



A submission in relation to the

**Regulatory Impact Statement Marine (Personal Floatation Devices and Other Safety Equipment) Regulations 2005**

*Introduction*

This is a submission in relation to the above-listed Regulatory Impact Statement (RIS) from the SCUBA Divers Federation of Victoria (SDFV). The SDFV is an affiliation of recreational SCUBA diving clubs and associations, and is the peak body representing the interests of recreational divers throughout Victoria.

We note that the RIS proposes to alter the existing regulations in relation to:-

- 1 the mandatory use of Personal Floatation Devices (PFD) and
2. the requirement to carry specific safety equipment.

Most recreational scuba diving in Victoria is power-boat based. Boating safety is therefore often an integral component of dive safety. Most snorkeling and diving in Victoria occurs through private, non-commercial activities of individuals, clubs and associations. In general, the SDFV welcomes sensible and practical efforts to improve boating safety. However, non-commercial recreational SCUBA divers were not part of the stakeholder workshop held in June 2004. We are concerned that the RIS is largely silent in the matter of boating for the purpose of recreational SCUBA diving in which participants wear wetsuits or dry-suits. This is unfortunate. The proposed regulations (in particular, the definition of 'underway'), do not recognize the mechanism of conducting a dive from a boat, and as written, the proposed regulations will **actually decrease** boating and diver safety.

We submit that the proposed regulations in relation to the use of PFD are both inappropriate and unreasonable in the context of boating for diving purposes. As the representative peak-body, with considerable subject matter expertise, we alert the architects of the proposed regulations that there is a **very high level of impracticability** with what is proposed in terms of conducting diving activities from a boat, and this will simply result in a **low level of compliance**. This does nothing to further the objectives of improving boating safety.

**1. Response in relation to use of PFDs.**

We focus our response on the proposals in relation to power-boating. In essence, our understanding is that the proposed regulations will require the mandatory wearing of PFD Type 1 at all times while underway in vessels 4.8m or less in length, and mandatory wearing of PFD Type 1 in vessels between 4.8m and 12m at times of defined 'heightened risk'. The RIS articulates rationale for the vessel size break on the basis of stability. The RIS establishes a higher rate of fatalities which may have been avoided by the wearing of a PFD Type 1 for vessels 4.8m or less in length. However, the RIS does not differentiate types of power-boating uses. More importantly, the RIS states that "the weight of occupants is the single biggest influence on vessel stability" (page 17). However, the nexus between being stationary (or at anchor) and being underway in relation to stability is not clear. The proposed regulation will not require wearing a PFD Type 1 when anchored. This appears inconsistent without the assumption that craft 4.8m or less in length are **significantly** less unstable at anchor that they are



underway (at any speed?). We doubt this assumption on simple common sense grounds, but more generally, we point out that it is not explored in the RIS.

#### *Inappropriate and/or Unreasonable*

Snorkeling and diving in Victorian waters usually involves the wearing of wetsuits (or dry-suits in the case of diving). Wetsuits used for diving in Victoria are 5mm or greater in thickness. Thick wetsuits afford both buoyancy and exposure protection. We note that in the rationale and statistics underpinning the need for mandatory use of PFD 1, the data does not explore the incident rate of fatalities (which might have been avoided with the use of a PFD Type 1) where wetsuits were involved. That is, it is not established in the RIS that wearing a PFD Type 1 with a thick wetsuit or dry-suit will reduce the rate of fatalities. Furthermore, the functionality of a wetsuit as a buoyancy device is recognized by implication with kiteboard and sailboard users. Not all participants in power-boating can swim, or have received water survival training, and we acknowledge that in terms of the Coroner's general investigations, the proposal to mandate the wearing of PFD devices in some circumstances is to reduce preventable drownings. However, recreational SCUBA divers are specifically skilled and trained. All SCUBA divers must meet swimming ability standards as part of certification. If an occupant of a dive boat of 4.8m or less is wearing a dive wetsuit while underway, there is very little additional benefit the mandatory wearing of a PFD Type 1 can deliver.

Many dive clubs operate air-inflatable crafts ("rubber ducks") which will be captured by the 4.8m or less length classification. The SDFV strongly suggests that the general stability rationale used in the RIS for vessels 4.8m or less in length does not apply to the same extent to air-inflatable craft as it does to 'tinnies' and flat-bottom aluminum boats favoured by fishermen. The point of Clubs using inflatable crafts is because they are suitable and stable when considering the weight and weight distributions of 2, 3, or 4 divers (4 SCUBA divers fit comfortably in a 4.5-4.8m air-inflatable craft). In the case of SCUBA diving and small craft, the proposed regulation in relation to compulsory wearing of a PFD Type 1 while underway will lead to *circumstances of greater risk*. Consider this scenario: Occupants in a craft less than 4.8m in length motor to a dive site. The occupants intending to undertake a dive will already be wearing a wetsuit, since it is very awkward and generally unsafe, to don a wetsuit in a small craft for the same stability arguments used in the RIS. The occupants will have on the PFD Type 1 as prescribed under this proposal. The divers will not have on tanks, weight-belts, scuba-feed buoyancy vests, since the requirement to wear the PFD Type 1 precludes traveling to the dive site fully kitted-up. At the dive site, provided the boat is anchored, the divers can take off the PFD Type 1, and now put on all the gear that could not be worn because of the PFD. It is during this activity that the small craft is most subject to risk in terms of stability and unbalance. All this can not occur unless the boat is anchored. But a large proportion of diving in Victoria occurs from boats which are not anchored. Often, it is not possible, or very unsafe, to anchor. Just as often, it is not allowed to anchor (ie historic shipwrecks, Marine Parks). Thus, as written, the RIS proposes regulations which would at best, reduce the diving opportunities, and at worst force divers into additional expenditure (*i.e.* purchase a bigger boat, only use commercial charter dive services), to pursue recreational diving.

#### *Impracticability*

Diving is circumstances dependent, irrespective of vessel size. The SDFV holds that it will be virtually impossible to conceive a situation where a diver could wear both a PFD Type 1 and SCUBA diving gear at the same time. Each type of equipment is simply functionally and physically incompatible. Therefore, it will be virtually impossible for recreational divers to comply with proposed regulations for wearing PDFs. For vessels between 4.8m and 12m, the defined 'heighten risks' identify circumstances where diving is common. For instance, night diving, and diving with a wind warning. In both cases, the diving practice is incompatible with divers being required to wear a PFD Type 1 until the boat is



anchored. In windy conditions, it is common practice not to anchor. With recreational night diving, which typically only ever occurs in perfectly calm conditions, it is common practice, if not operating procedure, not to anchor so as to allow pick-up of surfacing divers in the dark. Since the requirement to wear a PFD Type 1 as prescribed will be impractical for diving activities, it simply will not be complied with. This is not to say that divers are less safe, or do not respect attempts to improve safety. It is an observation that wearing PFD Type 1 (for buoyancy) for divers already in thick, buoyant wetsuits will not improve safety outcomes at all. Hence, the proposed regulation (as it applies to boat-based SCUBA divers) is an unnecessary regulation.

*Equity*

In Section 2.6.2 of the RIS, the use of a wetsuit as a proxy of a PDF is implicit. However, the proposed regulations pertain only to commercial dive charter operators where passengers are not required to wear a PFD if wearing a wetsuit/dry-suit. The effect of the proposed regulation is ‘to reduce the compliance burden.’ The SDFV suggests that it is fair and equitable that this concession apply to non-commercial operators as well.

**SDFV position:**

*Occupants on recreational vessels are exempt from the requirement to wear PFD at all times if in a vessel of 4.8m or less length, or at times of heightened risk if in a vessel between 4.8m and 12m, provided the occupant is wearing a wetsuit/dry-suit as defined in Section 2.62 of the RIS (proposed Regulation 209 (1)(b), 2009 (2)(b)).*

**2. Response in relation to use of specific safety equipment.**

The SDFV concurs with the intent of the proposals in relation to specific safety equipment in the context of pursuing national consistency. We note that there will be a compliance cost for parachute flares and compass for those vessels operating in coastal waters. We suggest to MSV that GPS devices should be considered equivalent to a compass.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John M. Hawkins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr John M. Hawkins,  
SCUBA Divers Federation of Victoria, Inc.