

SCUBA DIVERS FEDERATION of VICTORIA

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via e-mail to: marineactreview@transport.vic.gov.au

21 September 2009

Marine Act Review
Department of Transport
GPO Box 2797
MELBOURNE VIC 3001

re: Review of the Marine Act 1988

Dear Sir/Madam

Please find attached a Submission from the SCUBA Divers Federation of Victoria (SDFV) in relation to the above-listed Discussion Paper. The SDFV is a peak-body association of recreational SCUBA diving clubs. We have a long history of supporting safe and enjoyable recreational boating as a part of our SCUBA diving activities.

We wish to commend the Discussion Paper. As with many volunteer community groups, we are time- and resource-poor, and rely on the good-will of our members to engage. We found the structure and focus-points of the discussion paper helpful in this respect. The community meetings were also helpful, and a useful forum for sharing ideas and asking questions to clarify things.

Thank you for the opportunity to comment.

A handwritten signature in black ink, appearing to read "John M. Hawkins".

Dr John M. Hawkins,

Chairperson, and
Vice-President – Statutory
SCUBA Divers Federation of Victoria, *Inc.*

A submission in relation to the

Review of the Marine Act 1988

from the

SCUBA Divers Federation of Victoria, Inc.

GPO Box 1705 Melbourne, 3001
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September 2009





Introduction

This is a submission from the SCUBA Divers Federation of Victoria (SDFV) in relation to the 2009/2010 review of the Marine Act 1988.

About us and our interest

The SDFV is an affiliation of non-commercial recreational SCUBA diving clubs and associations throughout Victoria. We are a volunteer organisation and we have been providing peak-body representation of the interests and community values of recreational divers since 1964.

Recreational SCUBA diving and recreational boating go hand-in-hand, with the majority of Victorian SCUBA clubs being involved in a great deal of diving, from private and club boats. Since access to many dives sites requires careful planning and very competent boat handling skills (especially at the southern end of Port Phillip Bay, where much diving occurs), recreational SCUBA divers, as a group, should be considered experienced and responsible small-boat handlers.

As such, the SDFV is most concerned about protecting the interests of recreational divers, especially with regards to access restrictions (whether physical or financial) and with making other boaters aware of the ramifications of boats with divers in the water. In particular, we have a persistent concern in relation to boat operators ignoring the Divers Below Flag.

We acknowledge the point of review the Marine Act 1988 at this time, and the focus on safety. We point out that in the context of increased participation rates over the 25 years operation of the Act, the current Act must be seen as operating successfully, and there are no grounds for comprehensive changes. Nevertheless, we are strong advocates for water and diver safety, and we support the intention to improve safety where practical, as well as improve administrative and enforcement arrangements.

Our approach to the Discussion Paper

The SDFV submission will take the form of answers to the questions (in italics) in the Discussion Paper and Summary, plus comments about these issues, and for this submission, will be mainly confined to recreational issues. We address each of the Discussion Paper questions in the attached Table.

Our Summary Position

- The SDFV would like to see a greater awareness of small dive boats and dive flags among the recreational boating community
- This needs to extend to yachts, as well as powered craft
- The best way to regulate “grey vessels” is to accurately define the types and formalise the descriptions. Vessels which operate in true “not for profit” and community activities such as clubs, and so contribute to Victoria’s recreation opportunities, should be quarantined from being classified as commercial.
- Experienced boaters should not be penalized with levies and fees which might be introduced to accommodate the behaviour or attitude of inexperienced boaters.
- An increasing scale of penalties for repeat offenders (starting at present levels) is the most appropriate for dealing with infringements.



No	Questions	SDFV response
1	<p>Define the responsibilities of recreational boaters.</p> <p><i>Q. As part of a range of actions designed to address poor attitudes and promote a positive safety culture, do you support a statutory duty on all recreational boat users to take reasonable care?</i></p>	<p>In principle, we endorse the concept where boat users have an onus of behaviour which requires reasonable care in relation to the safe operation of the vessel. On the basis of the Discussion Paper, we remain cautious as to the scope of statutory obligations in this regard.</p>
2	<p>Improve integrity of vessel registration system.</p> <p><i>Q. Which option do you support?</i></p> <p><i>Q. Are both options required to protect against property theft and other forms of criminal activities?</i></p> <p><i>Q. Do you agree that under the Marine Act for operating an unregistered vessel should be aligned with those under the road safety act? If not, why?</i></p>	<p>We support the HIN if, and only if, the system can be made robust and reliability (in terms of thwarting registration integrity).</p> <p>We agree that a penalty for deliberately providing false information in relation to registration should exist. Both initiatives would be preferable.</p> <p>No. In our view, the Discussion Paper has not made it clear enough why the existing (4) penalty units for not complying with registration requirements are deemed inadequate.</p>
3	<p>Improving the effectiveness of the licensing system.</p>	



	<p><i>Q. Should skill based testing be introduced for recreational boat operators? If so, which licences should it be applied to?</i></p> <p><i>Q. Do you support improving the existing knowledge based licensing through an increased array of knowledge based endorsements</i></p>	<p>Perhaps, but we do not readily endorse it on the basis of the information provided in the Discussion Paper. It is a cornerstone theme of the Discussion paper that boating safety suffers from poor attitudes. We remain unconvinced that skilled-based testing will address attitude issues.</p> <p>We concur with the general statement that there is a case to increase the basic knowledge associated with licensing. We also agree that this might be in the form of an improved knowledge-based written test and a practical test, similar to that that currently applies to obtaining a motor vehicle licence. However, it is hard to see how a practical test for boating will necessarily reduce the safety data statistics associated with “serious incidents being most commonly caused by human factors such as navigational errors, errors in judgment and inexperience” any more so than it does with motor vehicle licensing.</p> <p>We believe that if there is to be a skill-based testing arrangement introduced, it should include an arrangement analogous to the learner driver system in Victoria with a prescribed period of practice training prior to licensing could be applied, and this would improve competence levels prior to licensing. It should apply to all types of recreational boating license.</p> <p>We agree in improving the existing knowledge-based licensing regime. Period. In our experience, there appears to be many boat operators who do not know or choose not follow regulations (on the water). For instance, from our own specific operating domain, too few recreational boaters observe the Diver Below flag, and we have persistent safety concern for divers in the water from other boats passing at speed.</p> <p>We remain skeptical as to the productivity (usefulness) of an endorsement scheme. We also think that costs associated with endorsements will be a disincentive.</p>
4	<p>Reduce or increase the scope of who is required to obtain a licence.</p> <p><i>Q. Should a licence be required to operate a powered recreational vessel with low a power motor?</i></p>	<p>Yes</p>



	<p><i>Q. Should operators of wind powered vessels be licensed? If so, which vessels?</i></p> <p><i>Q. Should owners and operators of wind powered vessels belonging to clubs be exempted from licensing?</i></p>	<p>Yes. Yachts of all size. Personal wind-power craft, no Yachts and all other wind-powered vessels should have to observe boating regulations such as Diver Below flag as well. For instance, we have regular reports from members of yachts sailing around them (within 10m), while divers were in the water, dive flags frantically waved, and signals made to the yachts to go around.</p> <p>Yes. In principle, we endorse arrangements where collective training and mentoring improves basic knowledge and skills, and provides a means for gaining experience in a controlled environment (that's what Clubs in the SDFV do!), and this type of environment should be recognised.</p>
5	<p>Revise the limits on age related “restricted licences”.</p> <p><i>Q. At what age should a person be able to get a full licence and operate unsupervised?</i></p> <p><i>Q. Should Victoria retain its restricted licence for persons under 16 years?</i></p> <p><i>Q. Is it reasonable to expect safety benefits from a proposal to increase the level of supervision for young operators?</i></p> <p><i>Q. Or to limit the types of vessels restricted licence holders are allowed to operate?</i></p> <p><i>Q. How significant are the costs?</i></p>	<p>16 years</p> <p>Victoria should allow supervised operation under 16 years old to allow new operators to gain knowledge and experience before they can be fully licenced. TA scheme like the ‘learners permit’ (mentioned above), which requires logged hour of supervised practice, would achieve this.</p> <p>Yes</p> <p>If the restricted licence holder scheme is retained, then perhaps an upper limit in terms of size or power (akin to the limit on motorcycles), is suitable. If a ‘learners permit’ scheme is adopted, and the supervision is involved, such prescribed limits may not be needed.</p> <p>Costs will be higher, depending on scheme adopted. If the improved scheme can be shown to specifically target an increase in safety outcomes, the costs may be justified..</p>
	<p>Increase awareness of environs in which</p>	



	<p>vessels are fit for operation.</p> <p><i>Q. Do you see the benefit of making it mandatory to provide information about what environs vessels can and cannot operate in?</i></p> <p><i>Q. Do you think such information would change the behaviour of recreational operators?</i></p>	<p>Yes. Boats are designed items, with fit purpose boundaries, and operating environs is part of the design set criteria. It should be made available and supplied by the manufacturer at time of purchase (and all times).</p> <p>In our view, the majority of recreational boating operators will be influenced and guided by this sort of information.</p>
	<p>Limit the scope of operation of recreational vessels.</p> <p><i>Q. What, if any, limits should be placed on the operation of recreational vessels?</i></p> <p><i>Q. Is it reasonable to impose a levy on recreational vessels to support vessel rescue services? If so, how should the levy be imposed?</i></p>	<p>None. Not supported.</p> <p>On the basis of the information in the Discussion Paper, this appears to be both impractical (to implement and police), and unfair (given that it tends to dismiss the contribution of competent boat handlers and sensible boating decisions).</p> <p>The linkages between safety outcomes and vessel disablements is probably better addressed through improved operator education (when is it safe, <i>etc</i>), and improved attitudes to vessel maintenance.</p> <p>No, not on the basis of the information in the Discussion Paper. We concur that marine rescue service(s) are valuable community establishments, and they must be funded. At present, some funding is derived through licencing and registration. We accept there might be an administrative need to specifically carve-out funds for rescue services, but we do not support any intention to impose a new levy above current registration fee without first having details about the fate of the current revenue.</p>
8	<p>Introduction of measures to ensure vessels are safe.</p>	



	<p>Q. Is the evidence regarding the unseaworthiness of second hand vessels sufficient to warrant an intervention?</p> <p>Q. If intervention is warranted, which option(s) would provide the best assurance that vessels are maintained in a safe condition?</p>	<p>No. On the basis of the Discussion Paper poor vessel condition is not a major contributor to poor safety outcomes. In this case, we can't see the cost of intervention as being cost effective.</p> <p>We advocate improved education and buyer-awareness advocacy.</p>
<p>9</p>	<p>Better manage the interfaces between commercial and recreational boating.</p> <p>Q. Which option or combination of options would form a preferred model for the regulation of "grey vessels"?</p>	<p>On the basis of the information in the Discussion Paper, this issue does not appear to be one with a specific or direct bearing on safety outcomes. Further, given there is no dimension to the 'problem' other than it is not 'widespread', it is difficult to see any driver for consideration in this safety-based review and reform of the Marine Act.</p> <p>That said, the first step to regulate "grey vessels" is to accurately define the types and formalise the descriptions. This should include a clear and unambiguous identification of vessels which are being used for profitable activities, including corporate, and fee for service activities, and means to distinguish this from vessels operation in a true 'not for profit' and community basis, and so contribute Victoria's recreation opportunities. Recreational boats used in private and Club activities should not be inadvertently captured by poorly targeted regulation. Overall, difficulties in practical enforcement should not be eased at a cost to broader communities.</p> <p>As listed, we do not support any of the models for the regulation of 'grey vessels' since none of them appear cost effective to the stated 'problem'</p>
<p>10</p>	<p>Improve co ordination and consistency of enforcement activities.</p> <p>Q. Do you think there is a need for more consistent and co ordinated enforcement activities across the state?</p>	<p>No.</p>



	<p>Q. Do you support MSV leading the development of common enforcement policies, coordination mechanisms, and systems to improve enforcement?</p>	<p>The SDFV consistently supports efforts for unified and co-ordinated enforcement policies across many government agencies. If the MSV is the lead agency in relation to the function of the Marine Act 1988, it seems reasonable that MSV has charter for developing and implementing common policies.</p>
11	<p>Measures to deal with repeat offenders.</p> <p>Q. Do you agree that repeat offenders should ultimately forfeit their right to operate vessels on water?</p> <p>Q. Do you agree that fines should be aligned with those applied in other transport modes for equivalent offences?</p> <p>Q. Do you agree that impoundment provisions similar to “hoon” laws on the roads should apply to certain types of dangerous conduct on water?</p> <p>Q. Are there any other forms of sanction that might be effective in addition, or as an alternative, to those discussed?</p>	<p>Yes..</p> <p>We agree in principle a ‘system’ of fines similar to that applied to other transport modes, but not necessarily aligned. Boating and control of use of waterways is different to road transport and the controlled use of roads. We agree with the concept of an increasing scale of penalties for repeat offenders.</p> <p>This could be a part of the treatment of repeat offenders, or part of the available penalties in an incremental regime.</p> <p>Graded fines and penalties that restrictive activity are sufficient</p>
12	<p>Improve enforceability of the rules governing navigation.</p> <p>Q. Do you agree that a lower penalty option should be introduced for breaches of the collision</p>	<p>The SDFV support (both) options provided they are designed to improve behaviour and encourage adoption of responsible boating (by being an appropriately leveled deterrent.)</p>



	<p><i>rules, and if so, should this involve lower penalties for individuals, infringement options, or both?</i></p>	
13	<p>Close gaps in the hierarchy of sanctions available.</p> <p><i>Q. Do you agree that the definitions of culpable and dangerous causing death in the Crimes Act should be extended to “operating a marine vessel”?</i></p>	<p>The Discussion Paper is silent on the deficiencies of the execution of the current Act in this area, and we do not have the capacity to comment wider.</p>
14	<p>Improve the effectiveness of the drug and alcohol provisions.</p> <p><i>Q. Under what circumstances should testing be permitted to take place?</i></p> <p><i>Q. Is it reasonable to extend the drug and alcohol regime to include observers?</i></p> <p><i>Q. Is it reasonable to extend the drug and alcohol regime to include participants in towed water sports?</i></p> <p><i>Q. Are there any other high risk water sports that should be covered by the drug and alcohol regime?</i></p>	<p>When a person is in a situation of control of a vessel, or when it is likely the vessel will require to be moved, and there are no other options available.</p> <p>Yes, provided the identity and role as observer is irrefutable.</p> <p>No (not on grounds of vessel or towed skier safety)</p> <p>No.</p>
	<p>Improve the application of the rules.</p>	



	<p>Q. Do you support the introduction of owner onus?</p> <p>Q. What laws are impractical, too hard to enforce, or unreasonably hard to comply with? Why?</p> <p>Q. What would be a better way of dealing with the “Problem” the law is aimed at?</p> <p>Q. Are there any new laws that should be created to address dangerous behaviour not covered by existing provisions?</p>	<p>No</p> <p>None of the rules are unreasonably hard to comply with.</p> <p>Education should be used as a on-going supplement to the rules.</p> <p>No</p>
	<p>Sharing the cost of marine safety.</p> <p>Q. How much would you be willing to pay for safer and more orderly waterways?</p> <p>Q. Do you think that Victoria should charge fees relative to the length of the vessel? If so, why?</p>	<p>It is not established that the waterways are currently unsafe. Thus, given current information, we would not pay any more for ‘improved’ safety. Community expectations demand that any initiative must be conducted on risk-return basis.</p> <p>No, not as the basis for pricing marine safety.</p>

End of Submission