

Transport  
for NSW

# Marine Safety Regulation 2016 Discussion Paper

October 2022

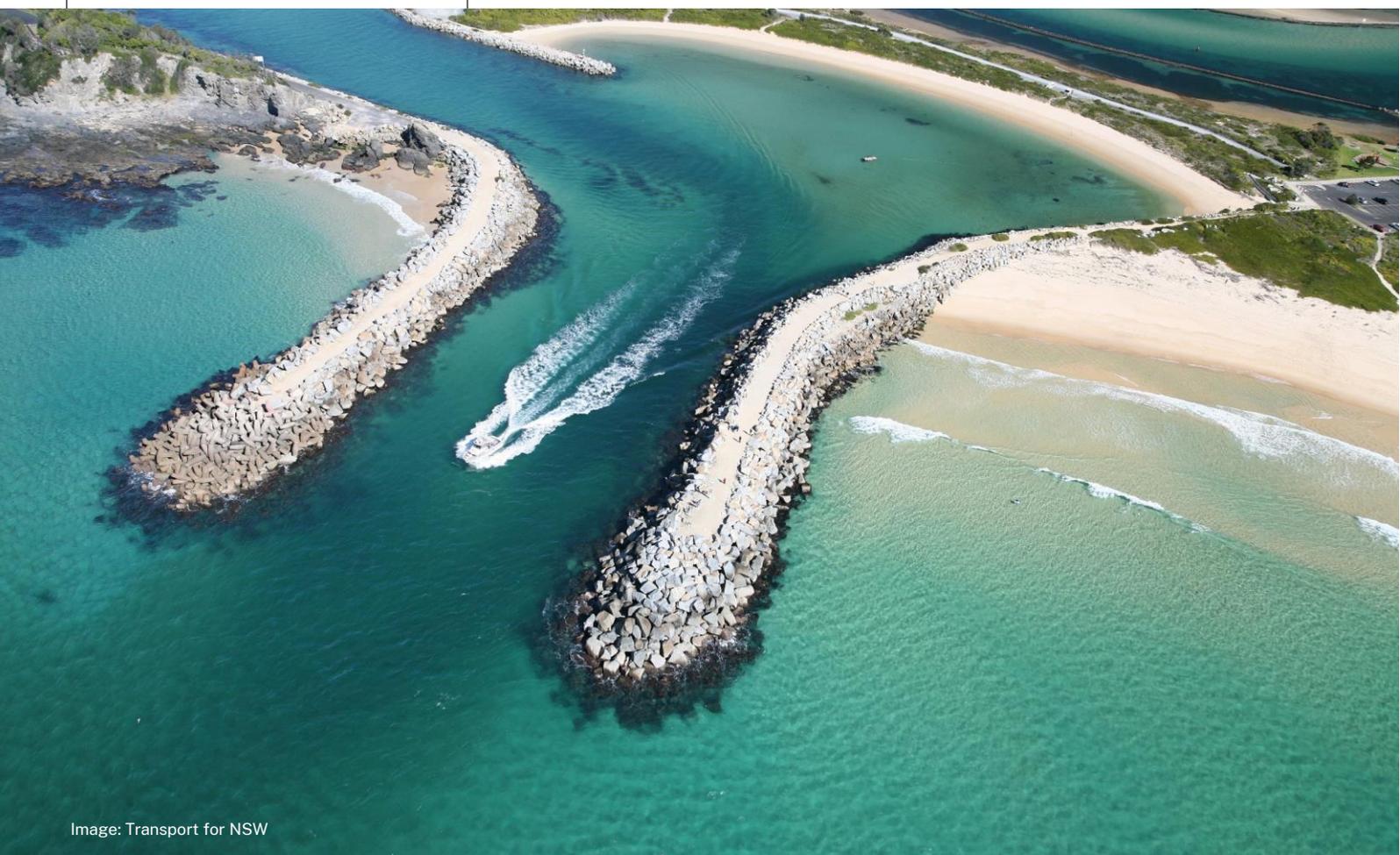


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Transport for NSW and each of its operating agencies, recognises Aboriginal and Torres Strait Islander peoples, as the First Peoples of Australia. Acknowledging their continuing spiritual, cultural, social and economic connection to our lands and many waterways. We recognise the Aboriginal cultural landscape values of waterways, the survival of freshwater and saltwater culture in NSW and the importance of waterways to the health and wellbeing of Aboriginal people.



# 1. Foreword

The Marine Safety Regulation 2016 (MSR) is made under the *Marine Safety Act 1998* (MSA). The MSR sets out the rules relating to the application of the MSA and supports delivery of its objectives. The MSR provides for the safe operation of ports and other waterways; promotes the responsible operation of vessels in those waters to protect the safety and amenity of other users of those waters and the amenity of occupiers of adjoining land; and provides a framework for the enforcement of marine legislation and for managing investigations.

In accordance with the *Subordinate Legislation Act 1989*, all statutory rules including regulations must be remade or repealed every five years. The MSR was due for repeal in 2021, however, the Governor of NSW granted a postponement under the Subordinate Legislation (Postponement of Repeal) Order 2021 to 1 September 2023.

The remake presents the opportunity to undertake a comprehensive review of the MSR to ensure it is meeting the objectives of the MSA, while identifying opportunities to improve the regulation to ensure it is modern, effective, minimises red tape and promotes administrative efficiency, consistent with the principles in the NSW Government Guide to Better Regulation.<sup>1</sup>

A number of potential amendments have been identified as part of the first stage of this review. The purpose of this issues paper is to seek public comment on these proposals and other potential amendments to the MSR and to gather information on other issues that stakeholders may wish to raise. Some of the proposals raised in the issues paper would require a change to the MSA. The potential amendments presented in this document are intended to gather feedback from key stakeholders and do not represent formal views of the NSW Government.

## 1.1 Definitions

This paper uses the below terms and abbreviations.

Abbreviations	Description
ABP	Australian Builders Plate
ATP	Authorised Training Provider
AMSA	Australian Maritime Safety Authority
BSO	Boating Safety Officer
COLK	Certificate of Local Knowledge
COLREGS	Convention of the International Regulations for Preventing Collisions at Sea 1972
DCV	Domestic Commercial Vessel
LOA	Length over all
MARPOL	International Convention of the Prevention of Pollution from Ships 1973/78
MO	Marine Order
MPA	<i>Marine Pollution Act 2012</i>
MSA	<i>Marine Safety Act 1998</i>
MSP 2021	Maritime Safety Plan 2021

<sup>1</sup><https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>

MSP 2026	Maritime Safety Plan 2026
MSR	Marine Safety Regulation 2016
National Law	<i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth)</i>
Navigation Act	<i>Navigation Act 2012 (Cth)</i>
PAMA Act	<i>Ports and Maritime Administration Act 1995</i>
Port Authority	Port Authority of New South Wales
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
POTS Act	<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)</i>
PSOL	Port Safety Operating Licence
PWC	Personal watercraft
RAV	Regulated Australian vessels
RTO	Registered Training Organisation
Transport	Transport for NSW
the Act	<i>Marine Safety Act 1998</i>
the Regulation	Marine Safety Regulation 2016
VTS	Vessel Traffic Services
WAL	Waterway Activity Licence

## 2. Consultation

### 2.1 How to make a submission

Interested parties are invited to submit written comments on the MSR, in particular on the questions raised in ‘Section 5, Issues to be considered’, to Transport for NSW (Transport).

Comments and suggestions may also be provided on individual matters raised in the Discussion Paper or on the MSR as a whole. The consultation period is eight weeks. Submissions can be made:

**By website:** <https://www.haveyoursay.nsw.gov.au/marine-safety-regulation>

**By email:** [msr.consultation@transport.nsw.gov.au](mailto:msr.consultation@transport.nsw.gov.au)

### 2.2 What will happen with my submission?

Transport will consider all feedback received to inform potential amendments to the MSR.

Transport will refer to the NSW Guide to Better Regulation when considering submissions received on this discussion paper, including whether there are clear obligations and accountabilities, the impacts on customers and other stakeholders as well as whether the proposed changes would be effective in achieving the objects of the primary legislation. Transport will also consider the relationship between the provisions of the MSA and MSR and the broader suite of maritime legislation, both within NSW and nationally, such as *Navigation Act 2012 (Cth)*, *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and relevant Commonwealth Marine Orders.

Submissions to the discussion paper will not be published, however, parts of any feedback provided may be included in a public review report. Please advise us if you do not wish to have your personal details or any part of your submission included in the public report. Automatically generated confidentiality statements in emails are not sufficient for this purpose. Note that even if you state that you do not wish certain information published, there may be legal circumstances that require the NSW Government to release that information (for example, under the requirements of the *Government Information (Public Access) Act 2009*).



## 2.3 NSW Government Better Regulation Principles

The [NSW Government Guide to Better Regulation](#) sets out seven Better Regulation Principles, designed to assist in the creation of good regulation that is reflective of good policy development and minimises the administrative burden for our community. This remake is being undertaken in accordance with those principles. This will ensure that the remake will improve the regulation to ensure that it is effective, reflective of the modern operating environment, provides a clear framework for stakeholders, minimises red tape and promotes administrative efficiency.

**Principle 1:** The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

**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 (using all available data) 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, modernisation or consolidation of existing regulation should be considered.

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

### 3. Context and background

Transport is responsible for the management of 2,140km of coastline and more than 12,800 square kilometres of navigable waters including rivers, lakes, dams and coastal waters. As of 1 July 2022, there were 462,097 current general boating licences, 80,697 personal watercraft (PWC) licences and 239,877 recreational vessel and PWC registrations in NSW. There are also an increasing number of vessels using the waterways that do not require registration such as off-the-beach sailing craft, canoes, kayaks and surf skis.

Commercial shipping is also an important feature of NSW waterways, with the State's six working ports contributing more than \$6 billion to NSW's economy each year. The Port Authority of NSW (Port Authority) and Transport have responsibility for the safe navigation of commercial shipping. There are over 6,000 visits from trade and cruise vessels each year, with the ports of NSW supporting businesses and employing thousands of people.<sup>2</sup>

Domestic commercial vessels (DCVs) are used in connection with a commercial, government or research activity and form an important component of the NSW economy. Although the safety standards and requirements for these vessels are set out in the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* there are a number of provisions in the MSR that relate to DCVs. The Australian Maritime Safety Authority (AMSA) and Transport Maritime have entered into a formal partnership agreement to deliver compliance and enforcement activities associated with the operation of DCVs. Under this partnership Transport undertakes targeted safety audit inspections of DCVs plus on-water safety interactions delivered by Boating Safety Officers (BSOs).

The NSW Government is committed in the Future Transport Strategy to zero trauma on NSW waterways by 2056.<sup>3</sup> In 2018 the NSW Government released the Maritime Safety Plan 2021 (MSP 2021) which provides the coordinated strategic framework aimed at reducing trauma on NSW navigable waterways. MSP 2021 set out 81 actions aimed at reducing fatalities and serious injuries by 30 per cent by 2026. It also establishes the foundation for the long-term target of zero fatalities on NSW waterways by 2056.



Image: Transport for NSW

The Maritime Safety Plan 2026 (MSP 2026) builds on the MSP 2021 with further actions and countermeasures to reduce trauma for all waterways users. The actions are aligned with the internationally-recognised Safe System approach to prevent and manage potential harm. The coordination of efforts across all NSW waterways and all vessels and their operators is important to ensure an ongoing reduction in fatalities and serious injuries. The NSW Freight and Ports Plan 2018-2023<sup>4</sup> also contains a series of actions to support safety in NSW ports.

<sup>2</sup> <https://www.portauthoritynsw.com.au/corporate/about-us/>

<sup>3</sup> <https://future.transport.nsw.gov.au/>

<sup>4</sup> <https://future.transport.nsw.gov.au/plans/nsw-freight-and-ports-plan-2018-2023>

The framework for marine safety is provided for both by the legislative framework for all vessels and the Maritime Safety Plan for recreational vessels. The MSP 2026 contains four priority areas with key actions.

### **Priority Area 1: Safer lifejacket wear and equipment**

Having the right safety equipment and knowing how it works is essential in dealing with unexpected situations or emergencies. The equipment required in NSW depends on the vessel you're on and where you are undertaking your voyage. Lifejackets are a particularly important piece of safety equipment, with and not wearing one is the leading cause of fatal incidents in NSW. Other safety equipment also plays a critical role in managing the safety of NSW boaters, particularly when in higher-risk, offshore environments.

### **Priority Area 2: Safer boating through technology**

Technology has facilitated safety improvements across all aspects of the Safe System in maritime and now makes it much easier to prepare, anticipate and respond to risk on the waterways. Technology continues to evolve, and we are seeking to accelerate the adoption of future advances in technology to deliver both an enhanced boating experience and, more importantly, further safety improvements.

### **Priority Area 3: Safer waterway access and infrastructure**

All boaters start and end a day on the water through access to infrastructure. Whether launching a tinnie at one of the state's 700+ boat ramps, rowing out to one of the 23,000 moorings or jumping on board a whale-watching vessel from a public wharf, all of these boaters rely on safe and convenient access.

### **Priority Area 4: Growing our safety culture together**

Building a strong and positive safety culture is a joint responsibility. All waterway users need to have safety foremost in their minds when venturing out. We will use a combination of education and regulatory tools to work with the boating community and our safety partners to drive behaviours that lead to improved safety outcomes.

Many of the proposals identified in this remake reflect implementation of the actions in MSP 2021 and planned in MSP 2026.

## **4. The Marine Safety Regulation 2016**

### **4.1 Context of the Regulation**

The MSA is part of the suite of regulatory instruments for maritime activity in NSW. In addition to the MSA, the *Ports and Maritime Administration Act 1995* (PAMA Act), *Marine Pollution Act 2012* (MPA), and associated statutory instruments provide the legislative framework for maritime and port activity in NSW.

#### **4.1.1 Marine Safety Act 1998**

The MSA is the primary piece of legislation related to the safety of navigation on waterways in NSW. It encompasses the safe operation of vessels in ports and other waterways, promotes the responsible operation of vessels to protect the safety and amenity of other waterways users and

the amenity of those on adjoining land. The MSA also provides a framework for enforcing marine legislation as well as for investigating marine accidents and any actions resulting from their investigation. On commencement, the MSA consolidated a number of pieces of marine safety legislation in NSW by repealing the *Maritime Services Act 1935*, the *Navigation Act 1901*, the *Commercial Vessels Act 1979* and certain other marine legislation.

An overview of the MSA is at Appendix 1. The full text can be viewed at [Marine Safety Act 1998 No 121 - NSW Legislation](#).

#### **4.1.2 Ports and Maritime Administration Act 1998**

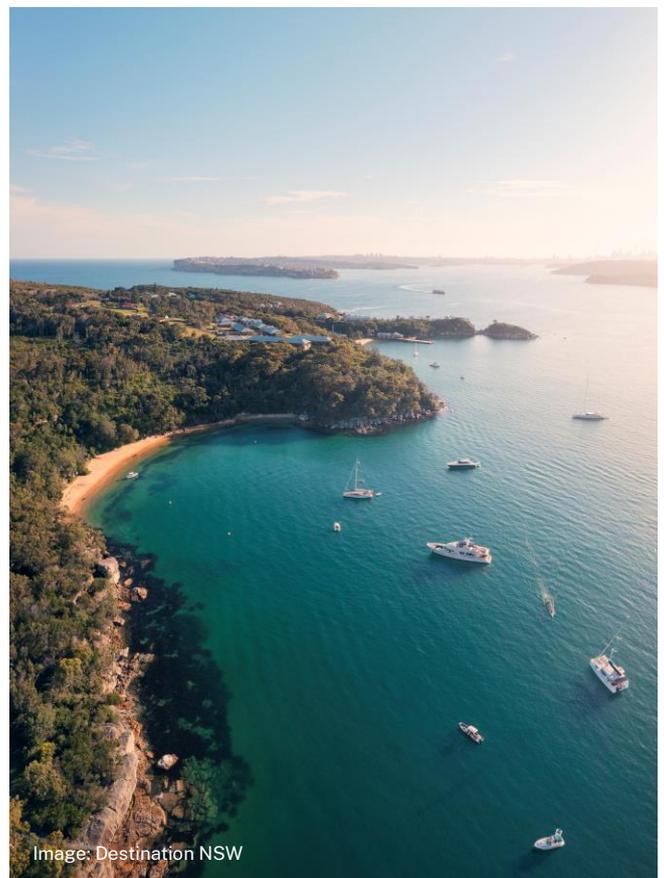
The PAMA Act sets the framework for ports and maritime management across NSW, including relevant functions of the Port Authority, the two private port operators (Port of Newcastle and NSW Ports) and Transport. It also specifies the marine safety functions of the Minister and contains provisions relating to the management of wharves and moorings, port price monitoring and the regulation of parts of the port supply chain. The PAMA is relevant for the recreational and domestic commercial vessel sectors, international trade and passenger vessels.

The Port Safety Operating Licence (PSOL) allocates and sets performance standards for some functions under the MSA to Port Authority. These functions give effect to the regulatory framework as provided for in the MSA. An Independent Review of the PAMA Act and the Port Botany Landside Improvement Strategy (PBLIS) is currently underway.

#### **4.1.3 Marine Pollution Act 2012**

The MPA is NSW's key legislative instrument regulating marine pollution discharges from vessels in NSW State waters. The objectives of the MPA are to give effect in NSW waters to Australia's ratification of the International Convention for the Prevention of Pollution from Ships (MARPOL) which is the main international convention for addressing ship sourced pollution. NSW gives effect to Annexes I to V of MARPOL while Annex VI of MARPOL deals with air pollution from ships and is implemented by Commonwealth legislation only.

The Commonwealth *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) (POTS Act) and the *Navigation Act 2012* (Cth) give effect to MARPOL, as well as subordinate legislation in the form of Marine Orders. Marine Orders adopt international changes to technical and operational standards for maritime safety and environmental protection to ensure Commonwealth legislation is kept up to date.<sup>5</sup> The MPA sets offences relating to five MARPOL pollutants: oil, noxious liquid substances, harmful substances in packaged form, sewage and garbage. The *Protection of the*



<sup>5</sup> <http://www.amsa.gov.au/about/regulations-and-standards-vessels/how-marine-orders-are-created>

*Environment Operations Act 1997* (POEO Act) has a water pollution offence which makes it an offence for a person to pollute 'any waters'.

The MPA also includes a number of provisions related to marine pollution that are not included in MARPOL, such as prevention of pollution from transfer operations, insurance requirements, Ministerial powers to respond to pollution incidents and recovery of clean-up costs following a pollution incident.

#### 4.1.4 National Law

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (National Law) replaced eight federal, state and territory laws with a single regulatory framework for the certification, construction, equipment, design and operation of DCVs inside Australia's exclusive economic zone.<sup>6</sup>

## 4.2 Parts of the Marine Safety Regulation 2016

On 1 July 2016, the MSR was made under the MSA, replacing the Marine Safety (General) Regulation 2009. The MSR is the statutory instrument beneath the MSA and is the key instrument in regulating recreational boating and port safety in NSW.

The MSR is made up of seven Parts and 13 Schedules that cover a range of maritime safety related areas such as safety of navigation, marine safety licences and safety equipment and facilities. An overview of the MSR is at Appendix 2. The full text can be viewed at [Marine Safety Regulation 2016 – NSW Legislation](#).

## 5. Proposals for consideration

This section of the discussion paper outlines a number of proposed amendments to the MSR. These proposed amendments have been identified during the first stage of an internal review of the MSR and reflect known issues in the current operating environment. The proposals have been grouped into four themes that reflect the primary objective of the proposals. The discussion outlines the overarching purpose of the proposed amendments in supporting delivery of the objectives of the MSA and the potential to improve the regulatory framework.

The proposals and questions raised in this section are intended to prompt feedback from stakeholders. **They do not reflect the formal views of the NSW Government.**

### 5.1 Safer recreational boating

Reducing preventable recreational boating fatalities and serious injuries is a priority, particularly preventable drowning and trauma incidents. As of 1 July 2022, there were 542,742 general boating licence and PWC licence holders in NSW. Over the past 10 years to 30 June 2021, there were 146 fatalities and 646 serious injuries in recreational boating incidents in NSW. Hospital statistics reported via NSW Health suggest an even greater number: 3,386 serious injuries in the past ten years relating to recreational boating.<sup>7</sup>

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<sup>6</sup> An exclusive economic zone (EEZ) is a sea zone out to 200 nautical miles prescribed consistent with international convention over which a sovereign state has special rights. It excludes the territorial sea, defined to mean the area 12 nautical miles outwards from the territorial sea baseline.

<sup>7</sup> Transport Boating Incidents Statistical report for the 10-year period ending 30 June 2020

Part 2 of the MSR relates to safety of navigation, including conduct on board vessels, the operation and securing of vessels, obstruction of navigation, speed limits, safe distances, towing, personal watercraft, and alcohol and other drug use.

MSP 2026 sets out the NSW Government's continuing initiatives to achieve the long-term vision of zero fatalities and serious injuries on NSW waterways by 2056. To support that vision, it is important to ensure that the legislative framework is up to date. The proposed amendments under this theme seek to promote improved safety outcomes and deliver the Plan's 2026 targets of reducing fatalities and serious injuries on NSW waterways.

#### Question 1

What aspects of the current MSR do you believe could be improved?

### 5.1.1 Keeping all parts of the body securely and within a vessel when underway

Currently, clause 8 of the MSR requires that a person must not extend any part of their body outside the vessel's perimeter when underway. Clause 8 also lists specific parts of the vessel on which a person must not be when the vessel is underway, including the swim ladder, swim platform, transom, or bow, where the person may be at risk of falling overboard. Over time, this list of vessel parts has increased and could be simplified for both the customer and the regulator.

**Proposal:** Replace the current list at clause 8 of the MSR with a general requirement that the operator should not get underway until all passengers are "secure and within the vessel", and a requirement on passengers to remain "securely and within the vessel".

#### Question 2

Will the above proposal simplify requirements for keeping all parts of the body securely and within a vessel when underway?

### 5.1.2 Australian Builders Plate (ABP) and major vessel modifications

The ABP is an information plate attached to most new powered recreational boats, including imported boats. From 5 June 2021, new vessels are required to be fitted with ABPs in compliance with ABP Standard Edition 5. ABP information must be determined by a competent person (typically the boat manufacturer) in compliance with relevant national or international technical standards. Clause 13 of the MSR sets out current requirements in relation to the engine power rating, including maximum power capacities.

To address instances of catastrophic vessel failure associated with engine modifications resulting in overpowered vessels, it is proposed to require a physical inspection by a qualified person (refer MSR cl 67) when major physical modifications are made to vessels. This is to ensure compliance with the relevant Australian Standard, section 2.6 of AS 1799.1:2021, Small craft, which specifies maximum power capacities for vessels. This will consist of a visual inspection of the modification by a qualified person.

**Proposal:** Require visual inspection by a qualified person if major modifications are made to a vessel to ensure compliance with the ABP and corresponding Australian Standard, regarding maximum power capacity for vessels with an inboard or sterndrive installation, before a new ABP is issued.

#### Question 3

Do you have any comments on introducing a requirement for major vessel modifications to be physically inspected by a qualified person for compliance with the ABP?

### 5.1.3 New administrative exemptions for events when under aquatic licence

Aquatic licences are granted by Transport to support the safe operation of temporary events such as aquatic events, competitions, exhibitions or any other activity which affect the general public's use of navigable waters.

For some aquatic licence events, such as paddle or sailing races, the carriage of full safety equipment that are required for general boating may be impractical and unnecessary if dedicated safety craft are in attendance in case of an emergency. When aquatic licences applications are assessed and granted by Transport, it is current practice to grant an exemption for carriage of a lifejacket if dedicated safety craft are in attendance. To help reduce the administrative burden on both the organiser and the regulator, this exemption could be added into the MSR, saving organisers time from having to apply for the exemption under each aquatic licence.

Similarly, it is current practice for aquatic licences to include exemptions to minimum distance-off requirements. The MSR establishes minimum distances to be maintained by vessels on NSW waterways from other vessels, land, structures and other things, varying between 30 and 200 metres. This requirement is impractical and unnecessary for certain aquatic events such as sailing and powered vessel races, when a vessel is supporting divers, swimmers, non-powered vessels or sailing vessels.

It is also current practice to grant participants who are under 12 years old an exemption from licensing requirements, as only people over 12 years are eligible for a young adult restricted licence.

In each of the above three circumstances, exemptions are manually provided in the aquatic licence application process for every application. The expansion of existing exemptions in the Regulation to cover these circumstances will cut red tape by reducing an unnecessary administrative burden on both Transport and its customers.



**Proposal:** Add the following three exemptions to the MSR when operating under aquatic licence:

- power vessels to carry a lifejacket if safety craft are in attendance;
- distance-off requirements; and
- licence requirements for participants under 12 years old.

#### Question 4

To what degree do you support introducing exemptions, when under an aquatic licence, for:

- power vessels to carry a lifejacket if safety craft are in attendance;
- distance-off requirements; and
- licence requirements for participants under 12 years old?

#### 5.1.4 Clarification of powers relating to removal of obstructions to navigation

Clause 24 of the MSR provides for the disposal of obstructions to navigation from NSW waterways. This provision complements section 16 of the MSA, which provides for the removal of those obstructions. Currently, there are difficulties enforcing the removal and disposal of obstructions to navigation when the obstruction is a vessel, and the last registered owner of the vessel claims that they are no longer the owner.

It is proposed to amend clause 24 to allow the Minister to identify the owner of the obstruction to navigation and to broaden the definition of an object that causes obstruction to capture vessels. An option being considered is to align with the definition in Western Australia which refers to an object likely to be a danger to navigation or to port facilities, or harmful to the environment.<sup>8</sup>

**Proposal:** Update provisions to help identify the ownership of an unregistered vessel that has no master on board and broaden the definition of an obstruction to navigation to include objects likely to be a danger to navigation or to port facilities, or harmful to the environment.

#### Question 5

Do you support the proposed clarification of provisions in the MSR relating to removal of obstructions to navigation?

#### 5.1.5 Licensing framework for young and inexperienced personal watercraft drivers

As of 1 May 2022, there were 2,142 PWC licence holders under the age of 16 in NSW, and 3,989 PWC licence holders between 16 and 18 years. Current restrictions on young adult licences are:

Licence holders under age 16 years must not drive a PWC or vessel:

- at a speed greater than 20 knots (approximately 37km/hour), or
- in any race, display, regatta, exhibition or similar operation, or
- between sunset and sunrise, or
- while the vessel is towing anyone.

Currently, when driving a PWC at a speed of 10 knots or more, licence holders under age 16 years must:

- have someone with a PWC licence who is 16 years of age or older present on the PWC, and
- not drive at these speeds while towing anyone.

Despite these restrictions, young adult PWC drivers under 16 continue to be over-represented in safety incidents and serious injuries and are involved in more than double the rate of compliance actions by authorised officers compared with drivers over 16.

To improve the skills and experience levels of young and new PWC licence holders, Transport is investigating policy options to reduce in the number of incidents associated with inexperienced drivers and to improve the boating experience for all waterway users. Transport is in the early stages of exploring potential changes to the Regulation, including:

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<sup>8</sup> Section 3, *Port Authorities Act 1999* (WA)

- extending the restrictions currently imposed on under 16-year-old PWC drivers to drivers aged 16-18; and
- introducing a 12-month provisional licence for inexperienced PWC drivers, with option of moving directly to a full licence by completing a practical training course through a registered training organisation (RTO).

#### Question 6

Do you support improving the safety of young PWC drivers and better waterway amenity through improvements to the regulatory framework for young and inexperienced PWC drivers?

#### Question 7

Do you support extending restrictions currently imposed on under-16-year-old PWC drivers to drivers aged 16-18?

#### Question 8

Do you support introducing a 12-month provisional licence for inexperienced PWC drivers, with an option of moving directly to a full licence by completing a practical training course through a registered training organisation (RTO)?

#### Question 9

Do you have any further comments on options to address the issues?

### 5.1.6 Mandating kill switches on PWC

A kill switch on a PWC is an important safety feature that automatically cuts off the engine in emergency situations when the driver has fallen overboard or lost control of the steering. Kill switches are usually activated by a lanyard, with one end attached to the driver's arm, leg, clothing or lifejacket, and the other attached to the engine mechanism. Currently, wearing a kill switch lanyard is strongly recommended, but not mandatory under the MSR.

**Proposal:** Introduce minor amendments to equipment requirements to mandate the use of a kill switch lanyard when operating a PWC.

#### Question 10

Do you support mandating kill switches for PWC?

### 5.1.7 Mandating carrying of GPS equipment when boating in open waters

Open waters are navigable waters that are not enclosed by land or not within a river, bay, harbour or port. They include coastal and ocean waters.

Boaters can encounter rough, choppy seas and large waves in open waters which can make them dangerous. In addition, boaters are far more exposed to risks associated with changing weather and sea conditions on open waters than on enclosed waters. This risk increases with greater distance from the coast and place of safe refuge. Vessel operators generally require a higher level of experience to operate in open water in these different conditions. The heightened safety risks associated with boating in open waters compared with boating in enclosed waters, are already reflected in the MSR with different safety equipment requirements.

An additional challenge associated with operating a vessel in open waters compared with enclosed waters is the lack of land-based reference points. GPS equipment provide accurate location

information in real-time, which allows easier navigation and measurement of speed, resulting in increased safety for recreational boaters. Such equipment would allow boaters in open water to navigate more directly to a place of refuge in the event of a change in weather or sea conditions. GPS equipment will also complement the requirement to carry an EPIRB beyond two nautical miles by enabling boaters to inform rescue agencies of precise location without prompting an immediate emergency response rescue.

**Proposal:** Introduce minor amendments to equipment requirements to include mandatory carriage of GPS equipment when boating in open waters.

#### Question 11

Do you support mandating the carriage of GPS equipment when boating in open waters?

## 5.2 Safer port operations

Our NSW ports are vitally important to the community and the economy with the State's six working ports contributing more than \$6 billion to the NSW economy each year.<sup>9</sup> Essential goods and valuable resources such as grain, coal, vegetable oils, petroleum and natural gas are shipped through our ports to and from markets overseas. Last year 4,903 commercial ships visited the working ports of NSW, and 9,344 marine pilotage movements were conducted. MSR provisions related to the safe operation of ports in NSW include the framework for marine pilotage licences, the Marine Pilotage Code and requirements related to Certificates of Local Knowledge (COLKs).

Amending provisions that relate to both commercial and recreational vessel operations will improve safer navigation and boating behaviour, and allow more efficient and harmonious use of port waters whilst improving the safety of the port operating environment.

### 5.2.1 Offshore anchoring

Currently offshore anchoring by merchant vessels occurs at the discretion of the ship's master. In some instances, depending on the locality and prevailing conditions, such anchoring can result in a negative impact on the seabed. When ocean-going vessels are at anchor, their large anchors and connecting chain can mechanically disturb, drag and 'scour' the seabed. These processes can significantly impact sensitive seabed habitats, including seagrasses, kelp, coral, and sponges. Due to their size and the frequency at anchor, anchored merchant vessels can cause cumulative seabed disturbance over wide areas.

The need for designated anchorage areas to manage seafloor impacts will grow as the number of merchant ships and their movements increase. Designated anchorage areas away from sensitive habitats is one approach being considered to better manage the impacts of anchor scour and limit the extent of disturbance caused by such vessels. Additional safety benefits are also anticipated by providing merchant vessels with appropriate places to anchor. Under this approach the Minister for Transport would have delegation to declare offshore anchorage areas.

**Proposal:** Add a provision for the identification of designated offshore anchorages near NSW ports with the aim of reducing the spatial footprint of anchoring on the seabed and providing for the planning of safe and appropriate anchorages.

**Note:** If the proposal proceeds, a new provision will need to be introduced in order to facilitate efficient management and use of these offshore anchorages including that harbour masters would have the power to direct vessels to use or leave a designated anchorage.

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<sup>9</sup> *Ports and Maritime Administration Act 1995* and Port Botany Landside Improvement Strategy (PBLIS) Discussion Paper

### Question 12

Do you support designated offshore anchorages to help reduce the impact and spatial footprint of anchoring on the seabed?



Image: Transport for NSW

### 5.2.2 Safety in shipping channels

Shipping channels are used by merchant vessels to enter and depart ports. The chance of one of these large ships interacting with small vessels in a shipping channel is high. A total of 4,903 commercial vessels visited NSW's six working ports in 2020–21.<sup>10</sup> As shipping channels are highly trafficked by large merchant vessels, it is essential that the MSR supports the safety of shipping channels for all waterway users. This is particularly relevant for kitesurfing, sailboarding and paddlecraft due to the reduced capacity of these vessels to quickly move out of shipping channels.

**Proposal:** Amend Schedule 5, waters in which kitesurfing and sailboarding is prohibited, to be extended to the shipping channels in Port Botany, Newcastle and Port Kembla. This is aimed at removing the potential safety hazard associated with a large merchant vessel colliding with a kitesurfer or sailboarder and also avoiding the need for a merchant vessel being forced to take emergency evasive action to avoid such a collision.

### Question 13

Do you support the prohibition of kitesurfing and sailboarding in all shipping channels?

### Question 14

Do you support the prohibition of paddlecraft in all shipping channels?

### 5.2.3 Pilotage framework

Marine pilots have the knowledge required to safely operate in and navigate our waterways and are crucial to allowing NSW to maintain safe and reliable passage to NSW ports. The marine pilotage framework under section 29 of the MSA describes a marine pilotage licence as being a marine

<sup>10</sup> <https://www.portauthoritynsw.com.au/media/5125/port-authority-annual-report-2021.pdf>

safety licence to act as pilot of a vessel in any port that is required by Part 6. Pilotage is compulsory for all commercial vessels exceeding 30 metres length overall, unless a current Marine Pilotage Exemption Certificate or COLK is held by the master.

Opportunities to improve the existing framework have been proposed related to the process for surrendering or cancelling marine pilotage licences and to the vessels to which pilotage framework should apply. The proposed updates to the pilotage framework are aimed at mitigating potential safety risks within ports and the waterways within port limits. Proposals under 5.2.4, 5.2.5 and 5.2.6 are related to the pilotage framework.

#### 5.2.4 Marine pilot licence automatic suspension/cancellation

A marine pilot is a highly skilled professional who assists masters of visiting commercial vessels in ports. The NSW Marine Pilotage Code includes a code of conduct and health requirements for marine pilots. Currently, as long as a marine pilot conforms to training and health requirements their licence does not expire even if the person retires or leaves the industry.

To ensure confidence in the marine pilot licensing framework it is proposed to introduce an automatic licence suspension/cancellation in the event that a marine pilot retires or leaves the industry. An option being considered is to suspend a marine pilot licence for a period of 6 months if a marine pilot leaves or retires from a licensed service provider. This would allow a pilot who intends to be re-employed by a pilotage services provider within 6 months to reactivate their licence. If the pilot does not intend to continue to practice, the licence will be cancelled after 6 months.

**Proposal:** Introduce automatic cancellation of pilot licences after a period of 6 months when a marine pilot retires or is no longer employed by a pilotage service provider.

#### Question 15

Do you support the proposed automatic cancellation of a marine pilot licence when a pilot is no longer employed by a licensed NSW service provider?

#### 5.2.5 Exemption from compulsory pilotage

**Note:** There is a separate proposal to change the minimum length of a vessel requiring pilotage in the MSA (refer to 6.2 of this paper). If this is supported, the relevant length applicable to this proposal would be 35 metres, not 30 metres.

The presence of large recreational vessels on state waters creates potential safety and navigation risks that are similar to commercial vessels. Currently, under clause 109A of the MSR, recreational vessels are exempt from compulsory pilotage for vessels 30 metres and over. NSW is the only Australian jurisdiction that allows a blanket exemption from pilotage for recreational vessels.

In Victoria, South Australia, Tasmania and the Northern Territory compulsory pilotage is regulated regardless of recreational or commercial status for all vessels 35 metres and above. In Western Australia compulsory pilotage is required for vessels above 35 metres for foreign registered vessels and 50 metres for Australian vessels and in Queensland pilotage of any vessel is compulsory for vessels greater than 50 metres in length unless exempt.

**Proposal:** Remove clause 109A, recreational vessels exempt from compulsory pilotage, to ensure that all vessels 30 metres and over require a marine pilot or its master is the holder of a certificate of local knowledge or marine pilot exemption certificate (see also 5.2.6). This would enable better safety outcomes for vessels, both for the crew and other users of NSW waterways.

### Question 16

Do you have any comments on the proposed changes to exemptions from compulsory pilotage?

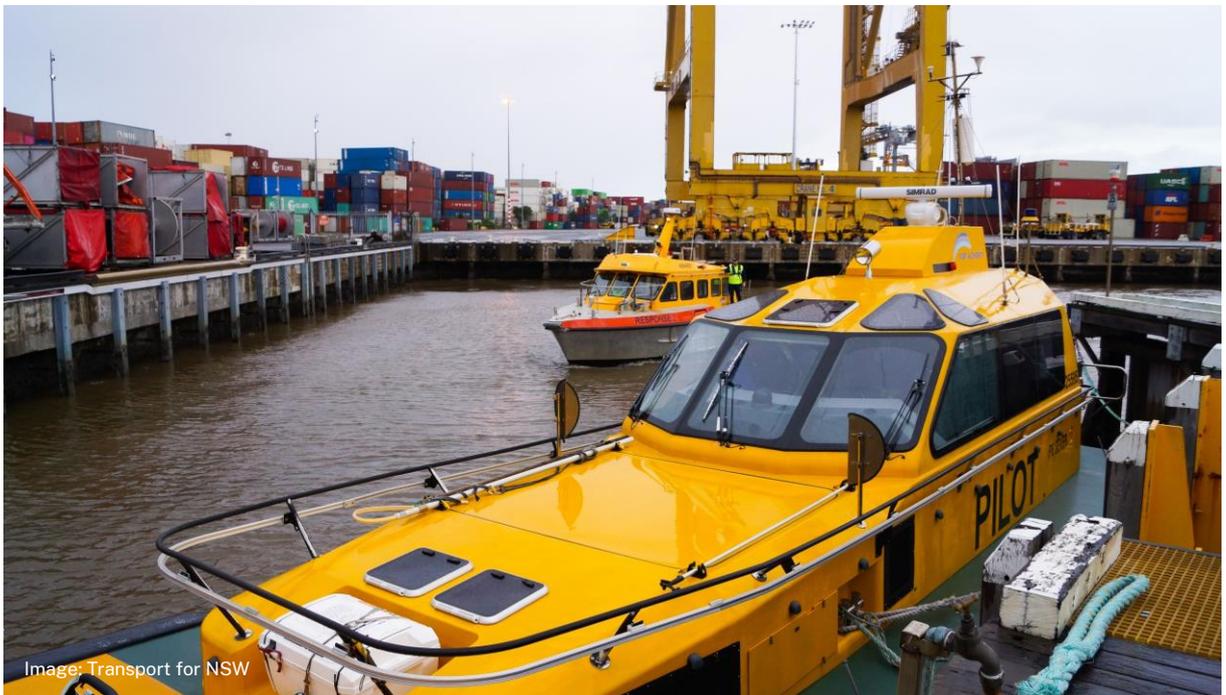


Image: Transport for NSW

#### 5.2.6 Certificate of Local Knowledge equivalent framework

**Note:** There is a separate proposal to change the minimum length of a vessel requiring pilotage in the MSA (refer 6.2). If this is supported, the relevant length applicable to this proposal would be 35 metres, not 30 metres.

Currently a Certificate of Local Knowledge (COLK) is required for masters of commercial vessels between 30 metres and 80 metres in length. The effect of the proposal under 5.2.5 would be that all recreational vessels over 30 metres would be required to have pilotage. To allow more flexibility an alternative to pilotage could be introduced such as a COLK equivalent training package for masters of recreational vessels over 30 metres. This could be implemented through the introduction of a COLK equivalent framework for recreational vessels administered through the Port Authority. The introduction of such a framework is aimed at reducing the potential for collision risks and close quarters incidents and the promotion of high standards in navigation for all vessels over 30 metres within NSW waters.

Port Authority have started early consultation to test the practicalities of a COLK equivalent, however the final framework will be developed further in consultation with industry to ensure it can be effectively implemented.

**Proposal:** To introduce a COLK equivalent for recreational vessels over 30 metres, it is proposed the framework could include the following key features:

- Masters of recreational vessels over 30 metres would be required to undertake an online testing regime, with the same content as the current commercial COLK applicants.
- Masters of such vessels would need to demonstrate relevant competence, for example, qualifications specified in the NSW Marine Pilotage Code.

- The exemption provided for a holder of this certificate would not apply to the first inward transit into the relevant port (i.e., a recreational or superyacht vessel over 30 metres in length would be required to take a pilot for the first inbound movement).
- The licence would apply only to a specific vessel and for a limited time, 60 days. These requirements would be communicated by way of Harbour Master Directions, notifications on Port Authority's website, communication via Superyacht Australia and Port Authority's Vessel Traffic Services (VTS).

#### Question 17

Do you support the introduction of a COLK equivalent framework for recreational vessels over 30 metres?

#### Question 18

What other features should be considered to support an improved safety framework?

### 5.2.7 Pilot boarding grounds and pilotage limits

A pilot boarding ground is the location outlined in the Harbour Master Directions as the usual place for boarding or disembarking from a vessel requiring pilotage within a port. The pilot boarding ground is located outside port limits.

The proposal is to allow, on a case-by-case basis, the harbour masters to permit a pilot to embark or disembark the vessel inside port limits. These circumstances are limited and linked to the safety of the pilot and could include weather, the condition of the pilot ladder or other limited circumstances.

It is not proposed that these circumstances are outlined in the Harbour Master Directions, but rather that the duty harbour master would provide a verbal instruction to the vessel to permit this to occur, on the rare circumstance it is necessary for the safety of the pilot and/or vessel.

**Proposal:** Allow the duty harbour master to issue a verbal instruction to a vessel to allow for embarking or disembarking of a pilot inside port limits on a case-by-case basis.

**Note:** this proposal is linked to the Act amendment proposal at 6.3.

#### Question 19

Do you support the duty harbour master being able to issue a verbal instruction to a vessel to allow for the embarking and disembarking of a pilot inside port limits on a case-by-case basis?

### 5.2.8 Removal of sea cables

There are several safety, environmental and operational risks associated with installations for used and disused sea cables. Sea cables can get caught in an anchor, can reduce the available water depth, can become displaced if old and eroded and can potentially limit the ability to utilise certain areas in the future as the types of vessels and/or activities change. Currently relevant standards and industry best practices, such as bathymetric position index (BPI) method or cable burial risk assessment methodology (CBRAM), are included as a condition of harbour master approval to install sea cables. To improve safety, it is proposed that sea cables must be removed once disused. This would become an obligation on a continuous basis for any harbour master approval.

**Proposal:** Introduce a regulatory requirement for the removal of sea cables once disused.

### Question 20

Do you support a regulatory requirement for removal of sea cables once disused?



Image: Destination NSW

### 5.2.9 Disturbance of the seabed

Currently under clause 110 of the Ports and Maritime Administration Regulation 2021, a person is required to obtain written permission from the relevant harbour master in order to undertake activities which would disturb the seabed of a port. This includes using drags, grapplings or other apparatus for lifting an object or material from the seabed, or otherwise disturb the seabed, of a port. This notification allows the harbour master to have oversight over activities that may have navigational impacts for shipping within ports and can appropriately mitigate any potential impacts.

**Proposal:** As part of the MSR review, disturbance of the seabed is considered to be a marine safety issue and would be best placed in the MSR rather than the PAMA Regulation. This also provides an opportunity to update terminology such as ‘grappling’ to make for a more modern regulatory framework that is reflective of current and future practice.

### Question 21

Do you support the proposal to move the disturbance of the seabed provisions from the Ports and Administration Regulation 2021 to the MSR?

It is also proposed to introduce a more robust application process for disturbance of the seabed be included in the MSR. This would include a mechanism for the Port Authority to cost recover the assessment of any application.

**Proposal:** For the MSR to include reference to an application process for disturbance of the seabed.

#### Question 22

Do you support including a reference in the MSR to an application process for disturbance of the seabed?

### 5.2.10 Obstruction of air space

Obstructions of air spaces have the potential to be a navigational safety risk. When maintenance work is done on bridges and berthing boxes, there can be obstructions to the air space above the channel which can impact vessel movements. These disturbances of air space can also relate to other things, such as cranes, wires, and other installations protruding over navigational waters.

Similar to the approach for disturbance of the seabed, there is a need to improve the safety management related to obstruction of air space. The introduction of an application process will provide clarity on the safety requirements needed to be implemented for this type of activity. As with proposal 5.2.9, the application process would be a similar administrative procedure requiring notification and approval by the harbour master. A mechanism for cost recovery would be included in the MSR.

**Proposal:** To have an application process for obstruction of air space in the MSR.

#### Question 23

Do you support mandatory requirements in the MSR to obtain the harbour master's approval to obstruct air space above navigable waters?

## 5.3 Modernising the framework

The challenge in amending legislation is to have a flexible framework that supports change and innovation while maintaining safety and amenity for the whole community. The proposed amendments identified under this theme modernise the regulation to reflect the current operating environment, improve consistency with national laws, or generally improve administration of the regulation.

### 5.3.1 Introduction of the Waterway Activity Licence, a new marine safety licence for commercial operations

Well-regulated commercial activity on NSW waterways contributes to Transport's long-term vision of creating successful places and supporting a strong economy. Businesses facilitating waterway activities provide more people in the community with the opportunity to experience NSW's waterways in a safe environment and increase their knowledge of recreational boating.

However, the regulatory framework for managing commercial activities on NSW waters is outdated and requires reform. Many existing commercial activities currently operate under an exemption framework provided under subclause 140(1) of the MSR, such as through ad-hoc Direction Notices and Exemption Orders. The current situation can create uncertainty for industry and unnecessary administrative burdens for Transport. For example, some hire-and-drive business owners have been operating under exemptions issued by Transport for several years, which does not provide ongoing certainty around sale and transfer. There have also been concerns around barriers to entry into the sector. Under the current conditions, Transport also does not have appropriate fee mechanisms for the administration of existing businesses.

Transport is in the early stages of exploring potential changes to the Regulation, including the possibility of introducing a new commercial licence. The proposed Waterway Activity Licence will be structured similarly to the existing Aquatic Licence in the MSR and would aim to create greater

business certainty, facilitate increased investment in maritime-related commercial activities, and provide a clearly-defined pathway for new entrants to the market.

The intent of the proposed new licence is to manage ongoing commercial activity that impacts upon waterway safety and navigation. This would exclude not-for-profit organisations or social clubs, and exclude short-term commercial events, which would continue to be regulated under the aquatic licence framework.

The proposed Waterway Activity Licence framework would:

- create a new licence prescribed under the MSR for business operations;
- set out licence application requirements;
- set out licence conditions;
- set out a clear framework around transfer/sale of businesses operating under the licence;
- prescribe penalties for breaches or non-compliance; and
- specify fees for licence applications and renewal, audits/observations and reviews.

Licence conditions would include:

- scope of permitted activities;
- maximum speeds for vessels;
- safety briefings and training;
- qualification of insurance requirements;
- recordkeeping; and
- other compliance requirements.

**Proposal:** Introduce a new marine safety licence for commercial activities, a Waterway Activity Licence.

#### Question 24

Do you support the proposal to introduce a Waterway Activity Licence?

#### Question 25

Are there any other considerations around introducing a new marine safety licence for ongoing commercial activities on NSW waterways?

#### Question 26

What implications would there be for you and your business in introducing this proposed framework?

### 5.3.2 Updated framework for accreditation and audit of authorised training providers

There is a need to enhance Transport's ability to ensure Authorised Training Providers (ATPs) are delivering effective boat driver training courses that can be used towards attaining a marine safety licence. Under MSR subclause 104(5), Transport currently audits these courses on a periodic basis to ensure that the ATP can adequately certify that an applicant for a licence has undertaken required components of practical training and knowledge testing. These checks include ensuring ATPs are meeting NSW-specific requirements for workers compensation and other insurances. Existing administrative activities to audit ATPs are currently not able to be cost-recovered by Transport under the marine legislation and it is proposed to introduce a fee mechanism into the MSR to do so.

**Proposal:** Introduce an hourly fee for the existing practice of auditing and accrediting ATPs relating to theory and practical courses for NSW marine safety licences, set at a reasonable rate consistent with existing administrative fees.

#### Question 27

Are there any other considerations around introducing a cost-recovery mechanism for the existing practice of audit and accreditation of ATPs by Transport?



Image: Transport for NSW

### 5.3.3 Vessel definitions across NSW maritime legislation

Definitions within legislation describe the meaning of terms used throughout the text and the translation of that meaning into an operational, transactional and customer context. Within the maritime legislation there are several different definitions related to the term 'vessel' that are harmonised and some that are specific to the distinct legislation reflective of the intent of that specific law.

Transport is in the early stages of reviewing the definition of 'vessel' across NSW marine legislation and is seeking feedback to inform the process.

In jurisdictions around Australia the most common approach to defining a vessel is adoption of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) definition. This definition lists craft that are vessels and also things that are not vessels. Some states also have specific references to particular kinds of craft in regulation to assist with their management.

The MSR defines 14 categories of vessel and has a general definition of a vessel for the purposes of the MSA. The way that vessels are defined in the MSR allow more craft to be added where Transport deems a need to capture them in the regulation framework and allow links to existing frameworks such as vessel registration or the carriage of safety equipment.

The MSA and PAMA define vessels in the same way:

- **vessel** includes water craft of any description used or capable of being used as a means of transportation on water.

Without limiting the above, a vessel includes —

- (a) any non-displacement craft, and

- (b) a seaplane, but only while it is on water.

However, a vessel does not include anything declared by the regulations not to be a vessel and includes anything used on water that is declared by the regulations to be a vessel.

- **recreational vessel** means a vessel other than a commercial vessel
- **foreign vessel** has the same meaning as in the *Navigation Act 2012* of the Commonwealth

The MPA defines vessels in alignment with MARPOL and other specific requirements:

- **recreational vessel** is defined in the MPA as means a vessel used wholly for the purpose of recreational or sporting activities and not for hire or reward. For the purposes of marine pollution, the MPA also defines an Australian ship, a foreign ship, a government ship and large ships.
- **Australian ship** means –
  - (a) a ship registered in Australia, or
  - (b) an unregistered ship having Australian nationality.
- **foreign ship** means a ship that is not an Australian ship.
- **Government ship** has the same meaning as in section 13 (1) of the *Protection of the Sea (Civil Liability) Act 1981* (Cth).
- **large ship** means a ship –
  - (a) that has a gross tonnage of 400 or more, or
  - (b) that has a gross tonnage of less than 400 and that is certified to carry more than 15 persons, or
  - (c) that does not have a measured tonnage and is certified to carry more than 15 persons.

#### Question 28

Do the current definitions support effective regulation of safety for vessels?

#### Question 29

Do you believe the vessel definitions in the MSR need to be changed?

#### Question 30

Do you believe there is a need for improved consistency relating to vessel definitions across State and Commonwealth legislation?

### 5.3.4 Seagoing ship definition

The current MSR definition of seagoing ship means a vessel of more than 45.72 metres in length that is used or intended to be used to carry cargo or passengers for hire or reward and that normally operates on voyages between ports.

**Proposal:** To provide consistency with the AMSA classification for Master certificate of competency under Marine Order 505, and in turn with other jurisdictions, it is proposed that the definition of seagoing ship be amended to meaning a vessel of more than 45 metres.

#### Question 31

Do you believe the definition of seagoing ship should be amended to be consistent with MO 505?

### 5.3.5 Distinguish row boat from rowing shell

The definition of 'row boat' in MSR clause 3 does not define a rowing shell or characterise how a rowing shell is distinguished from a row boat. It is proposed to add a rowing shell definition to ensure that row boats are subject to the safety requirements of the MSR.

**Note:** there will be no change to definition of row boat or current requirements for a row boat.

**Proposal:** To add a definition of 'rowing shell'.

#### Question 32

Do you agree with the proposal to add a rowing shell definition in the MSR?



### 5.3.6 Paddlecraft definition

There is a growing interest in paddle sports in NSW with many new paddlecraft and paddlers entering the sport each year. Currently, there are several permutations of paddlecraft that are difficult to distinguish from one another, for example, a sit-on-top kayak and a surf ski, but which have similar risk profiles, and should be subject to similar safety regulations under the MSR.

Transport proposes to create a single harmonised definition to cover all kinds of paddlecraft, including kayaks, canoes, stand-up paddleboards, sit-on-top kayaks, and all similar craft, including surf skis, which will improve safety, compliance, enforcement and reporting of this growing group of waterway users.

This definition would exclude craft used by Surf Life Saving New South Wales or professional lifeguards for the purpose of undertaking rescues or surf rescue training or patrolling.

**Proposal:** Include a new paddlecraft definition as below:

A paddlecraft is one that is propelled by paddle or otherwise by the movement of the person operating the craft, but does not include such a craft that is or may be propelled by mechanical power.

#### Question 33

Do you believe the proposed paddlecraft definition is suitable?

### 5.3.7 Personal watercraft (PWC) definition

The current definition of a PWC was implemented when it accurately represented the kinds of PWC on the market and in use on our waterways. With the emergence of new technology and vessel types the current definition is now outdated. It is proposed to modernise the definition with the intent of being able to capture modern PWC under the regulatory framework.

**Proposal:** Amend the PWC definition to:

**Personal watercraft** means a power-driven vessel that is designed to be operated by a person standing, crouching, kneeling, or sitting astride the hull of the vessel, rather than within the confines of it.

**Note:** a personal watercraft does not cease to be a personal watercraft if it is modified from its original production, unless approved by Transport for NSW.

#### Question 34

Do you believe the proposed PWC definition is suitable?

### 5.3.8 Open area of a vessel definition

In some circumstances mandatory lifejacket wear requirements only apply when in the open area of a vessel. As all vessels differ in layout, it is necessary to clarify when lifejackets are required to be worn by introducing a definition of what constitutes the open area of a vessel. This is aimed at providing more clarity to waterway users on when lifejackets must be worn and to align with other states such as Victoria.

**Proposal:** Add open area of a recreational vessel definition as:

- all deck areas including coach roofs, superstructures, open flying bridges, trampolines and nets, excluding areas within rigid deck house, a rigid cabin, a rigid half cabin or a securely enclosed under deck space;
- vessels without a deck, the whole vessel excluding areas with a rigid cabin or a securely enclosed space;
- for kayaks or canoes, the open area is the whole vessel.

#### Question 35

Do you support inclusion of open area of a vessel in the definitions section of the MSR?

### 5.3.9 Novel craft definition

Transport assesses vessel types in terms of what is and is not considered safe for registration and use on NSW waterways. With the development of new technologies and vessel types there are an increasing number of such vessels that sit outside of the existing regulatory framework. It is proposed to insert a new novel craft definition into the MSR to provide greater clarity in how these vessels should be treated in terms of registration, operator licence requirements, on-water restrictions and safety equipment carriage requirements.

A new definition could capture relevant elements of the AMSA 'Novel' vessel types detailed in the current policy statement\* on [novel vessels](#). This refers to novel vessel types as:

- submarines;
- passenger-carrying submersibles;
- dynamically supported vessels (including fully foil-born, and vessels that are partially foil supported);
- wing-in-ground effect (WIG) vessels;

- autonomous vessels greater than twelve metres in length, or those intending to carry people;
- vessels with alternative fuel technologies including hydrogen, ammonia, and gas-fuelled engines;
- vessels with electric propulsion and installed battery power exceeding 30kWh.

Consideration will also be given to lower mass and lower operating speed vessels that have limited power storage in the battery. It is considered that these vessels have a lower risk profile as other conventional vessels such as PWC. An example of this is an engine-powered body board which are permitted to reach a maximum speed of 25 knots on NSW navigable waterways and the operator must hold a general boat driving licence to operate the vessel at 10 knots or more.

In NSW these vessels fall under a definition of a PWC. However, they have different operating and design characteristics to a conventional PWC.

**Note:** the AMSA policy statement is specifically for the regulation of commercial vessels and any relevant areas would be adapted to the meet the needs of the NSW legislation.

#### Question 36

Do you support inclusion of novel craft in the definitions section of the MSR?

### 5.3.10 Water taxi definition

There is currently no definition of a water taxi in the MSR, but movements of water taxis are regulated under the MSR and under the PAMA Regulation. The inclusion of a water taxi definition would assist businesses and their passengers to know what rules apply to their vessels and which wharves are available for use.

**Proposal:** Include under clause 3 of the MSR that water taxi means a commercial vessel less than 12 metres with a survey certificate issued pursuant to National Law citing the intended use as water taxi, that is available and used to provide unscheduled/ad hoc transport for paying members of the public upon water.

#### Question 37

Do you support the inclusion of a water taxi definition in the MSR?

## 5.4 Compliance and enforcement

The MSR provides a framework for the safe and responsible use of NSW waterways. Compliance and enforcement activities assist the community to comply with the regulatory framework and help improve the safety and amenity of NSW waterways for everyone.

This theme identifies proposals that will support improved safety and amenity outcomes by amending the provisions to clarify or promote compliance requirements and enforcement provisions.

### 5.4.1 Restrictions on time at anchor

The current wording of MSR subclause 17A(2) creates some uncertainty about the amount of time that a vessel can stay at the same place at anchor. Replacing the word 'place' with something that is more practical would improve understanding of the restriction as well as enforcement and could include made fast to the shore to cater for times when a vessel is secured by means other than an anchor.

**Proposal:** Amend the wording of subclause 17A(2) from calendar year to 12-month period.

### Question 38

Do you support this proposal to replace the word 'place' in relation to restrictions on time at anchor and adjust from calendar year to 12-month period?

#### 5.4.2 Speed limits in certain areas

Currently, speed limits for the Port of Sydney are prescribed in the MSR (see Part 2 Division 6). There are four different speed zones prescribed as below:

- **Speed limit for Port of Sydney Central Area** – vessels 30 metres or more must not be operated at a speed of more than 10 knots.
- **Speed limit for Port of Sydney Northern Area** – vessels 30 metres or more must not be operated at a speed of more than 12 knots.
- **Speed limit for Port of Sydney Western Area** – vessels 30 metres or more must not be operated at a speed of more than 6 knots.
- **Speed limit of 8 knots** – a vessel in Sydney Cove must not be operated at a speed of more than 8 knots.

In addition to there is a 15 knot transit zone under the Sydney Harbour Bridge.

If a speed limit needs to be changed, the regulation requires amendment which can take some time to come into effect. An alternative way to manage speed limits is to retain the speed limits for Sydney Cove and the transit zone under the Sydney Harbour Bridge but to have a single speed limit for vessels over 30 metres in length to replace the three different speed limits in the Port of Sydney. This would allow speed limits to be communicated clearly to waterway users and remove some of the legislative and operational complexity.

**Proposal:** Amend the MSR to have one speed zone for vessels over 30 metres in the Port of Sydney (retain 8 knot Sydney Cove and 15 knot transit zone).

### Question 39

Do you support one speed limit for vessels over 30 metres in the Port of Sydney (retain 8 knot Sydney Cove and 15 knot transit zone)?



#### 5.4.3 Obligations on PWC owners

Currently in the MSR, the obligation to ensure that PWC are not used by unlicensed operators only applies to NSW registered PWC.

To ensure authorised officers can effectively regulate interstate licence holders operating PWC in NSW, an amendment is proposed to place an obligation on the “owner” of any PWC used on NSW waterways to ensure it is only operated by a person holding a valid licence. The definition of

“owner” in section 7 of the MSA includes holders of a registration in any jurisdiction, so interstate PWC driving licence holders operating in NSW waters will be able to be effectively regulated.

**Proposal:** Introduce a provision in the MSR to place an obligation on the owner of a PWC to ensure the PWC is not operated by a person unless that person holds a valid licence.

#### Question 40

Do you support introducing an obligation on the owner of a PWC to ensure it is not operated by a person unless that person holds a valid licence?

### 5.4.4 Compliance and safety concerns with young adults

A review of vessel compliance and safety across NSW has highlighted a number of issues with young adult boat and PWC drivers. All NSW Maritime regions have reported significant safety and enforcement issues with young adults under 18 years of age, with PWC drivers in particular overrepresented in safety incidents.

Currently, paragraph 78(1)(d) of the MSR allows for suspension or cancellation of a marine safety licence if an offence has been committed under the marine legislation. This provision is not operationally effective for young adult licence holders, as authorised officers typically issue young adults with non-financial sanctions such as official cautions, instead of offences.

It is therefore proposed to expand the provisions to allow a suspension or cancellation of a licence based on an official caution issued to a young adult, not just a formal offence. The intent is to ensure subclause 78(1) can be applied to all licence holders, and to increase safety for young adult licence holders and other waterway users.

**Proposal:** Add a provision under subclause 78(1) to allow for:

- suspension or cancellation of a marine safety licence if the holder of the licence is under 18 years of age, and
- an official caution is issued to the holder of a marine safety licence.

#### Question 41

Do you support the expansion of MSR subclause 78(1) for suspension or cancellation of a marine safety licence to include official cautions issued to persons under 18 years of age?

### 5.4.5 Compulsory reporting of accidents based on property damage

Under subsection 99(1) of the MSA when a vessel is involved in an accident on the water, the master of that vessel (and the owner of the vessel if aware of the accident) must send a report to Transport containing particulars of the accident as soon as practicable by the quickest means available. Such a report is currently not required unless there is more than \$5,000 of property damage (MSR clause 139). This could be leading to many incidents going unreported and safety issues not being identified early, resulting in increased risk of trauma and/or property damage.

**Proposal:** Lower the reporting of damage to property to \$500.

#### Question 42

Do you support the requirement for reporting accidents where there is damage to property being lowered to \$500?

### 5.4.6 Notice to be published to call for the owners of vessel where ownership is uncertain

There have been issues with establishing the ownership of abandoned vessels on NSW waterways leading to poor navigational and environmental outcomes. To assist the regulator to establish the ownership of unmanned vessels that are causing obstruction to navigation, it is proposed a new provision in the MSR be included to enable a notice to be published to call for the registered owner of the vessel to come forward where the ownership is uncertain.

**Proposal:** Create a provision to enable a notice to be published to call for the owner of a vessel where ownership is uncertain.

#### Question 43

Do you support the creation of a provision to enable a notice to be published to call for the owner of a vessel where ownership is uncertain?

## 5.5 Additional feedback

#### Question 44

Do you have any additional feedback on any other issues with the MSR you would like to raise? To help understand your feedback please refer to the specific area of the MSR you are providing feedback on.



## 6. Marine Safety Act 1998 proposals

Together, the regulatory frameworks in the MSA and MSR support the safe and effective management of NSW waterways and the vessels operating on them. The remake of the MSR is comprehensive and a number of the proposals have highlighted the need to review related parts of the MSA.

## 6.1 Power to issue short-term safety directions to vessel operators including minors

Transport recognises that there are instances of negative behaviour by boat drivers and PWC drivers that impact safety and general enjoyment of the waterways otherwise not captured in the existing framework. These instances are intensified over long weekends and holiday times during the boating season where many waterway users converge at the same location.

An operational review of vessel and operator compliance has highlighted opportunities to improve the ability of compliance officers to remove problem users from waterways for a short period of time. The intention is to have a more flexible approach to dealing with nuisance behaviour that is proportionate and appropriate for dealing with minors.

It is proposed to provide an authorised officer with the power to issue a direction under section 15A of the MSA with the effect of being able to remove a potential safety risk for a nominated period. This proposal is aimed at improving safety for all waterway users.

**Proposal:** Amend section 15A of the MSA to add that a direction may remain in force for seven days. It is proposed that an authorised officer could issue a direction to any person, including a person under 18 years of age, to cease operation of a vessel for a period of seven days.

### Question 45

Do you support changes to section 15A including to allow an authorised officer to issue a direction to cease operation of a vessel for a period of seven days, including to a minor?

## 6.2 Compulsory marine pilotage

In order to improve consistency across Australian jurisdictions it is proposed to review paragraph 75(1)(c) of MSA and increase the size of the vessel requiring compulsory pilotage from 30 metres to 35 metres.

Linkage to MSR: this would also have an impact the proposal under 5.2.5 to remove the recreational vessel exemption from compulsory pilotage and if the proposal is accepted this would apply to all vessels over 35 metres.

## 6.3 Exceptions to compulsory pilotage

Division 6 of the MSR details exemptions from the compulsory pilotage framework. On occasions, when a pilot experiences unforeseen and exceptional circumstances such as being unwell or adverse weather conditions, it can mean that the pilot boarding grounds are not the safest available place for a pilot to embark or disembark from a ship. The regulation could be made more flexible in these exceptional circumstances to allow for the harbour master to prioritise the safety of the pilot and crew for a limited duration. A ship in this circumstance could be managed by the harbour master through the VTS.

**Proposal:** Amend subsection 74(2A) of the MSA to allow the harbour master to grant approval for a pilot to embark or disembark from a ship outside of pilot boarding grounds within pilotage limits in limited exceptional circumstances.

### Question 46

Do you support amendments to subsection 74(2A) to allow the harbour master to exercise discretion and authorise a pilot to embark or disembark outside pilot boarding grounds due to exceptional circumstances?

## 6.4 Grant Port Authority or harbour masters the power to declare anchorages outside port areas

In order to support the proposal at 5.2.1 in relation to offshore anchoring, an amendment to the MSA would be required to authorise the Port Authority or a harbour master the power to declare anchorages outside port areas. As outlined above, the intent of this proposal is to better protect the sea floor from the anchor and chains of large merchant vessels and allow for improved safety for vessels in high seas waiting to come into NSW ports.

**Proposal:** Add a section in the MSA that grants the Port Authority or the harbour master the power to declare anchorages outside port areas.

### Question 47

Do you support granting Port Authority or harbour master the authority under the MSA to be able to declare anchorages outside port areas?



## 7. Appendix 1

### 7.1 Overview of the *Marine Safety Act 1998*

#### **Part 1 – Definitions**

Sets out the introductory provisions, definitions, meanings of expressions, and specifies the vessels and waters to which the MSA applies.

#### **Part 1A – Application of Commonwealth domestic commercial vessel national law**

Sets out the MSA's relationship with the Domestic Commercial Vessel National Law, including its application as laws of NSW, the functions and powers provided under those provisions, offences, administrative laws, fees, fines, and powers for regulations to be made.

#### **Part 2 – Safety of navigation**

Sets out general provisions around safety of navigation, and provisions for the seizure, impoundment or forfeiture of recreational vessels.

The provisions, among other things, also set out powers to make regulations for the prevention of collisions at sea, impose restrictions such as speed limits, wash limits, restrictions during special events, restrictions on reckless, dangerous or negligent operations, navigation in a menacing manner, and unreasonable interference by operation or use of a vessel.

#### **Part 3 – Boating safety – alcohol and other drug use**

Prescribes meanings of prescribed concentrations of alcohol in breath or blood, expressions of measurement of alcohol concentrations, offences involving alcohol and other drugs, and the cancellation and suspension of licences.

#### **Part 4 – Marine safety licences**

Sets out the administration of marine safety licences, including conditions, offences to contravene conditions, and special provisions relating to the marine pilot's licence, marine pilotage exemption certificate, and certificate of local knowledge.

Sets out the administration of suspension and cancellation of licences, and administrative review by the Civil and Administrative Tribunal.

#### **Part 5 – Requirements for vessels**

Sets out definitions and restrictions around unsafe vessels and the repair and disposal of unsafe vessels. Also provides for vessel registration requirements, including exemptions from registrations.

#### **Part 6 – Pilotage**

Provides for pilotage requirements, including in relation to licensing, requirements for pilots in 'pilotage ports', deferment of pilotage, duties and liabilities of the master, offences, and notification requirements.

#### **Part 7 – Harbour Masters**

Provides for functions and powers of Harbour Masters, including in relation to giving and carry out directions, offences for failure to comply with Harbour Master Directions, identification of Harbour Masters, and protection from liability.

#### **Part 8 – Compliance and investigation**

Sets out investigative powers relating to marine accidents and other marine safety matters, duties of masters and owners in case of marine accidents, regulation of public ferry wharves, and legal proceedings.

### **Part 9 – Legal proceedings**

Provides for legal proceedings for offences by persons or corporations under the marine legislation.

### **Part 10 – Miscellaneous**

Provides for various administrative matters related to the operation of the MSA, including regulations to be made to carry out or give effect to any matter in the MSA, exemptions from requirements under the MSA or MSR, and other administrative provisions.

### **Schedule 1 – Testing for alcohol and drug use**

Expands on powers provided under Part 3 for the administration of alcohol and drug testing, including random breath testing, powers of arrest, random oral fluid testing for illicit drugs, blood samples to be taken after certain accidents, procedures for taking samples, and admissible evidence.

### **Schedule 1A– Camera recorded offences**

Provides for approval of enforcement devices by the Governor and areas by the Minister, admissible evidence, and liability for camera recorded offences.

### **Schedules 2 and 3**

[Repealed]

### **Schedule 4 – Savings, transitional and other provisions**

Provides for various savings and transitional matters related to the operation of the MSA consequent to other NSW legislation, across maritime, roads and rail.

## 8. Appendix 2

### 8.1 Overview of the Marine Safety Regulation 2016

#### **Part 1 – Preliminary**

Sets out introductory provisions and definitions, including the definition of "vessel".

#### **Part 2 – Safety of navigation**

Sets out regulations for the prevention of collisions, requirements for signals and lights on vessels, conduct of persons on board vessels, operation and securing of vessels, obstruction of navigation, speed limits, distances between vessels and other objects, requirements for towing, wake boarding and wake surfing, requirements for personal watercraft, safe loading of vessels, impounded vessels, alcohol and other drug use, and other safety provisions.

#### **Part 3 – Special safety requirements for certain waters and vessels**

Sets out requirements relating to certain waters, including Port Jackson, Sydney Cove, Lord Howe Island. This Part also provides for requirements for commercial adventure vessels, which are Class 1 or 2 DCVs used for the purposes of high-speed adventure or thrill rides.

#### **Part 4 – Requirements relating to builders plates for certain recreational vessels**

Sets out requirements for builders plates for specified recreational vessels, and requirements for vessels for sale, exemptions from the requirements, offences, alterations, and requirement for vessel registration.

#### **Part 5 – Marine safety licences**

Provides for marine safety licences, including the boat driving licence, marine pilot's licence, marine pilotage exemption certificate, certificate of local knowledge, bar crossing licence, vessel registration certificate, and the aquatic licence.

The Part sets out requirements for applications for licences, eligibility, powers and reasons to refuse licences, powers to issue an immediate boat driving licence suspension, general suspension or cancellation powers, changes to particulars, renewal and return of licences, and for cheating and forgery.

The Part also provides for administration of vessel registration, including requirements for hull identification numbers (HINs), registration numbers, transfer and disposal.

Specific additional requirements for aquatic licences, boat driving licences, marine pilot's licences, certificates of local knowledge and commercial bar crossing licences and also provided for under this Part.

#### **Part 6 – Safety equipment and facilities**

Sets out requirements and responsibilities of owners and operators of recreational vessels in relation to safety equipment, including lifejackets. Minimum safety equipment is specified in Schedule 8. Exemptions from this Part are also provided for certain types of vessels.

#### **Part 7 – Miscellaneous**

Provides for various administrative matters related to the operation of the MSR, including inspection reports and maintenance plans for public ferry wharves, fees and penalties, exemptions under the Regulation on safety or emergency grounds, and reporting of accidents.

#### **Schedule 1 – Coastal bars**

Specifies the names and descriptions of coastal bars in NSW.

#### **Schedule 2 – Partially smooth waters**

Specifies the boundaries of partially smooth waters in NSW.

### **Schedule 3 – Smooth waters**

Specifies the boundaries of smooth waters in NSW.

### **Schedule 4 – Modifications to Convention on International Regulations for Preventing Collisions at Sea**

Modifies the Convention on International Regulations for Preventing Collisions at Sea by including additional special Rules as laws of NSW.

### **Schedule 5 – Waters in which kitesurfing and sailboarding prohibited**

Sets out boundaries of waters in which kitesurfing and sailboarding is prohibited.

### **Schedule 6 – Requirements relating to Sydney Cove**

Specifies requirements relating to Sydney Cove, including boundaries, general navigation requirements, the north/south rule, the waiting line, requirements for water taxis, control of hull or propeller wash, berthing of vessels, vessels entering or leaving Campbells Cove, and radio communications.

### **Schedule 7 – Standard of safety equipment carried on recreational vessels**

Specifies items of equipment and minimum standards required.

### **Schedule 8 – Minimum safety equipment to be carried on recreational vessels**

Specifies general requirements for safety equipment and modified requirements for specified vessels. General requirements include essential items, quantities required, and whether they are required for enclosed or open waters. Modified requirements are specified for sailing vessels, certain vessels less than 6 metres, certain small tenders, personal watercraft and canoes on open waters, rowboats, dinghies and inflatable boats, off-the-beach vessels, outrigger canoes, and dragon boats in enclosed waters.

### **Schedule 9 – Penalty notice offences – offences under the MSA**

Specifies offences under both the MSA and MSR, and their penalty levels. Penalty amounts are set out at Part 7.

### **Schedule 10 – Penalty notice offences – offences under the MPA**

Specifies offences under both the MPA and MPR, and their penalty levels. Penalties are set out for natural persons and for corporations.

### **Schedule 11 – Fees relating to State matters**

Specifies fees for State matters, including for vessel registration and licensing matters, examinations, fee for impounded vessels, towing fee, and fee for retrieval of DCVs.

### **Schedule 12**

[Repealed]

### **Schedule 13 – Savings, transitional and other provisions**

Provides for various savings and transitional matters including validity of licences, permissions, evidentiary certificates and other documents in transitional periods between legislative commencement dates.

## 9. Appendix 3

### 9.1 List of questions for consideration

**Question 1:** What aspects of the current MSR do you believe could be improved?

**Question 2:** Will the proposal at 5.1.1 simplify requirements for keeping all parts of the body securely and within a vessel when underway?

**Question 3:** Do you have any comments on introducing a requirement for major vessel modifications to be physically inspected by a qualified person for compliance with the ABP?

**Question 4:** To what degree do you support introducing exemptions, when under an aquatic licence, for:

- power vessels to carry a lifejacket if safety craft are in attendance;
- distance-off requirements; and
- licence requirements for participants under 12 years old?

**Question 5:** Do you support the proposed clarification of provisions in the MSR relating to removal of obstructions to navigation, under 5.1.4?

**Question 6:** Do you support improving the safety of young PWC drivers and better waterway amenity through improvements to the regulatory framework for young and inexperienced PWC drivers?

**Question 7:** Do you support extending restrictions currently imposed on under-16-year-old PWC drivers to drivers aged 16-18?

**Question 8:** Do you support introducing a 12-month provisional licence for inexperienced PWC drivers, with an option of moving directly to a full licence by completing a practical training course through a registered training organisation (RTO)?

**Question 9:** Do you have any further comments on options to address the issues under 5.1.5?

**Question 10:** Do you support mandating kill switches for PWC?

**Question 11:** Do you support mandating the carriage of GPS equipment when boating in open waters?

**Question 12:** Do you support designated offshore anchorages to help reduce the impact and spatial footprint of anchoring on the seabed?

**Question 13:** Do you support the prohibition of kitesurfing and sailboarding in all shipping channels?

**Question 14:** Do you support the prohibition of paddlecraft in all shipping channels?

**Question 15:** Do you support the proposed automatic cancellation of a marine pilot licence when a pilot is no longer employed by a licensed NSW service provider?

**Question 16:** Do you have any comments on the proposed changes to exemptions from compulsory pilotage?

**Question 17:** Do you support the introduction of a COLK equivalent framework for recreational vessels over 30 metres?

**Question 18:** What other features should be considered to support an improved safety framework?

**Question 19:** Do you support the duty harbour master being able to issue a verbal instruction to a vessel to allow for the embarking and disembarking of a pilot inside port limits on a case-by-case basis?

**Question 20:** Do you support a regulatory requirement for removal of sea cables once disused?

**Question 21:** Do you support the proposal to move the disturbance of the seabed provisions from the Ports and Administration Regulation 2021 to the MSR?

**Question 22:** Do you support including a reference in the MSR to an application process for disturbance of the seabed?

**Question 23:** Do you support mandatory requirements in the MSR to obtain the harbour master's approval to obstruct air space above navigable waters?

**Question 24:** Do you support the proposal under 5.3.1 to introduce a Waterway Activity Licence?

**Question 25:** Are there any other considerations around introducing a new marine safety licence for ongoing commercial activities on NSW waterways, under 5.3.1?

**Question 26:** What implications would there be for you and your business in introducing the proposed framework under 5.3.1?

**Question 27:** Are there any other considerations around introducing a cost-recovery mechanism for the existing practice of audit and accreditation of ATPs by Transport?

**Question 28:** Do the current definitions under 5.3.3 support effective regulation of safety for vessels?

**Question 29:** Do you believe the vessel definitions in the MSR need to be changed?

**Question 30:** Do you believe there is a need for improved consistency relating to vessel definitions across State and Commonwealth legislation?

**Question 31:** Do you believe the definition of seagoing ship should be amended to be consistent with MO 505?

**Question 32:** Do you agree with the proposal to add a rowing shell definition in the MSR?

**Question 33:** Do you believe the proposed paddlecraft definition at 5.3.6 is suitable?

**Question 34:** Do you believe the proposed PWC definition at 5.3.7 is suitable?

**Question 35:** Do you support inclusion of open area of a vessel in the definitions section of the MSR?

**Question 36:** Do you support inclusion of novel craft in the definitions section of the MSR?

**Question 37:** Do you support the inclusion of a water taxi definition in the MSR?

**Question 38:** Do you support the proposal at 5.4.1 to replace the word 'place' in relation to restrictions on time at anchor and adjust from calendar year to 12-month period?

**Question 39:** Do you support one speed limit for vessels over 30 metres in the Port of Sydney (retain 8 knot Sydney Cove and 15 knot transit zone)?

**Question 40:** Do you support introducing an obligation on the owner of a PWC to ensure it is not operated by a person unless that person holds a valid licence?

**Question 41:** Do you support the expansion of MSR subclause 78(1) for suspension or cancellation of a marine safety licence to include official cautions issued to persons under 18 years of age?

**Question 42:** Do you support the requirement for reporting accidents where there is damage to property being lowered to \$500?

**Question 43:** Do you support the creation of a provision to enable a notice to be published to call for the owner of a vessel where ownership is uncertain?

**Question 44:** Do you have any additional feedback on any other issues with the MSR you would like to raise? To help understand your feedback please refer to the specific area of the MSR you are providing feedback on.



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