serious and even fatal injuries. Placing body parts outside the vessel, such as dangling legs overboard, also leaves a person in danger of falling overboard.

In the 10 years from 2002-03 to 2011-12, there were 40 fatal incidents and 81 serious injury incidents involving a person falling overboard, being hit by a vessel or a propeller injury.¹⁰ Although the number of these incidents that are directly connected to 'bow riding' and placing body parts outside the vessel is not known, these activities do increase the likelihood that a person will fall overboard. Prohibiting bow riding and increasing the penalty levels for these offences will reduce the risks of an incident occurring.

There are no costs associated with these reforms.

Overloading PWC and automatic engine cut-offs

Two changes are proposed which affect PWC:

- requiring automatic engine cut-offs (a 'kill switch') to be worn where the device has one, and
- prohibiting the overloading of PWC.

PWC are significantly over-represented in fatal and serious recreational and commercial vessel incidents. Although PWC account for only 0.5 per cent of vessel usage, between 2002 and 2012 they were involved in 2.5 per cent of fatal incidents and 12 per cent of serious injury incidents. In addition, four fatal incidents were the result of overloading; however, these involved both PWC and other vessel types.¹¹

¹⁰ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

¹¹ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

The proposed reforms reduce the risks associated with PWCs and other vessels to which a kill switch is fitted. However, as the number of incidents attributed to overloading PWC or which could have been prevented had a kill switch been worn is not known, the benefits of the proposals have not been quantified.

There are no costs associated with these reforms.

Towing young persons

It is proposed that the current speed limit of 60 knots, which applies to a vessel that is carrying a person under the age of 18, will also apply to vessels that are towing persons under the age of 18.

This amendment closes a gap in the current regulations and addresses two key risks that significantly increase the likelihood of a fatal or serious injury incident:

- towing: in the 10 years from 2002–03 to 2011–12, towing accounted for 10 fatal incidents, and were the third highest type of fatal incident. They also accounted for 64 serious injury incidents and were the highest type of serious injury incident.¹² The same trend continued in 2013–14, where 12 serious injuries involved a towing incident;¹³ and
- age: persons less than 20 years of age accounted for 8.3 per cent of fatalities in the 10 years from 2002–03 to 2011–12, and were over-represented as compared to estimated actual participation in boating activities.¹⁴

In addition, towing activities are increasing in popularity,¹⁵ which reinforces the need to address risk factors that contribute to towing-related fatalities and serious incidents.

A 2007 Victorian study of hospital-treated recreational boating injuries looked at the contributing factors to towing related injuries. It found that excessive speed was a high risk factor and that imposition of ski boat speed limits could prevent injury.¹⁶

Assuming that:

- in six per cent of towing fatalities and serious injuries the victim is 18 years or younger
- 50 per cent of these fatalities and serious injuries would be prevented if the 60 knot speed limit applied,

it is estimated that \$920,680 would be saved over a five-year period (measured in 2015 dollars).

There are no costs associated with this reform.

Changes to offences

The penalty level for towing more than three persons and for towing before sunrise or after sunset will increase from level 1 (\$100) to level 2 (\$250). As set out above, in the 10 years from 2002–03 to 2011–12, towing accounted for 10 fatal incidents and 64 serious injury incidents.¹⁷

¹² Ibid.

¹³ Boating Incidents in NSW, Statistical statement 2013–14, Transport for NSW.

¹⁴ ¹⁵ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

¹⁶ Follow up study of hospital treated recreational boating injury, January 2007, Transport Safety Victoria.

¹⁷ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

High-speed collisions between unprotected persons, or between an unprotected person and a fixed object, are more likely to occur if the operation does not comply with the time of day and maximum number of towed person requirements. Increasing the penalty levels for these offences will act as a deterrent and reduce the likelihood of a towing-related incident.

If one per cent of towing-related fatal and serious injury incidents were prevented as a result of the changes, it would save \$306,893 over five years in 2015 dollars.

There are no costs associated with this reform.

Removing penalty notices for offences under sections 13(1) and 14 of the Marine Safety Act 1998 (reckless and dangerous navigation and operating vessel to interfere with others use of waters) will require all of these offences to be determined by a court. While there will be costs associated with this change, they will be met within existing budgets. There were no penalty notices issued for these offences in 2014.

5.3.3. Reform #3: National Law and Navigation Act alignment

A number of the proposed changes are designed to better align the Regulation with the National Law for domestic commercial vessels and the Navigation Act. As the Regulation covers all vessels operating in NSW waterways, it is important to ensure that it only addresses, in relation to commercial vessels, issues outside the National Law and the Navigation Act.

The changes are:

- ensuring that the safe operating requirements for persons on board vessels do not apply to vessels regulated under the Navigation Act
- removal of HIN requirements, and the reduction of the penalty for altering a HIN
- a new power for Roads and Maritime Services to issue directions to operators of commercial vessels in NSW waters, and
- the introduction of fees for activities carried out under the National Law, and which are not already provided for in the 2009 Regulation. This includes issuing a certificate of survey where the survey is not carried out by a Roads and Maritime Services surveyor (\$149), accrediting a Registered Training Organisation under the National Law (\$149 per hour or part of an hour) and auditing a Registered Training Organisation that is (or has applied to be) accredited under the National Law (\$149 per hour or part of an hour).

The Navigation Act applies safe operating requirements to foreign vessels and Regulated Australian Vessels (generally, Australian vessels that operate internationally). The removal of these vessels from the provisions of the Regulation which cover the conduct of persons on board vessels prevents any conflict or overlap between the laws.

Commercial vessels are now subject to national vessel identification requirements. Removal of the HIN requirements ensures there is no duplication or potential conflict between the national and NSW requirements.

Although the offence of altering a HIN will remain, this is considered to be an administrative breach rather than a safety breach and does not warrant a significant penalty. Penalty levels for altering a HIN are proposed to be reduced from \$1,500 to \$500. Between 2010 and 2014, no penalty notices were issued for altering a HIN. As such, no benefits associated with this change can be quantified.

The operation of commercial vessels in NSW affects other vessels and persons on and in the water. As manager of waterways in NSW, Roads and Maritime Services needs to be able to issue directions to the operation of commercial vessels in NSW, where necessary to maintain safety. The directions can only relate to waterway management matters prescribed under the National Law, and as such will not affect or alter National System requirements.

The proposed introduction of fees for new activities carried out under the National Law is an important change. Without provision for charging fees, the services could not be provided by Roads and Maritime Services. This would mean that Registered Training Organisations approved under the National Law would need to be approved and audited by interstate delegates of the National Regulator, increasing their compliance costs.

There are no costs associated with these reforms. The vessel identification, certificate of survey and Registered Training Organisation requirements are governed by the National Law for domestic commercial vessels and not imposed by the Proposed Regulation.

5.3.4. Reform #4: Wake boats

Wake boats (powered and ballasted vessels travelling at low speed that generate a large wake, or wave for wakeboarding or wake surfing) are currently not subject to any special requirements. The large wake created by the boat allows the wake boarder or wake surfer to jump the wake and perform tricks.

The large wake also creates a large wash which can swamp and capsize other vessels and may contribute to the erosion of river banks in some areas. Studies have found that wake boats can produce waves with greater erosion potential than other types of powered recreational vessels.¹⁸

Under the proposal, wake boats used for wakeboarding or wake surfing activities would be prohibited from operating in specified areas (rivers) where wash contributes to the swamping and capsizing of other vessels and to erosion. The prohibition of wake boats would be identified through signs on the waterways. The same boat with no ballast on board (for example, when used for waterskiing) would be permitted to operate in these areas.

The benefits and costs associated with this measure cannot be quantified. It will provide Roads and Maritime Services with the flexibility to respond to safety and environmental issues associated with wake boats as they arise.

¹⁸ Marine Vessel Wave Wake: Focus on Vessel Operations within Sheltered Waterways, Gregor J Macfarlane, Australian Maritime College, University of Tasmania, 5 June 2012.

5.3.5. Reform #5: Safe distance requirements

The fifth proposed change, that all vessels (not only those operating at 10 knots or more) must remain at least 60 metres (or a safe distance) from persons in or on the water, including from dive flags, addresses a significant risk identified in the incident data.

In addition, vessels travelling at six knots or more, or which are towing a person, must remain at least 30m (or a safe distance) from power-driven vessels, land, structures, moored and anchored vessels and other things. Previously, this safe distance requirement applied to vessels travelling at 10 knots or more.

In the 10 years from 2002-03 to 2011-12, three persons were fatality hit by a vessel, and 32 persons were seriously injured. 'Persons hit by a vessel' were significantly over-represented in incident numbers in comparison to recreational vessel incident types generally. In addition, in 10.9 per cent of all fatal incidents and over 30 per cent of all serious injury incidents, the victim was either swimming, diving, snorkelling or being towed at the time of the incident.¹⁹

A Coroner's Inquest into a fatal incident involving a diver being hit by a vessel in Jervis Bay in 2013 recommended that all boat operators be required to keep a minimum distance of 60 metres or more (or if not possible a safe distance) from all persons in the water, including where an International Code Flag A (a dive flag) is displayed.²⁰

If the proposed new safe distance requirements prevented 30 per cent of fatalities and serious injuries associated with persons in the water being hit by a vessel, this would save \$3,545,599 over a five-year period in 2015 dollars.

There will also be savings associated with fewer incidents involving collisions with another powered vessel or a fixed object. In the 10 years from 2002-03 to 2011-12, 16 fatal incidents involved a collision with another vessel or fixed object, as did 84 serious injury incidents.²¹ It is assumed that the same proportion of incidents are caused by collision with another vessel or fixed object (18 per cent, or 540 incidents).

In order to estimate the cost savings associated with the reduced number of incidents, it is also assumed that in 70 per cent of incidents damage of \$5,000 has been sustained and that in 30 per cent of incidents, a non-serious injury occurs. As incidents only need to be reported where there is a fatality, injury, damage in excess of \$5,000, or damage to the environment, a large number of minor incidents go unreported and are not accounted for in these figures.

If the proposed new safe distance requirements prevented five per cent of fatalities, serious injuries, injuries and property damage associated with collisions with other vessel or fixed objects, this would save \$2,370,009 over a five-year period in 2015 dollars.

5.3.6. Reform #6: Revising PWC offences

The changes proposed involve reducing disqualification periods for operating a PWC without the required licence, and for operating a PWC in Sydney Harbour, from:

- two years to a maximum of one year for first offence, and
- four years to a maximum of two years for subsequent offences.

The current lifetime ban that applies to third and subsequent offences will be removed.

¹⁹ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

²⁰ Coroner's Inquest into the death of Matthew Peter Sykes, 2014.

²¹ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

Disqualification of the offender from holding a licence will also become discretionary. In other words, it will not be mandatory for the person who has committed the offence to be disqualified. Current disqualifications, beyond the one and two year periods being introduced, will expire.

In addition, the penalty level for third and subsequent offences (level 5, \$1,500) will be removed, and the penalty for second offences will apply (level 4, \$750).

In 2014, 34 penalty notices were issued for operating a PWC without an appropriate licence and three penalty notices were issued for operating in Sydney Harbour. These are considerably lower than in previous years, which indicates that compliance rates are improving. Significant penalties will continue to apply to the offences (between \$500 and \$750).

Given the high penalties and ability to disqualify the person from holding a licence, the reduction of the period of disqualification and lowering of penalties for third and subsequent offences is unlikely to impact on compliance rates.

There are no costs associated with these proposed changes. The 30 or so offenders each year will benefit in having a reduced disqualification period imposed, or no disqualification where the payment of a penalty alone is considered to be a sufficient deterrent from reoffending. Very few penalty notices for third (or subsequent) offences are issued each year.

5.3.7. Reform #7: Trade plates

It is proposed that dealer and trader vessels be exempt from registration requirements without being required to display a trade plate. Trade plates will no longer be issued.

Only a small number of trade plates are issued each year (16 were issued in 2014). Compliance officers can use other methods of verifying that a vessel is being used for purposes connected with the manufacture, alteration, repair, testing, sale or demonstration of a vessel - such as identifying and questioning the business owner - and trade plates constitute unnecessary red tape. They are also an administrative cost to Roads and Maritime Services who issue the plates without any power to charge a fee.

There are currently approximately 111 trade plates on issue, and 16 new trade plates were issued in 2014. In addition, 16 businesses are on record as having obtained a trade plate. Assuming that it takes on average one hour for dealers to obtain the plate (including travel time to and from a service centre), and costs Roads and Maritime Services 15 minutes and \$2 to issue a trade plate (including the cost of the plate and the administrative time), this proposed change would save \$4,852 over a five-year period in 2015 dollars.

There are no costs associated with this change. Compliance officers will be able to use other methods for determining whether or not a vessel is being used for verifying that a vessel is being used in connection with its manufacture, alteration, repair, testing, sale or demonstration.

5.3.8. Reform #8: Vessel registration

It is proposed that registration labels are no longer issued and no longer required to be displayed on recreational vessels.

On 1 January 2013 registration labels were abolished for light vehicles in NSW. The proposed change for recreational vessels reflects improvements in technology which allow Boating Safety Officers and Water Police to access registration data while in the field. Registration numbers will continue to be required to be displayed on the vessel. These display requirements will not change, but will be contained in the Regulation rather than on the Registration Certificate.

Over a 12-month period from March 2014 to February 2015, the cost to Roads and Maritime Services of producing and mailing registration labels was \$124,319. This equated to around 13 cents for producing each label and just under 60 cents to mail each label. Removing the display requirements will also save five minutes per registered vessel for the owner to change the registration label every year.²² As there are 231,351 registered vessels in NSW, the benefits of this reform over five years are estimated to be \$2,558,556 in 2015 dollars.

Changes to Roads and Maritime Services IT systems will be required in order to implement these changes. These are estimated to be in the order of \$20,000.

There is a risk that compliance rates with vessel registration requirements will decline due to a perception that the removal of the registration label display requirement reduces the likelihood that an unregistered vessel will be detected. To address this risk, it is also proposed that the penalty level for operating an unregistered vessel is increased from level 2 (\$250) to level 3 (\$500). This will act as a deterrent to operating an unregistered vessel and will encourage ongoing compliance with the registration requirements. Registration compliance rates will also be monitored to assess the impact of the registration label change.

5.3.9. Reform #9: Aquatic licences

Aquatic licences are required in order to conduct a race, competition or exhibition or any other activity that restricts the availability of navigable waters for normal use by the public. They have been used to permit both short-term and long-term activities. Long-term activities licensed through the aquatic licensing provisions include some hire and drive (PWC and fly board) operations which require the exclusive use of navigable waters.

The proposed change will limit the use of aquatic licences to temporary events. (14 days or less for each occurrence. Multiple occurrences – such as a weekly regatta – will continue to be able to be licensed through a single aquatic licence.)

Activities involving surfboards and other similar craft such as stand up paddle boards, swimming competitions and fishing competitions are not required to obtain an aquatic licence unless they pose a safety risk to vessel operators or restrict the availability of waters for normal use by members of the public. Under the proposed changes, conditions may be imposed on such activities and there would be the flexibility to identify other activities that are not subject to the aquatic licence requirements.

²² This is based on savings to businesses and customers identified in the post-implementation review of the abolition of registration labels for light vehicles, completed by Transport for NSW. Affixing a registration label to a vehicle is analogous to affixing a registration label to a vessel.

In addition, the fees for aquatic licences will be streamlined, and lower fees will apply to aquatic licences for non-commercial activities. The new fees are:

- \$373 for a commercial event
- \$187 for a non-commercial event, and
- an appropriate market rate for events that require exclusive use of waterways.

The current fees vary depending upon whether the event is a 'standard' or 'special' event, and do not account for the commerciality (or non-commerciality) of the activity.

Given the limited number of licences affected by these aquatic licensing reforms, the quantified savings are expected to be conservative.

Of the 646 aquatic licences issued on average each year, 125 are for events on Sydney Harbour which are likely to continue to be managed through the aquatic licence processes (given the risks associated with the high number of vessels operating on Sydney Harbour). Of the remaining 521 licences, those which relate to low-risk activities that do not require the exclusive use of a waterway – including some swimming and sailing events – would be classed as permitted activities and an aquatic licence would not be required.

Assuming that 15 per cent of the aquatic licences that are currently issued each year to events not on Sydney Harbour would not require a licence under the proposal, the reform would save \$83,516 in 2015 dollars over five years. This figure accounts for licence fee and time (one hour per licence) savings to the applicant, using the lowest possible fees (standard events, application submitted more than 28 days in advance). The administrative savings to Roads and Maritime Services in no longer issuing these licences are offset by the reduction in aquatic licence fee revenue.

Currently, five licences are issued to activities which continue for more than 14 days and which allow the exclusive use of navigable waters. All five are commercial hire and drive activities involving PWC or flyboards. In the future ongoing aquatic activities will be managed through leasing and development application processes ensuring that commercial operators who obtain long term exclusive use rights over waterways do so on a fair and equitable basis.

5.3.10. Reform #10: Boat driving licence reforms

A number of reforms to the current boat driving licence arrangements are proposed.

Allowing boat driving licences to be suspended immediately

This proposed change involves empowering authorised officers to suspend boat driving licences immediately where an offence involves:

- the use of a vessel in a way that causes death or grievous bodily harm to another person
- reckless, dangerous or negligent navigation, or
- operating a vessel with a middle or high range prescribed concentration of alcohol.

This proposed change will protect other persons on the water from unsafe operators. Given the high rates of compliance with the marine safety legislation in NSW (99 per cent and higher compliance rates are recorded annually), it is not expected that this power will be used on a regular basis. As such, the costs and benefits have not been quantified for the purposes of this RIS.

Removal of young adult licence class

It is proposed that separate licences for young adults (12–16 years of age) are no longer issued. Young adults would continue to be able to obtain general boat driving and PWC licences, at concession rates.

The same conditions and restrictions that currently apply to young drivers will continue to apply, except that a PWC licence holder who is under 16 years of age must be accompanied by a PWC licence holder who is 18 years of age or more. This applies even when the PWC is being operated at less than 10 knots. The current arrangements require a young adult PWC licence holder to be accompanied by a person 16 years or older when operating a PWC at 10 knots or more.

Existing young adult general and PWC licence will be recognised until they expire.

Young adult boat driving licences are issued on a yearly basis only. Under the proposed change, young adults would be able to obtain one-, three-, five- or 10-year licences, which will reduce costs for both the licence holder and government. In addition, there would be no need for a young adult licence holder to apply for a new licence when they reach 16 years of age.

Fees for licences for young adults will generally decrease, as follows:

- A 10-year licence at the concession rate (which will apply to persons 12–16 years of age) will be \$223. The cost of four annual young adult boat driving licences plus a one and five-year general boating licence is \$395.
- A five-year general boating licence at the concession rate will be \$122. The cost of four annual young adult boat driving licences and an annual one year general boating licence is \$157.
- A three-year general boating licence at the concession rate will be \$78, while three yearly young adult boating licences would be \$75.
- A one-year general boating licence at the concession rate will be \$29 as opposed to \$25 for a young adult boating licence.
- A 10-year PWC licence at the concession rate will be \$445. The cost of four annual young adult PWC licences plus a one and five-year PWC licence is \$1,097
- A five-year PWC licence at the concession rate will be \$244, and four annual young adult PWC licences and an annual PWC licence would be \$508
- A three-year PWC licence at the concession rate will be \$156, while three annual young adult PWC licences would be \$252.
- A one-year PWC licence at the concession rate will be \$58, as opposed to \$84 for a young adult PWC licence.

Note that these fees are based on the new fee arrangements and include proposed changes to concession fee rates and the introduction of a 10-year licence, which are discussed further below. They also include the CPI increase in fees that applies from 1 July 2015.

As at June 2014, there were 3,320 young adult boat driving licences and 667 young adult PWC licences issued. For general boat driving licences, 42 per cent of current licences are five-year, 41 per cent are three-year and 17 per cent are one-year, while for PWC licences, 34 per cent are five-year, 50 per cent are three-year and 16 per cent are one-year. In order to estimate the cost impact, it is assumed that:

- the same split between one, three and five-year licences applies under the proposal to licences issued to persons 12–16 years of age as currently applies to the adult general and PWC licences, except that one per cent of licence holders will choose a 10-year licence instead of a five-year licence, and
- it takes a person one hour to renew a licence (including travel time to and from a service centre), the savings would be \$301,579 over five years in 2015 dollars.

However, the current low numbers of five-year adult PWC licences can at least be partially attributed to the high costs of the PWC licence. As such, \$301,579 in quantified benefits for this proposed change should be seen as a conservative (low) estimate, as the actual number of five-year PWC licences issued to young adults is likely to be higher than 34 per cent.

There will be savings to government associated with a reduction in time taken to renew licences; however, these are offset by the reduction in fees collected.

Current speed and other conditions will continue to apply to 12–16 year old licence holders, except for a tightening of the requirement for PWC licence holders under the age of 16 to be accompanied. As such, there should be no detrimental impact on safety or other costs associated with this change.

In fact, the tightening of the requirement for PWC licence holders under the age of 16 to be accompanied addresses two key risk factors – PWCs and age:

- as set out above, although PWC account for only 0.5 per cent of vessel usage, between 2002 and 2012 they were involved in 2.5 per cent of fatal incidents and 12 per cent of serious injury incidents,²³ and
- as set out above, persons less than 20 years of age accounted for 8.3 per cent of fatalities in the 10 years from 2002–03 to 2011–12, and were over-represented as compared to estimated actual participation in boating activities.²⁴

Recognising prior experience and qualifications

The Proposed Regulation allows for prior experience and qualifications to be recognised as an alternative to completing course, practical training and examination requirements when obtaining a boat driving licence. This already occurs under administrative processes. It will now be contained in the Proposed Regulation.

As the recognition of the prior experience and qualifications already occurs through administrative processes, the benefits of this amendment are not considered to be significant and cannot be quantified. There are no costs associated with this proposed change.

Streamlining licensing processes

Applicants for a boat driving licence must currently complete a theory component (the general boating safety course), have practical boating experience and pass a test (the general boating knowledge test). The current requirement to complete a theory based boating safety course can be met either by attending a course run by a training provider, purchasing a DVD or completing an online course.

A new process for obtaining a boat licence will focus on practical boating training and assuring an applicant's knowledge of boating safely through the knowledge test, rather than requiring all licence applicants to complete a theory based boating safety course, as is now the case.

²³ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

²⁴ Ibid.

A new free online course will be developed and made available as an additional resource for people applying for a boat driving licence. This change will remove unnecessary red tape, save applicants time and money and, as improvements are made to testing and practical training, it will improve safety outcomes.

This change will reduce the cost of obtaining a boat licence by at least \$14. Eighty-three per cent of applicants currently complete a boating safety theory course at a Registered Training Provider, at a cost of \$63 to \$188.²⁵ It is assumed that 50 per cent will continue to elect to do the course at a Registered Training Provider, and 25 per cent will continue to complete the online course, despite the fact that it will not be a prerequisite to obtaining a licence. It is assumed that it takes one hour to complete the online course, and four hours to complete a theory course at a Registered Training Provider.

In the 2013–14 financial year, 24,751 new licences were issued. Assuming that the same number of new licences continue to be issued annually, this change would save \$7,784,931 over the next five years, in 2015 dollars.

There will be costs to government associated with making the theory course freely available online. These are estimated to be \$250,000, mainly for information technology.

Reforming the governance of Registered Training Providers

In order to provide training, practical courses and testing in support of the boat driver licensing regime, Registered Training Providers must currently be registered with the NSW Vocational Education and Training Accreditation Board, and must deliver courses based on core competencies developed by the former National Marine Safety Committee. These requirements are not contained in the 2009 Regulation.

It is proposed that Registered Training Providers are instead required to be registered with the Australian Skills Training Authority and have an agreement with RMS. In addition, trainers employed by the organisation would be required to comply with the National Quality Council training and assessment competencies when delivering the training.

As the existing Registered Training Providers are already registered with the Australian Skills Training Authority, this change is not expected to impose costs on industry.

It is further proposed that practical boating training be conducted in accordance with guidelines issued by Roads and Maritime Services. This is also a current requirement and will not impose additional costs on industry or Roads and Maritime Services.

There are no costs associated with this proposed change. It aligns the requirements for training providers with national arrangements and reduces compliance costs for training organisations that operate nationally.

Reducing PWC licence fees, aligning concession fees and introducing 10-year licences

It is proposed that PWC licence fees are reduced from two to three times the general boat driving licence fee to double the general boat driving licence fee.

It is also proposed that concession licence fees be set at 50 per cent of the general licence fees.

Finally, it is proposed that 10-year licences are introduced. This will harmonise boat licensing arrangements with road driver licences, and reduce red tape for licence holders.

25 Percentage of licence applicants who attend an RTP for the theory, test and practical experience components are provided in the Review of NSW Boat Driver Licensing Discussion Paper, October 2014, Transport for NSW.

Applicants for a PWC licence are effectively obtaining two licences in one – a general boating and a PWC licence. They must (currently) complete both a general boating safety course and a PWC boating safety course, obtain practical experience and complete both the general and PWC knowledge tests.

The current PWC licence fees may be preventing persons from obtaining a PWC licence and from taking a licence for longer periods. Lower fees would encourage more people to get a PWC licence (improving compliance and safety outcomes) and encourage longer licences to be obtained (reducing administrative costs).

There are currently 44,699 PWC licences in NSW. This number does not include young adult PWC licences, as the fee changes for young adult PWC licences have already been considered above. The initial fee reduction would be:

- one-year PWC licence reduced from \$172 to \$116, and from \$85 to \$58 for concession
- three-year PWC licence reduced from \$376 to \$312, and from \$198 to \$156 for concession
- five-year PWC licence reduced from \$589 to \$488, and from \$290 to \$244 for concession
- a 10-year PWC licence will be \$890 (as compared to \$1,178 for 2 x five-year licences), and \$445 (as compared to \$580 for 2 x five-year licences) for concession.

Note that the new fees include the CPI increase that applies from 1 July 2015.

Currently, 16 per cent of PWC licences (5 per cent of which are concession) issued are one-year, 50 per cent (4 per cent of which are concession) are three-year, and 34 per cent (8 per cent of which are concession) are five-year licences. The number of five-year licences issued is low compared to general boat driving licences, of which 17 per cent are one-year, 41 per cent are three-year and 42 per cent are five-year licences. This difference can be in part attributed to the high cost of five-year PWC licences.

Assuming that, in the future, the split of one, three and five-year PWC licences was the same as the split for general licences, except that one per cent of licence holders will obtain a 10-year licence instead of a five-year licence, the saving over five years (in fees to the licence holders) is estimated to be \$4,713,550 in 2015 dollars.

The changes to the concession fees for PWC are taken into account in this figure. For general licences, the changes to concessions licence fees are:

- one-year licence will increase from \$28 to \$29
- three-year licence will increase from \$73 to \$78
- five-year licence will increase from \$115 to \$122, and
- a 10-year licence will cost \$223, as compared to \$230 for two x five-year licences.

The cost impact on concession licence holders of \$339,367 over five years in 2015 dollars (note that this accounts for the impact of the CPI increase in fees that applies from 1 July 2015).

The impact of introducing a 10-year licence for PWC and concession boat driving licence holders, and associated fee reductions, have been considered in the above savings and costs. However, the time savings associated with only renewing the licence once every 10 years have not been considered. In addition, for general (non-concession) boat driving licences, the cost of a 10-year licence will be \$445, as compared to \$476 for 2 x five-year licences. Assuming that one per cent of licence holders' move to a 10-year licence instead of a five-year licence, this change will save \$132,569.

Although there will also be reduced costs to government associated with issuing fewer licences (as more PWC licence holders obtain five- and 10-year licences), these savings will be offset by the reduced revenue from issuing fewer licences.

5.3.11. Reform #11: Marine pilot, pilotage exemption and local knowledge certification

This proposed change involves:

- allowing marine pilot licences and pilotage exemption and local knowledge certificates to be cancelled where the required qualifications are no longer held, and
- ensuring that Harbour Masters and the Minister are responsible for managing the pilotage, pilotage exemption and local knowledge arrangements.

The qualifications required for pilot licences, pilotage exemption certificates and local knowledge certificates include Certificates of Competency issued under the Navigation Act, State or Territory marine pilot licences, National Standard for Commercial Vessel Part D Certificates of Competency and other equivalent certificates.

These required certificates are not perpetual and sea time and medical conditions apply to their renewal. Where the certificate is no longer held, it is not appropriate for the pilot licence, pilotage exemption certificate or local knowledge certificate to continue to be valid. The costs and benefits of this proposal are considered to be minor and have not been quantified for the purposes of this RIS.

Harbour Masters and the Minister are currently responsible for managing the pilot licensing and pilotage exemption and local knowledge certification arrangements. The removal of the 'Port Authorities' as equally responsible for these licences and certificates under the Regulation reflects the current arrangements.

5.3.12. Reform #12: Lifejacket wear requirements and lifejacket standards

The current lifejacket wear requirements are extremely complicated and take into account the type and size of the vessel, the age of the person and the way in which the vessel is operating. A lifejacket must be worn by persons:

- on canoes and kayaks operating in specified waters
- on vessels crossing coastal bars
- on PWC
- who are less than 12 years of age and on specified vessels <8m
- being towed by a vessel
- on small vessels in alpine waters
- on off-the-beach vessels on open water
- on kiteboards
- on small vessels in specified circumstances.

Under the proposal, lifejackets must be worn by each person on board a vessel <4.8m (including canoes, kayaks, kiteboards and sailboards of any length):

- between sunset and sunrise
- in open waters
- in alpine waters, or
- when not accompanied by another person 12 years of age or more.

The other times a lifejacket is required remains the same (i.e. lifejackets must be worn by persons on vessels crossing coastal bars, on PWC, less than 12 years of age on certain vessels and being towed by a vessel).

In addition, the penalty levels for not wearing a lifejacket currently vary depending on the circumstances of the offence. Under the proposal, penalty level 2 (\$250) will apply to all lifejacket wear offences, simplifying compliance and enforcement activities.

Lifejacket wear has been found to be effective in preventing boating fatalities. Since the introduction of compulsory lifejacket wear requirements for bar crossings, the annual average number of bar crossing related fatal incidents has fallen by more than 55 per cent.²⁶

The NSW Boating Incident Report states: 'Notwithstanding the various risk factors involved in vessel incidents, lifejackets remain one of the most simple and effective tools for reducing boating fatalities.²⁷ 103 fatalities in the 10 years from 2002-03 to 2011-12 were attributed to drowning, 93.2 per cent of whom were not wearing a lifejacket at the time of the incident.²⁸

This trend continued in 2013-14, when three out of four people who drowned in recreational boating incidents were not wearing a lifejacket at the time of the incident. Of the seven fatalities in 2013-14, two could possibly have been prevented had lifejackets been worn in accordance with the 2009 Regulation.²⁹ Six of the fatal incidents involved circumstances where the victim is likely to have been suddenly forced into the water (e.g. falling overboard or vessel capsized).³⁰

The current lifejacket wear requirements covered 49.3 per cent of fatalities in the period 2002-03 to 2011-12. If lifejacket wear applied to all vessels <4.8m that are underway, 59.9 per cent of fatalities would have been covered. This reflects the fact that vessels less than 4.8 metres in length were responsible for just over 50 per cent of fatal incidents.

As such, it is estimated that an additional 10 per cent of fatalities that involved a person drowning would be covered by the new lifejacket wear requirements (as compared to the current requirements). There are very high rates of compliance with boating safety requirements in NSW (over 99 per cent compliance, based on boating safety officer compliance and enforcement activities over the past five years). Given these high compliance rates, it is assumed that in 90 per cent of cases of increased coverage the fatality would have been prevented if a lifejacket had been worn. Based on these assumptions, this proposed change would save \$16,343,010 over a five-year period.

There are also proposed changes to the standards for lifejackets required to be worn or to be carried. These changes implement the latest lifejacket standards in Australia and reflect the lifejackets that are now available on the market. Transitional provisions will allow existing lifejackets to continue to be carried and worn until they need to be replaced.

²⁶ Boating Incidents in NSW, Statistical report for the 10-year period ended 30 June 2012, Transport for NSW.

^{27, 28, 29} Ibid.

³⁰ Boating Incidents in NSW, Statistical statement 2013-14, Transport for NSW.

The costs associated with these reforms are minor. All vessels must already carry an 'appropriate lifejacket' for each person on board. This means that no new lifejackets need to be purchased in order to comply with the new lifejacket wear requirements. There may be some education and campaign costs, however, education supporting increased lifejacket wear outcomes is a key priority for Transport for NSW, and campaigns would be undertaken even if the changes were not made.

5.3.13. Reform #13: Fees for regulatory services

The proposed change involves legislating the fees for services provided in the administration of boatcode agents, HIN and vessel registration. The fees for these services reflect the current arrangements, so there are no costs associated with the proposal. Legislating the fees increases the transparency of the arrangements and prevents fee increases without adequate consultation.

5.3.14. Reform #14: EPIRB registration stickers

EPIRB registration stickers were introduced as a way for beacon owners to provide marine safety inspectors with proof that the beacon has been registered with AMSA. However, AMSA has found it to be an inefficient means of checking compliance and one which is not supported by stakeholders. In addition, the stickers are often lost and need to be replaced. On 1 September 2015, the registration stickers will be retired and replaced with more modern techniques, such as mobile phone SMS communications.

Given this change in policy, the requirement for an EPIRB to have a valid registration sticker needs to be removed from the Regulation. At 31 December 2014, there were 42,702 EPIRBs registered to persons or vessels located in NSW. Although some of these could be used for bushwalking, aviation and other activities, it is assumed that generally a Personal Locator Beacon or an Aviation Distress Beacon will be used for these activities and that the majority (40,000) of EPIRBs registered in NSW are used on recreational vessels.

Assuming that it takes a person five minutes to apply for the sticker, attach the sticker to the beacon and address any issues that arise with the sticker over the two year period of validity (for example, ordering a replacement sticker if it is lost), the savings over the five years are estimated to be \$184,500 in 2015 dollars.

There are no costs associated with this change. Although there are benefits in terms of administrative savings to AMSA, they are not driving the legislative change in NSW.

5.3.15. Reform #15: Safety equipment offences

Penalty levels for safety equipment offences currently vary depending whether the offence involves one or more items of equipment. The complexity makes it difficult for compliance officers to enforce the requirements of the Regulation.

The proposed change to make all safety equipment offences a level 2 offence (\$250) will make it easier for Boating Safety Officers and Water Police to apply the provisions and advise recreational boaters of their obligations.

5.4 Option 1: Remaking the 2009 Regulation

Option 1 involves remaking of the 2009 Regulation without amendment. Under this option, the benefits of the Proposed Regulation identified above would not be realised. These are summarised in the following chapter.

5.5 Option 2: No regulation

The Regulatory Impact Statement on the 2009 Regulation found that the ‘no regulation’ option would result in a significant increase in serious injuries and boating fatalities. These could arise from:

- the non-implementation (or Commonwealth implementation) of COLREGS in NSW
- significantly reduced standards for vessels and reduced competency standards for those operating vessels
- removal of restrictions on aquatic events that could pose a safety risk to other vessels and the general public
- removal of restrictions on certain activities such as kitesurfing, sailboarding and high speed thrill rides, which can pose a risk to other vessels and persons, and
- removal of lifejacket wear and equipment carriage requirements for recreational vessels, which help reduce the consequences of an incident.

Option 2 would also require a significantly greater emphasis to be placed on education campaigns. The 2009 RIS estimated that there would be a need for 350 campaigns each year (as compared to the 80 campaigns run under the status quo option), at a significant additional cost to the taxpayer.

Option 2 would also remove the ability for Roads and Maritime Services to charge for services provided to both the recreational and commercial sector. This would reduce the provision of marine safety services and infrastructure for use by boaters.

Option 2 would not only prevent the benefits identified under Option 3 from being realised, but is not considered to be a feasible option due to the safety and economic implications of no regulation.

6. Evaluating the options

This chapter summarises the impact of each option, identifies the preferred option, and considers the preferred option against the requirements of the Subordinate Legislation Act and the Better Regulation Principles.

6.1 Option 3: Proposed Regulation

The following table provides a summary of the impact of Option 3.

Table 3 – Summary of the impact of the Proposed Regulation

Proposed change	Benefits	Costs
Reform #1: Application of COLREGS	Ensures that the latest version of COLREGS applies in NSW. Reduces costs for Transport for NSW by removing the need for the Regulation to be amended when there are changes to COLREGS.	None identified.

Proposed change	Benefits	Costs
Reform #2: Operating safely	<p>Reduced risk of persons falling overboard, being hit by the vessel and of propeller injuries as a result of new 'bow riding' offences and increased penalties for not keeping all body parts inside the vessel.</p> <p>Reduced risks associated with PWCs and other vessels to which a 'kill switch' is fitted.</p> <p>\$920,680 in quantified benefits associated with reduced fatalities and serious injuries over five years, as a result of the new speed limits for towing young persons.</p> <p>\$306,893 in quantified benefits associated with reduced fatalities and serious injuries over five years, as a result of the increased penalties for towing related offences.</p>	None identified.
Reform #3: National Law and Navigation Act alignment	<p>Removal of duplication between the National Law, Navigation Act and the Regulation.</p> <p>Allowing services to be provided under the National Law, including issuing certificates of survey (where the survey is not conducted by Roads and Maritime Services) and approving and auditing Registered Training Organisations</p> <p>Allowing directions to be issued to commercial vessels operating in NSW, where necessary to maintain safety or protect the environment.</p>	None identified.
Reform #4: Wake boats	<p>Reduced swamping and capsizing of other vessels and possibly reduced erosion in some areas.</p>	None identified.
Reform #5: Safe distance requirements	<p>\$3,545,599 in benefits over five years associated with fewer persons being hit by a vessel.</p> <p>\$2,370,009 in benefits over five years associated with fewer collisions between vessels and between vessels and fixed objects.</p>	None identified.
Reform #6: Revising PWC offences	<p>The 30 or so offenders each year will benefit in having a reduced disqualification period imposed, or no disqualification where the payment of a penalty alone is considered to be a sufficient deterrent from reoffending</p>	None identified.

Proposed change	Benefits	Costs
Reform #7: Trade plates	\$4,852 in time savings to industry and administrative savings to Roads and Maritime Services, over five years.	None identified.
Reform #8: Vessel registration	\$2,558,556 over five years in reduced costs and time savings associated with removing registration label requirements.	\$20,000 associated with information technology system costs.
Reform #9: Aquatic licences	<p>\$83,516 in fee savings over five years for events that do not require exclusive use.</p> <p>Ensuring that commercial operators who obtain long-term exclusive use rights over navigable waterways do so on a fair and equitable basis.</p> <p>Simplifying the fees for aquatic licences and applying lower fees to non-commercial activities.</p>	
Reform #10: Boat driving licence reforms	<p>Streamlining licensing processes.</p> <p>\$301,579 in fee and time savings over five years associated with removing young adult boating and PWC licences.</p> <p>\$7,784,931 in reduced costs and time savings over five years associated with removing the requirement for a boating safety course (theory course) to be completed .</p> <p>\$4,713,550 over five years associated with reduced fees for PWC licences.</p> <p>\$132,659 in reduced fees and time savings over five years associated with the introduction of a 10-year licence.</p>	<p>\$250,000 in costs associated with making the boating safety theory course freely available online.</p> <p>\$339,367 in costs over five years associated with concession fee changes (note that concession licence holders will face lower fees over the five-year period, as a result of the other fee changes).</p>
Reform #11: Marine pilot, pilotage exemption and local knowledge certification	Ensuring that a person who no longer holds the required qualification also does not hold a valid pilot licence, pilotage exemption certificate or local knowledge certificate.	Minor and not quantified.
Reform #12: Lifejacket wear requirements and lifejacket standards	<p>\$16,343,010 in improved safety outcomes over five years.</p> <p>Ensuring the latest lifejacket standards apply.</p> <p>Simplifying the penalty and enforcement regime.</p>	None identified.

Proposed change	Benefits	Costs
Reform #13: Fees for regulatory services	Increasing the transparency of the fee arrangements.	None identified.
Reform #14: EPIRB registration stickers	\$184,500 in time savings over five years associated with removing the registration sticker requirements. Removal of a requirement that cannot be complied with from 1 September 2015.	None identified.
Reform #15: Safety equipment offences	Simplifying the penalty and enforcement regime for safety equipment offences.	None identified.

Option 3 is the preferred option. It provides \$38.6 million in quantified benefits over a five-year period in 2015 dollars. This does not include the unquantified benefits identified in the table above.

The Proposed Regulation is the only option which meets all of the objectives of government action.

6.2 Option 1: Remaking the 2009 Regulation

Under this option, the estimated \$38.6 million in benefits of the Proposed Regulation identified above would not be realised.

Option 1 is not supported because it does not provide the greatest net benefit at the least net cost to the community. Option 1 also does not achieve all of the objectives of the government action identified at Chapter 3 above.

6.3 Option 2: No regulation

Option 2 is not supported because it could:

- result in a significant increase in serious injuries and boating fatalities
- create a need for a substantial increase in education campaigns, at a large cost to the tax payer, and
- remove the ability for Roads and Maritime Services to charge for services and effectively administer the Act.

Option 2 fails to discharge any of the objectives of government action.

6.4 The Subordinate Legislation Act

In order for the Proposed Regulation to be made, the anticipated benefits to the community from the Proposed Regulation must outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce that may be affected.

In addition, as compared to the range of alternative options available and considered, the Proposed Regulation must involve the greatest net benefit or the least net cost to the community.

Without considering the unquantified benefits, the cost benefit of the Proposed Regulation is estimated at \$38.6 million over a five-year period. In other words, the benefits of the Proposed Regulation outweigh its costs by an estimated \$38.6 million over a five-year period.

Option 1 is the 'base case' against which the cost benefit of the Proposed Regulation was calculated. In other words, the costs of Option 1 outweigh its benefits by an estimated \$38.6 million – not accounting for the significant unquantified costs associated with Option 1.

Option 2 is not considered to be a feasible option. 'No regulation' would have a significant safety and economic impact, and would not achieve any of the objectives of government action.

The Proposed Regulation meets the requirements of the Subordinate Legislation Act.

6.5 The Better Regulation Principles

In order for the Proposed Regulation to be made, it must demonstrate compliance with the Better Regulation Principles set out in the Guide. Each principle is considered below.

6.5.1. Principle 1: The need for government action should be established

Chapter 2 of this RIS considers the need for government action. In summary, government action is required in order to:

- address current gaps in the regulatory settings which impact on safety or the environment, such as the 'safe distance' and 'towing' rules
- remove unnecessary red tape and outdated requirements that do not support safety, and
- improve administrative efficiency and fairness, and allow fees to be charged for new services.

6.5.2. Principle 2: The objective of government action should be clear

The objectives of the Proposed Regulation correspond to the identified need for government action. The objectives are identified in Chapter 3. In summary, the objectives are to:

- improve safety and environmental outcomes
- remove unnecessary red tape, and
- improve administrative efficiency and fairness.

6.5.3. Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options

The impact of the Proposed Regulation has been clearly identified in Chapters 5 and 6.

Overall, the Proposed Regulation represents an estimated \$38.6 million in benefits in net present value to the community as a whole over a five-year period. This does not account for the unquantified benefits associated with:

- not having to update the Regulations in order to apply the latest version of COLREGS
- improved safety of PWC and other vessels with a kill switch fitted
- reduced incidence of persons being on the bow of a vessel in a position that puts the person at risk of falling overboard when the vessel is making way
- reduced PWC disqualification periods, and greater flexibility in applying disqualifications

- removal of duplication between the National Law and the Regulation
- reduced HIN penalties
- allowing new services to be provided under the National Law
- allowing directions to be applied to the operation of commercial vessels in NSW, where necessary to maintain safety
- ensuring that commercial operators who obtain long term exclusive use rights over navigable waters do so on a fair and equitable basis, and
- simplified compliance and enforcement activities for safety equipment and lifejacket wear.

The benefits of Option 3 far outweigh the benefits of Options 1 and 2.

6.5.4. Principle 4: Government action should be effective and proportional

Government intervention is required in order to achieve the objectives. The reviews undertaken of the 2009 Regulation, in particular those relating to the boat driver licensing and lifejacket wear requirements, confirmed the need for changes to the current regulations in order to address safety issues and remove unnecessary red tape.

In addition, government action is required to close safety gaps in the 2009 Regulation.

6.5.5. Principle 5: Consultation with business and the community should inform regulatory development

Consultation has occurred on the key proposed changes to the 2009 Regulation. This has included:

- the Review of NSW Boat Driver Licensing Discussion Paper, released in October 2014
- consultation with key industry stakeholders on the proposed changes to the boat driving licensing requirements, including with the Boating Industry Association of NSW, the Boat Owners Association of NSW, Yachting NSW and registered training providers, and
- consultation with key government stakeholders on the Proposed Regulation, including Roads and Maritime Services and the Marine Area Command of the NSW Police Force.

These consultations provided support for most proposals, and also resulted in their amendment to address issues raised. For example, the maintenance of the current boat driving licensing requirements for hire and drive vessels addressed industry concerns with proposed licensing reforms and an earlier proposal to require operators of all powered registered vessels to be licensed has been withdrawn.

Further consultation is to occur on the Proposed Regulation and this RIS. This is discussed further in Chapter 7 below.

6.5.6. Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered

The Proposed Regulation involves the minor reform of existing legislation in order to simplify and update the requirements.

This RIS considered the option of 'no regulation'. This option is not feasible due to its safety and economic implications.

6.5.7. Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

The Proposed Regulation will be automatically repealed five years after implementation under the Subordinate Legislation Act, and will be subject to a comprehensive review at the date.

In addition, the safety implications of the licensing requirements, lifejacket wear obligations and vessel and equipment standards will be subject to ongoing review. Transport for NSW completes a Boating Incident statistical report each year, the outcomes of which may result in the development of proposals to amend the Regulation prior to the five-year review.

The ongoing review of the Proposed Regulation is also described in Chapter 8.

7. Consultation

7.1 Consultation undertaken to date

Consultation has occurred on the key proposed changes to the 2009 Regulation. This has included:

- the Review of NSW Boat Driver Licensing Discussion Paper, released in October 2014
- consultation with key industry stakeholders on the proposed changes to the boat driving licensing requirements, including with the Boating Industry Association of NSW, the Boat Owners Association of NSW, Yachting NSW and registered training providers, and
- consultation with key government stakeholders on the Proposed Regulation, including Roads and Maritime Services and the Marine Area Command of the NSW Police Force.

These consultations provided support for most proposals, and also resulted in their amendment to address issues raised. For example, the maintenance of the current boat driving licensing requirements for hire and drive vessels addressed industry concerns with the licensing reforms and an earlier proposal to require operators of all powered registered vessels to be licensed has been withdrawn.

7.2 Consultation on the Proposed Regulation and this RIS

Public consultation on the Proposed Regulation and the draft RIS will occur for a period of at least four weeks in July-August.

Individuals and organisations will be invited to comment on the Proposed Regulation in the following ways:

- publication of a notice in the Sydney Morning Herald and the Daily Telegraph
- publication of the Proposed Regulation and this RIS on the Transport for NSW website, and
- letter of notice and invitation to comment on the Proposed Regulation and this RIS sent to key stakeholders.

Issues raised in submissions on the Proposed Regulation will be taken into account in the finalisation of the Regulation.

8. Implementation and review

8.1 Implementation

The Proposed Regulation will take effect on 1 December 2015.

8.2 Review

The Proposed Regulation will be automatically repealed on 1 September 2021, and will be subject to a review before this date.

In addition, the safety implications of the licensing requirements, lifejacket wear obligations and vessel and equipment standards will be subject to ongoing review. Transport for NSW completes a Boating Incident statistical report each year, the outcomes of which may result in the development of proposals to amend the Regulation.

Appendix A: Summary of assumptions

Proposed change	Assumptions
Reform #2: Operating safely	<p>One towing-related fatality and 6.4 towing-related serious injuries per year.</p> <p>In six per cent of towing fatalities and serious injuries the victim is 18 years or younger 50 per cent of these fatalities and serious injuries would be prevented.</p> <p>One per cent of towing fatalities and serious injuries would be prevented as a result of the increases in penalties for towing-related offences.</p>
Reform #5: Safe distance requirements	<p>0.3 fatalities and 3.2 serious injuries where a person in the water is hit by a vessel. Reduction of 30 per cent of these fatalities and serious injuries per year.</p> <p>1.6 fatalities, 8.4 serious injuries, 16.2 injuries and 37.8 incidents (costing \$5,000 in property damage per year) where a vessel collides with another vessel or a fixed object. Reduction of five per cent of these incidents.</p>
Reform #7: Trade plates	<p>Sixteen trade plates issued per year. One hour saved by trade plate owner; \$2 and 15 minutes per plate saved for RMS.</p>
Reform #8: Vessel registration	<p>Savings to RMS of 10 cents per registered vessel, and five minutes to the owner of the registered vessel.</p> <p>\$20,000 in IT costs to Roads and Maritime Services</p>
Reform #9: Aquatic licences	<p>78.15 aquatic licences per year will be 'permitted activities' and no longer require a licence. One hour saved per licence, plus licence fees (40 per cent annual licences, 60 per cent three-day licences).</p>

Proposed change	Assumptions
Reform #10: Boat driving licence reforms	<p>For the general licence: 17 per cent are one-year (15.2 per cent of which are concession), 41 per cent are three-year (10.9 per cent of which are concession), 41 per cent are five-year (15.2 per cent of which are concession) and one per cent are 10-year licences (15 per cent of which are concession)</p> <p>For the PWC licence: 16 per cent are one-year, 50 per cent are three-year, 33 per cent are five-year and one per cent are 10-year.</p> <p>It takes one hour to obtain and renew a licence.</p> <p>Online course costs \$14 and takes one hour. Online test costs \$32 and takes one hour. RTP course (including theory, practical training and test) costs \$285 and takes six hours. RTP course (excluding test) is \$125.50 at takes four hours.</p>
Reform #10: Boat driving licence reforms	<p>One per cent of licence holders will move from a five-year licence to a 10-year licence.</p> <p>\$250,000 in costs to make the boating safety course freely available online.</p>
Reform #12: Lifejacket wear requirements and lifejacket standards	<p>10.3 fatalities each year attributed to drowning. Increased coverage of 10 per cent. 90 per cent reduction in fatality where coverage is increased.</p>
Reform #14: EPIRB registration stickers	<p>It takes five minutes every two years to meet the sticker obligations.</p>

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