



Queensland

# **Safety in Recreational Water Activities Amendment Regulation (No. 1) 2013**

## **Explanatory Notes for SL 2013 No. 117**

made under the

*Safety in Recreational Water Activities Act 2011*

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## **General outline**

### **Short title**

*Safety in Recreational Water Activities Amendment Regulation (No. 1) 2013.*

### **Authorising law**

Section 45 of the *Safety in Recreational Water Activities Act 2011*

### **Policy objective and the reason for them**

Queensland's recreational diving and snorkelling sector contributes approximately \$1.4 billion to the Queensland economy each year and is a major driver in the state's tourism sector; one of the Queensland Government's four pillars to rebuild Queensland's economy. There are approximately 1.2 million diving trips and 2.3 million snorkelling trips undertaken in Queensland each year, and approximately half of these are undertaken by overseas visitors. As a result, any recreational diving or snorkelling incident receives intense media scrutiny.

The *Safety in Recreational Water Activities Regulation 2011* (the SRWA Regulation) supports the *Safety in Recreational Water Activities Act 2011*

(the SRWA Act) and maintains Queensland's high standards of safety in the recreational water activities industry by ensuring the health and safety of people for whom recreational water activities are provided by a person conducting a business or undertaking.

The SRWA Regulation applies to recreational water activities, defined as activities carried out for the purposes of recreation on, in or under waters; more specifically recreational diving and snorkelling.

The *Recreational Diving, Recreational Technical Diving and Snorkelling Code of Practice* (the Diving and Snorkelling Code of Practice) supports the legislation by providing detailed advice and guidance about the control measures that should be followed to ensure recreational diving, recreational technical diving and snorkelling are conducted in a safe way.

In late 2011, a review of the recreational diving and snorkelling industry was undertaken to ensure Queensland continues to have Australia's most comprehensive dive industry safety regime. This included the establishment of a Dive Safety Reference Group to report on the adequacy of the regulatory framework for the industry.

The amendment regulation implements two recommendations from the review as follows:

1. Improving head count and missing diver location procedures.
  - The dive reference group was provided with information on a number of incidents where vessels have left a dive or snorkel site without properly counting all persons on board, resulting in persons being left behind.
  - Analysis of the incidents indicated that manual counts of persons on vessels have failed due to a lack of attention and cross checking procedures rather than a systemic failure of head count procedures. There have been no fatalities connected with a failed count since 1998.
  - The dive reference group identified that an enhanced system of cross checks using a combination of active and passive systems would further minimise the risk of a person being left behind.
  - The dive reference group recommended that at least two crew members be required to conduct independent counts of all persons on board whenever a count is required to be conducted. Where there is only one person representing the operator on the

vessel then the count must be conducted using both a passive and an active count.

2. Restricting the requirement for dive medical certificates to 'at risk' entry-level certificated divers.
  - Currently the Diving and Snorkelling Code of Practice recommends that all candidates involved in entry-level certificate diving training possess a medical certificate prior to participation. This has generally been adopted as the industry standard. This contrasts with resort divers and certificated divers who are required to self assess their medical fitness to dive.
  - In addition to the differences in medical fitness requirements, the dive reference group was provided with numerous examples of how the current requirements for a medical certificate from all candidates restricts business for diver operators with no evidence that it provides a safer system than the self-assessed medical declaration required by resort divers and certificated divers.
  - The dive reference group concluded that the guidance set down in the code unnecessarily restricts operators in Queensland from competing in the entry-level certificate dive market. No jurisdiction in Australia or in the Asia Pacific region requires such a medical certificate.
  - The dive reference group concluded that there are safety benefits in requiring a dive operator to obtain a fitness to dive medical certificate for candidates who fall into the following 'at risk' categories:
    - have medical conditions that may put their safety at risk;
    - persons over the age of 45 years, as that age group have an increased risk of cardiac or underlying coronary conditions;
    - persons with a body mass index over 30 and a waist circumference greater than 102cm for males and 88cm for females, as these persons have an increased risk of cardiac or underlying coronary conditions.
  - The dive reference group recommended that dive operators obtain a medical declaration from all entry-level dive candidates prior to allowing them to dive and require the dive operator to view a fitness to dive medical certificate if the person identifies that they are in one of the 'at risk' categories. This ensures the

appropriate safety standards are in place without imposing an unnecessary regulatory burden on operators.

### **Achievement of policy objectives**

The amendment to the SRWA Regulation will achieve the objective of continuing to maintain Queensland's high standards of safety in the recreational water activities industry by:

1. Amending the requirements for counts of all persons on board a vessel for recreational diving and snorkelling, by requiring the duty holder to ensure that whenever a count is required at least two crew members:
  - independently count all persons on board; and
  - compare the counts to ensure they agree; and
  - make a written record of the counts; and
  - verify the counts; or
  - if there is only one crew member on board that crew member must conduct two head counts, one using an active count system and one using a different active or a passive count system.
2. Inserting new requirements for dive operators to:
  - obtain a medical declaration from all entry-level dive candidates prior to allowing them to dive; and
  - view a fitness to dive medical certificate if a person identifies on the medical declaration that he or she is in one of the following 'at risk' categories;
    - has or has had any of the medical conditions mentioned in the self-completed medical declaration; or
    - is over 45 years of age; or
    - has a body mass index of more than 30 and a waist circumference of more than 102 cm for males and 88cm for females.

The Diving and Snorkelling Code of Practice has also been amended to reflect these changes.

### **Alternative ways of achieving policy objectives**

The policy objective can only be achieved by regulatory amendment.

### **Estimated cost of government implementation**

The amendments will not impose any additional costs on recreational diving and snorkelling operators or the government.

### **Consistency with fundamental legislative principles**

The regulation raises no fundamental legislative principle issues. The regulation has been drafted with regard to the fundamental legislative principles and is considered to comply with these principles.

### **Consultation**

There has been extensive consultation on the amendments over a considerable period since 2011 including:

On 18 August 2011, the then Minister for Education and Industrial Relations announced the establishment of a Recreational Dive and Snorkelling Industry Reference Group (dive reference group);

- The dive reference group released an information paper for public comment and 15 written submissions were received;
- The dive reference group attended five public forums in Cairns, Townsville, Airlie Beach, Gold Coast and Sunshine Coast between 3 and 20 October 2011. A total of 43 people attended the public forums.
- The dive reference group considered feedback from the information paper and five public forums and prepared a report containing 12 recommendations to improve safety standards in the recreational dive and snorkelling industry. The report was presented to the then Minister on 1 December 2011.
- The then Minister released the report for further public comment on 17 January 2012. The period of public comment closed on 31 March 2012. Workplace Health and Safety Queensland (WHSQ) received 14 written submissions about the report's recommendations.

- WHSQ reviewed and considered public comment and presented recommendations for approval to the Attorney-General and Minister for Justice.
- The Attorney-General and Minister for Justice consulted further with key industry stakeholders to confirm their support of the recommendations in Cairns on 28 August 2013.
- Consultation with key industry stakeholders in Cairns was undertaken on 7 May 2013 on the proposed amendments.

## Notes on Provisions

*Clause 1* provides the short title of the regulation.

*Clause 2* states that this amendment amends the *Safety in Recreational Water Activities Regulation 2011*.

*Clause 3* amends section 6 (Count of all persons on board to be made and recorded) which prescribes how the count of all persons on board the boat must be carried out, recorded and verified. The clause amends the section by requiring cross checking of counts and active and passive counts as follows:

- Before the boat departs for the dive site the duty holder must nominate at least two crew members and ensure that they independently count all persons on board, compare the counts to ensure they agree, make a written record of the counts and verify the information recorded;
- If anyone joins or leaves the boat permanently, once the vessel has departed for the dive site, the nominated two crew members must ensure they independently count persons as they leave the boat, independently count the persons as they join the boat, compare the counts to ensure they agree, make a written record of the counts, make a written record of the total number of persons on board and verify the written record;
- Before the boat departs from the dive site the nominated two crew members must ensure they independently count all persons on board, compare the counts to ensure they agree, make a written record of the

counts, compare the counts with the last counts recorded to make sure they agree, make a written record of the comparison and verify both of the written records made.

- If there is only one crew member aboard the boat, the crew member must do each of the counts required twice, once using an active count system and once using either a different active count system or a passive count system.
- The duty holder must keep each record made for at least one year.

**Clause 4** inserts a new part 2A Conducting entry-level certificate diving

Section 10A provides the definition of entry-level certificate diving

Section 10B provides that this part applies to the provision of entry-level certificate diving by a duty holder.

Section 10C describes the circumstances under which a duty holder may allow a person to do entry-level certificate diving. A person is permitted to dive if:

- the person gives the duty holder a completed medical declaration form; and
- the duty holder (or someone on their behalf) has read the medical declaration and does not know or suspect the information is false or misleading and assesses the person's fitness to dive taking into account the information contained in the declaration and decides it is reasonable to allow them to dive.

The duty holder must keep a copy of the medical declaration for at least one year.

Section 10D sets out that if a person has disclosed on a medical declaration form that they have any of the medical conditions listed in the declaration or are over 45 years old or have a body mass index of more than 30, and a waist circumference of more than 102 centimetres for males and more than 88 centimetres for females, the duty holder must ensure the person provides a medical certificate from a doctor certifying that they are medically fit to dive before providing the person with entry-level certificate diving. The duty holder must keep a record of the medical certificate for at least one year.

**Clause 5** amends section 12 (Count of all persons on board to be made and recorded) which prescribes what a duty holder must do when using a boat to transport persons to, or to the vicinity of, a recreational snorkelling site,

to ensure no persons are left behind at the site. The section prescribes how the count of all persons on board the boat must be carried out and recorded at certain times. The clause amends the section by requiring cross checking of counts and active and passive counts, when conducting recreational snorkelling, consistent with the changes made under clause 3.

**Clause 6** amends the schedule (Dictionary) to include definitions of active count system; passive count system; and entry-level certificate diving.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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