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CM: D22/75789

Ms Natalie Reiter  
Deputy Secretary, Policy, Precincts and Innovation  
Department of Transport  
1 Spring Street  
MELBOURNE VIC 3000

24 May 2022

Dear Ms Reiter

## **REGULATORY IMPACT STATEMENT FOR THE MARINE SAFETY REGULATIONS 2022**

I would like to thank your staff at the Department of Transport (the Department) for working with the team at Better Regulation Victoria to prepare the Regulatory Impact Statement (RIS) for the Marine Safety Regulations 2022 (the proposed Regulations). The proposed Regulations will replace the current Regulations (Marine Safety Regulations 2012) in June 2023 or earlier. The Department is seeking to extend the current Regulations until June 2023.

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 24 May 2022 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

### **Background**

Marine safety is regulated in Victoria through the *Marine Safety Act 2010* (the Act). The Act applies to Victorian waters, which include inland waters and waters up to three nautical miles from the Victorian coast as waters beyond this area are Commonwealth waters and regulated by the Commonwealth. The purpose of the Act and Regulations made under it are to "provide for safe marine operations" in Victoria. Powered vessels (that is, those capable of using engines for propulsion) pose risks such as fatalities,

injuries, property damage and costs associated with search and rescue. To reduce these risks, the Government regulates the marine sector. The Act covers recreational vessels and the provision of pilotage services (the guidance of ships into and out of certain port waters). There are about 200,000 recreational vessels registered in Victoria.

Domestic commercial vessels (such as vessels used for commercial, government or research purposes within Australian domestic waters only) are regulated under a national scheme (the Domestic Commercial Vessel National Law) and do not fall under the Marine Safety Act. Similarly, the regulation of masters (the person in charge of a vessel) and crew of domestic commercial vessels is under the national system.

### **Problem analysis**

In the RIS, the Department explains that the operation of marine vessels poses potential harms to the master of a vessel, any other operators, passengers and the community. In many cases, the master of a recreational vessel will also be the operator and owner of the vessel.

These harms include fatalities, serious injuries and infrastructure damage. The Department notes that in the five years from 2014-15, it recorded over 6,700 marine safety incidents in Victoria, which led to 40 fatalities, 107 serious or minor injuries and 2 cases of missing persons. It explains that the level of harm is influenced by drivers and factors including:

- design, construction and maintenance of vessels;
- inadequate safety equipment; and
- human factors, such as competence, knowledge and risk-taking behaviour.

The Department explains that the Act imposes general safety duties on persons or entities that can control marine safety risks including masters and operators of vessels. It explains that in addition to these duties, regulations are required to prescribe specific requirements to reduce harm and achieve the Act's objectives. It explains that if the current Regulations expired and were not replaced, private incentives and other parts of the current regulatory frameworks would insufficiently reduce harms.

In the RIS, the Department analyses the problems in relation to six areas of the regulatory framework:

1. Marine licensing – what knowledge and skills should an operator of a vessel be required to have before being permitted to operate a vessel?
2. Vessel standards and safety – what performance standards and conditions should vessels have to meet in order for owners or operators to satisfy their safety duties under the Act?

3. Operational requirements – what requirements should operators of vessels have to meet when operating a vessel, for example, maximum passenger number and mass requirements?
4. Vessel identification – what requirements should there be for registering vessels to enable them to be uniquely identified?
5. Safety equipment – what equipment should be required to be carried on each type of vessel? and
6. Pilotage service providers (PSPs) – what safety standards should PSPs be required to meet?

## **Options and analysis**

In the RIS, the Department analyses options for the six different problem areas outlined above. It assesses options using a multi-criteria analysis (MCA) against a base case of no regulations. Options are analysed against three criteria, with the following weights:

1. Safety – the degree to which an option reduces fatalities, serious injury and infrastructure damage (50 per cent);<sup>1</sup>
2. Cost to government – the cost to the Government of administering and enforcing an option (25 per cent); and
3. Cost to community – the financial and time cost of an option to the marine community and other regulated parties (25 per cent).

For each problem, the Department analyses the current Regulations against alternative options with stronger regulatory requirements. For most problems, the Department's preferred option is the current Regulations (in some cases with minor changes) rather than alternative options because these alternative options have limited additional safety benefits and more significant additional costs.

### *Marine licensing*

The preferred option is the current Regulations, where an applicant has to pass a knowledge test to obtain a licence and operate a vessel. The Department explains that this test strongly improves safety by requiring applicants to demonstrate their knowledge of boating and waterway rules, while imposing low costs on government and the community. The Department explains that, in its view, there is no evidence that alternative options (requiring completion of a practical on-water course and on-water assessment in addition to a knowledge test) would increase safety significantly more than the preferred option, and that these alternative options would impose significant additional costs on government and the community.

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<sup>1</sup> For vessel identification, "safety" is replaced with "crime reduction and improved law enforcement" as the benefit criterion.

### *Vessel standards and safety*

The preferred option is the current Regulations, where as a condition of registration vessels must be fit-for-purpose in relation to the vessel condition and performance standards outlined in the Regulations. The Department explains that these fit-for-purpose requirements strongly increase safety, while imposing low costs on government and the community. It considers two alternative options:

1. a more detailed approach than the preferred option where new vessels would be required to be built and maintained to a certain standard prescribed in the Regulations; and
2. new vessels would be required to be built and maintained to a certain standard prescribed in the Regulations and seaworthiness inspections would be required when vessels are transferred.

The Department explains that additional safety benefits from these alternative options relative to the preferred option would be limited. This is because prescribing a certain standard would incrementally improve upon current fit-for-purpose requirements and only apply to new vessels. Seaworthiness inspections on transfer of registration would be infrequent, so have limited benefits. The Department explains that these alternative options would impose significantly higher costs on the community.

### *Operational requirements*

The Department's preferred option is the current Regulations with minor changes. It explains that the current Regulations, which state that the master of a vessel must ensure that a vessel is not overloaded and that passengers are not onboard while a vessel is being refuelled, are still required to reduce harm. The minor changes require vessel masters to comply with mass limits rather than passenger number limits.

### *Vessel identification*

The Department's preferred option is requiring vessel owners to provide the hull identification number (HIN) upon registration (if the vessel has a HIN). This is essentially the requirement imposed by the current Regulations with minor changes. The Department explains that the preferred option reduces crime and assists with law enforcement while imposing low costs on government and the community. It explains that the additional benefits of alternative options (verifying HINs provided at registration and retrospective applications of HINs to older vessels) are limited and that these options would impose significantly greater costs on government and the community. The Department also explains that the current Regulations are preferred because Australian jurisdictions are considering developing a national database to share vessel information across jurisdictions and legislative amendment might be required to setup a verification scheme.

### *Safety equipment*

The preferred option is based on the current Regulations but with some changes. These changes relate to strengthening life jacket requirements, such as phasing out the use of life jackets that do not meet the Australian Standard, prescribing alternatives to flares that can be carried to signal distress and prescribing that only VHF radios can be used where radios are required to be carried. The Department explains that relative to the base case of no regulations, the preferred option strongly increases safety and imposes costs on boaters because safety equipment is critical for protecting life when marine safety incidents occur. It would cost about \$1500 to fit a small vessel (up to 4.8m in length) with required safety equipment. The Department also explains that the changes to requirements would marginally improve safety at the same cost to government and the community.

### *Pilotage service providers*

The preferred option is an alternative option, requiring PSPs to have a Safety Management System which outlines the steps a PSP will take to eliminate or manage risk. The Department explains that such a system would complement existing obligations under the general safety duty in the Act. It explains that this system would increase safety because it is a best practice model of ensuring risks are appropriately identified and actively managed. The Department states that it understands that PSPs already have in-depth safety systems, so the compliance costs associated with this option are expected to be minor.

The Department explains that the preferred option would be more effective at increasing safety than the current Regulations, which prescribe safety standards for PSPs to meet. It also explains that the preferred option would be more effective than a voluntary code of practice.

## **Implementation and Evaluation**

In the RIS, the Department explains that overall, the proposed Regulations will not substantially change requirements. Transport Safety Victoria (TSV) will be the primary agency responsible for implementing any changes and will develop a detailed implementation plan. The Department is seeking to extend the current Regulations until June 2023. The proposed Regulations will replace the current Regulations before the current Regulations expire in June 2023.

Implementation will include direct engagement with marine stakeholders as well as communication to the broader community. The proposed Regulations may require updates to letters, forms, notices, websites and publications produced by VicRoads, Transport Safety Victoria and other Victorian Government agencies such as Victoria Police.

In the RIS, the Department explains that the proposed Regulations will be evaluated against safety outcomes. The Department notes that it will establish an intradepartmental committee to provide an ongoing forum where any issues with the regulations can be brought to its attention.

Evaluation will also involve a mid-term review of the proposed Regulations, which will most likely commence in 2027/28. Evaluation will draw on information collected by TSV, Victoria Police and studies commissioned by the Department, such as information on registrations and infringements. Evaluation will involve developing a baseline and measuring outcomes against this baseline.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



**Anna Cronin**  
Commissioner for Better Regulation