

Safety in Recreational Water Activities Regulation 2024

Explanatory notes for SL 2024 No. 100

made under the

Safety in Recreational Water Activities Act 2011
Marine Parks Act 2004

General Outline

Short title

Safety in Recreational Water Activities Regulation 2024

Authorising law

Section 45 of the *Safety in Recreational Water Activities Act 2011*
Section 150 of the *Marine Parks Act 2004*

Policy objectives and the reasons for them

The *Safety in Recreational Water Activities Regulation 2024* (Regulation 2024) supports the policy objective of the *Safety in Recreational Water Activities Act 2011* (the SRWA Act), which is to maintain Queensland's high standards of safety in the recreational water activities industry. This objective will be achieved by re-making the *Safety in Recreational Water Activities Regulation 2011* (SRWA Regulation) to ensure the health and safety of people for whom recreational water activities are provided by a dive operator.

The SRWA Act applies to recreational water activities which are defined as activities carried out for the purposes of recreation on, in or under waters. Examples of recreational water activities contained within the SRWA Act include diving and snorkelling. The Regulation 2024 applies specifically to recreational diving, recreational technical diving and recreational snorkelling.

The SRWA Act and the SRWA Regulation came into effect on 1 January 2012 following the exclusion of specific safety risks related to recreational water activities by Queensland's adoption of the harmonised work health and safety laws. Pursuant to section 54 of the *Statutory Instruments Act 1992*, the SRWA Regulation expires on 1 September 2024.

With the important contribution recreational diving and snorkelling makes to the Queensland tourism economy and the high-risk nature of these activities, it is in the interests of all Queenslanders to ensure we continue to have one of the safest recreational diving and snorkelling industries in the world. Consistent with these interests, the primary objective of the Regulation 2024 is to maintain and modernise the high standards of safety in the industry as established through the SRWA Regulation.

The *Marine Parks Act 2004* (MP Act) has the main purpose of providing for the conservation of the marine environment. Section 150 allows the Governor in Council to make regulations under this Act for matters such as the implementing, and enforcing compliance with, management plans or codes of practice. Some of these plans interact with the SRWA Act and Regulation 2024 by, for example, leveraging definitions in sections that restrict the number of people diving in certain marine habitats. The remaking of the Regulation 2024 will therefore cause consequential amendments to these plans.

Achievement of policy objectives

The Regulation 2024, the SRWA Act and the *Work Health and Safety Act 2011* (WHS Act) operate together. The WHS Act provides the broad duties and requirements for health and safety that apply to persons conducting a business or undertaking. The SRWA Act and the Regulation 2024 apply more specifically to the health and safety duties and requirements for persons conducting a business or undertaking that provide recreational water activities. In addition, key provisions of the WHS Act are replicated in the SRWA Act. For example, the work health and safety regulator for the WHS Act is the regulator for the SRWA Act and the Regulation 2024; and work health and safety inspectors appointed under the WHS Act also monitor and enforce compliance with the SRWA Act and the Regulation 2024.

The Regulation 2024 will achieve the objective of maintaining Queensland's high standards of safety in the recreational water activity industry by ensuring the health and safety of people for whom recreational water activities are provided by a dive operator. In summary, the Regulation 2024 continues to require that:

- all persons aboard the boat are counted;
- entry-level certificate divers and non-certified divers complete a medical declaration;
- entry-level certificate divers are provide a medical certificate where required;
- snorkellers are given advice about medical conditions which may impact their ability to snorkel safely;
- lookouts (and/or guides for snorkellers), rescuers and first aid facilities are provided;
- non-certified divers are adequately supervised; and
- a dive safety log is kept.

The SRWA Regulation is due to expire on 1 September 2024 unless it is remade. The Regulation 2024 remakes the SRWA Regulation and in a restructured to be more simplified, align with contemporary drafting practices, reduce duplication and make minor technical amendments.

Consistency with policy objectives of authorising law

The Regulation 2024 is consistent with the objectives of the authorising Act that is to ensure the health and safety of persons to whom recreational water activities are provided.

Inconsistency with policy objectives of other legislation

The Regulation 2024 is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

It is estimated that over 1 million people undertake recreational diving and snorkelling activities each year in Queensland¹. With the important contribution recreational diving and snorkelling makes to Queensland's and regional economies, it is in the interest of Queensland to ensure it continues to have one of the safest recreational diving and snorkelling industries in the world.

Remaking the SRWA Regulation with minor amendments balances the need to manage safety risk with economic opportunity. The Regulation 2024 will continue to provide dive operators with clear requirements on their health and safety duties when providing recreational diving and snorkelling activities and will continue the high standard of safety for the recreational diving and snorkelling industry in Queensland. The requirements within the Regulation 2024 will reduce the risk of injuries and death to recreational divers and snorkellers who undertake these high-risk activities.

The cost of remaking the proposed Regulation 2024 to the Queensland Government will be minimal and will be met from existing resources.

In terms of impacts on industry, the Regulation 2024 includes a restructure in line with modern drafting principles, updated definitions and terminology, and makes minor technical amendments to the SRWA Regulation that place no additional regulatory burden on dive operators.

Consistency with fundamental legislative principles

The Regulation 2024 is generally consistent with fundamental legislative principles. Issues relating to fundamental legislative principles are discussed below.

Institution of Parliament – sub-delegation of power (external documents)

The Regulation 2024 includes two definitions that refer to an external document, AS ISO 24801. The definition of a *recreational dive training organisation* in the Schedule is defined as an 'organisation engaged in the certification of recreational divers through documented training procedures that substantially comply with AS ISO 24801 (Recreational diving services – Requirements for the training of recreational scuba divers).' The definition of *initial training course* in Section 8 is defined as a course that complies with ASO 24801 and refers to

¹ The recreational dive and snorkelling industry in the Great Barrier Reef: profile, economic contribution, risks and opportunities Great Barrier Reef Marine Park Authority, Jim Binney

certificates issued by a *recreational dive training organisation* through undertaking an *initial training course*.

Allowing an external document such as AS ISO 24801, that is not subject to parliamentary scrutiny, to stipulate the circumstances under which an entity may be considered a recreational dive training organisation and what is considered an initial training course, could infringe section 4(5)(e) of the *Legislative Standards Act 1992*. This section allows the sub-delegation of power delegated by an Act only in appropriate cases and if authorised by an Act.

However, given recreational dive training organisations may issue qualifications for various types of divers (for example, supervised divers, autonomous diver and dive leaders), with different standards for each of those qualifications, it is not considered practical to include all of these details in the Regulation 2024. It is also not practical to specify the description of the requirements of an initial training course as the requirements are extensive and may change over time if they are updated in line with current industry practice.

The AS ISO 24801 series are published by Standards Australia. Standards Australia is Australia's peak standards organisation. Australian Standards are recognised and accepted industry standards and are developed through consultation with technical experts, government and industry. Since 2014, AS ISO 24801 has been the adopted Australian Standard for dive training qualification and most recreational dive training organisations are already delivering qualifications against this standard.

The standard referenced in the definition in the Schedule and in Section 8 of the Regulation 2024 deal with specific, detailed technical requirements. It is therefore considered an appropriate sub-delegation of power given that this reference to this external standard is necessary, the high level of rigour surrounding the development and adoption of Australian Standards, and that without reference to the standard, copious amounts of technical information would instead need to be detailed in the Regulation 2024.

Consultation

Government

The Department of the Premier and Cabinet (DPC), Queensland Treasury (QT), the Department of Environment, Science and Innovation (DESI) and the Department of Justice and Attorney General (DJAG) were consulted on the Regulation 2024.

Industry

Dive operators, other recreational diving and snorkelling industry stakeholders and subject matter experts were consulted during the sunset review and advised of the proposal to remake the Regulation 2024 with minor technical amendments. The Regulation 2024 has broad support from industry.

Notes on Provisions

The provisions in the Regulation 2024 reflect a restructure of the SRWA Regulation and amendments to align with contemporary drafting style. In particular, the provisions pertaining

to medical fitness and medical conditions, duties relating to transport by boat, and lookouts and guides have been streamlined to exist together, rather than duplicated in separate parts based on the type of activity being undertaken.

The Regulation 2024 also incorporates a number of minor changes to clarify existing policy, reflect current industry practices and updated medical information.

An outline of the Regulation 2024 is provided below, which includes a description of changes that simplify and enhance the operation of the SRWA Regulation.

Part 1 Preliminary

Part 1 establishes the preliminary matters for the Regulation 2024, including the application of the Regulation 2024, interpretation of key concepts such as the meaning of dive operator, recreational diving, recreational technical diving, recreational snorkelling, certified diver, entry-level certificate dive and non-certified dive.

Amendments have been made to Part 1 to replace the term ‘duty holder’ with dive operator to use plain language and to clarify the different types of activities referred to within the Regulation 2024. The definition of recreational diving has been simplified and the reference to being photographed, filmed or videoed is no longer needed to differentiate between recreational diving and a person being filmed or photographed for profit or gain in a diving work situation as opposed to a recreational situation. Resort dive has been replaced with non-certified dive to reflect that this activity often occurs outside a resort context. Entry-level certificate dive is clarified with a definition of an initial training course to ensure the term is more easily understood by industry. Recreational snorkelling is clarified to include free diving which can be undertaken without a snorkel but otherwise is consistent with the activity of recreational snorkelling. A definition is provided for certified diver to clarify what constitutes an entry-level certificate dive and a non-certified dive, particularly in situations where certified divers may participate during an entry-level certificate dive or non-certified dive.

Part 2 Medical fitness and medical conditions

Part 2 establishes the requirements of medical fitness for entry-level certificate and non-certified dives and the requirement to provide advice to people who participate in recreational snorkelling. Part 2 combines the medical fitness and medical condition provisions of entry-level certificate dives and non-certified dives to avoid the duplication that existed in the expiring SRWA Regulation.

Part 2 prescribes that dive operators must ensure people who wish to undertake entry-level certificate dives and non-certified dives provide a medical declaration. The medical declaration informs the dive operator of relevant medical conditions and allows the dive operator to make an assessment of the person’s fitness to dive and whether it is reasonable and safe for the person to dive.

For entry-level certificate dives, Part 2 clarifies that the medical declaration may indicate a medical evaluation by a medical practitioner is required based on the person’s responses in the medical declaration. In those circumstances, the dive operator must ensure that they receive a medical certificate certifying that the person is fit to dive prior to participation in the dive. Amendments to Part 2 include replacing outdated medical criteria that triggered a requirement

for a medical certificate with new a medical declaration in the approved form. Using an approved form will allow the Regulator flexibility to keep medical declarations current and reliant on the latest medical information. Part 2 specifies that a medical declaration given to a dive operator must be kept for at least one (1) year. This ensures consistent record keeping of both entry-level certificate dives and non-certified dives.

Part 2 sets out the requirement for dive operators to provide advice to snorkellers about the increased risks to health and safety from the activity of recreational snorkelling as certain medical conditions can pose significant risks to people while undertaking this activity. Part 2 includes that the dive operator must advise the snorkellers to tell a worker if they have any medical condition. Part 2 was amended from referring to a medical condition a snorkeller was 'concerned about' to 'any' medical condition. The rationale for this change was to ensure that, while not all persons may be concerned about their medical conditions, they should tell a worker about all their medical conditions to allow the worker to properly assess the risks to their health and safety. This amendment will encourage fuller disclosure by prospective participants which will enable the dive operator to make more informed decisions.

Part 3 Duties relating to transport by boat

Part 3 states what the dive operator must do when providing a recreational diving activity, or a recreational snorkelling activity, using a boat to transport one (1) or more persons to a dive site to ensure that no persons are left behind at the dive site.

Part 3 requires a dive operator to implement systems that focus on the safety of the divers and snorkellers and involves conducting counts of all persons aboard a boat.

Part 3 includes the definition of a dive site to ensure dive operators understand when counts are to occur.

Part 3 provides the meaning of a nominated crew member and sets out how, and when, a dive operator must ensure a nominated crew member accurately counts persons aboard a boat. To ensure accuracy in the counting, the required way to count persons is set out for circumstances where there are 2 or more nominated crew members and when there is 1 nominated crew member. The requirement of counting persons includes comparing counts to ensure both counts agree (i.e., are identical) and there is no discrepancy.

Amendments to Part 3 set out what steps need to be taken if the counts do not agree and provides a definition of emergency plan. This Part provides clear actions for dive operators to take to ensure a timely response when there are persons who are not accounted for. For consistency, the meaning of emergency plan is referred to as the requirement of an emergency plan under the *Work Health and Safety Regulation 2011*.

To ensure appropriate recordkeeping, the requirements of how to make and verify the records are set out in Part 3. The timeframe for keeping those records is consistent with other recordkeeping requirements within the Regulation 2024.

Part 4 Lookouts and guides

Part 4 applies if a dive operator is conducting recreational diving, recreational technical diving or recreational snorkelling for one or more persons. The dive operator must ensure that while the divers and snorkellers are undertaking the activity, at least one (1) person acts as lookout.

Part 4 outlines the limited circumstances in which a dive operator may allow the activity without an additional person available to act as a backup lookout; such as when a lookout is needed to undertake a rescue.

Part 4 prescribes that the dive operator may allow persons to undertake recreational snorkelling only if there is a lookout. However, Part 4 allows for recreational snorkelling to be undertaken without a lookout, using a guide only, and describes the circumstances in which this is allowed. Part 4 sets out the requirements for lookouts and guides including the responsibilities while undertaking the activity to ensure lookouts and guides can effectively fulfil the purpose of the role.

Part 4 has been amended to reflect current terminology relating to the provision of first aid.

Part 5 Supervision of non-certified dives

Part 5 sets out how dive operators must provide appropriate supervision for non-certified dives. The dive operator must ensure that each person doing a non-certified dive is supervised in the water by a dive instructor or a dive instructor assisted by a certified assistant. This Part outlines the maximum number of non-certified divers that the dive supervisor can supervise in the water at one time.

Part 5 includes definitions of certified assistant and dive instructor.

Part 6 Dive safety log

Part 6 establishes the obligations of dive operators who conduct recreational diving or recreational technical diving to ensure a written dive safety log is kept for the diving activity.

Part 6 sets out the requirements to verify the dive safety log, the timeframe to keep the record which is consistent with other record keeping provisions in the Regulation 2024 and the requirement to make or sign an entry as soon as possible.

Part 6 sets out the required information to be recorded for each dive carried out during the diving activity. Additional information requirements for dive safety logs are prescribed in Part 6 if the dive activity includes a dive carried out using dive tables or when specified breathing equipment is used.

The purpose of the requirement to keep a written dive safety log is to ensure that details are recorded about each dive. These details may be of assistance in case of an incident, to help the planning of any future dives so, for example, the likelihood of decompression illness can be minimised and to ensure all divers return safely after the dive.

Part 7 Miscellaneous

Part 7 describes the prescribed Acts under the Regulation 2024 which relate to section 41(3)(c)(ii) of the SRWA Act.

Part 8 Repeal and transitional provisions

Part 8 of the Regulation 2024 contains transitional provisions. This ensures that the keeping of dive safety logs and the declaration of existing medical conditions as required under the expiring SRWA Regulation are preserved and remain valid in certain circumstances.

Part 8 provides guidance that references to the repealed SRWA Regulation may be taken to be a reference to this Regulation 2024, if the context permits, without limiting the application of section 14H of the *Acts Interpretation Act 1954*.

Part 9 Amendment of legislation

Two pieces of subordinate legislation under the MP Act define a recreational dive training organisation as the definition given under the SRWA Regulation.

Part 9 makes consequential amendments to the definition of a recreational dive training organisation in the:

- *Marine Parks (Great Sandy) Zoning Plan 2024*; and
- *Amendment of Marine Parks (Moreton Bay) Zoning Plan 2019*.

Schedule Dictionary

The schedule to the Regulation 2024 contains a dictionary that provides definitions of words and terms used in the Regulation 2024.

Terms that are no longer referred to in the Regulation 2024 have been omitted from the dictionary as are terms which were defined in the SWRA Regulation using their ordinary meaning or where the definition did not provide any further clarity (for example, *scuba* and *underwater diving*).

The definition for a *recreational dive training organisation* has been amended to reference an updated Australian Standard. A further definition has been added to define the particular Australian Standard.

Definitions for recreational diving activity and recreational snorkelling activity have been added to clarify that these activities are provided by a dive operator.

A definition has been added for *unique identifier* as something for a person or document, meaning a particular code, letter, number, mark or combination of those things, used to identify the person or document, including in an electronic form. This addition rectifies the omission of the definition in the SRWA Regulation.