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## **Marine Safety Act 2010**

### NOTICE OF MAKING OF THE CODE OF PRACTICE FOR YACHT CLUBS WHICH MANAGE 'BOATING ACTIVITY EVENTS'

I, Jaala Pulford, Minister for Fishing and Boating, under section 272 of the **Marine Safety Act 2010** give notice of the approval of the following Code of Practice for Yacht Clubs Which Manage 'Boating Activity Events'.

The Code of Practice for Yacht Clubs Which Manage 'Boating Activity Events' comes into operation on 10 August 2019.

Dated 9 August 2019

HON. JAALA PULFORD MP  
Minister for Fishing and Boating

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**SPECIAL**

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CODE OF PRACTICE  
FOR  
YACHT CLUBS WHICH MANAGE  
'BOATING ACTIVITY EVENTS'

This Code of Practice is made under section 272 of the **Marine Safety Act 2010**

## INTRODUCTION

- 1 Yacht clubs organising boating activity events (e.g. races) have a strong incentive to ensure the safety of their members, volunteers, employees and participants. The strength and viability of the activity of sailing is dependent on being able to give assurance to existing and prospective members that sailing is both enjoyable and safe.
- 2 There are safety risks associated with sailing in the same way there are safety risks associated with other sports and recreational activities. There are common law duties of care that cover these activities and there are legislative requirements that must be adhered to at the Commonwealth, State and local levels.
- 3 Yacht clubs and representative bodies such as Australian Sailing have developed rules, processes, risk management approaches, racing classes and categories, safety equipment requirements and a range of planning and communications practices in the interests of ensuring safety with applicable duties of care. As a consequence, yacht clubs generally have very good safety records.
- 4 Section 25A of the **Marine Safety Act 2010** (the **Act**) imposes a duty on employers and self-employed persons (**duty holders**) who manage Boating activity events to, so far as is reasonably practicable, ensure the safety of participants in the Boating activity event or persons affected by the Boating activity event (the **Duty**).
- 5 The Duty mirrors statutory duties that exist under the **Occupational Health and Safety Act 2004**. The inclusion of the Duty in the Act through amendment in 2017 was made in response to several incidents that occurred on State waters where the safety of participants and others was compromised. None of these incidents related to boating activity events managed by yacht clubs.
- 6 The establishment of the Duty enables the marine safety regulator, Transport Safety Victoria, to promote compliance with good risk management practices in partnership with persons and entities responsible for managing Boating activity events (i.e. Duty holders).
- 7 This Code of Practice (the **Code**) identifies good practice that should be followed to provide assurance that safety risks are being managed effectively. It provides guidance on what is and is not a Boating activity event by reference to the types of events that yacht clubs are known to be involved in. The Code also explains and elaborates on who is a duty holder.
- 8 Adoption of the code is voluntary.
- 9 The Code specifies a risk management approach that must be applied by yacht clubs who choose to follow the Code when planning and preparing for the conduct of a Boating activity event. The Code, when followed, also requires that specific sailing rules and regulations must be implemented to comply with the Code.
- 10 Due to the effect of section 299 of the Act, if a duty holder complies with the Code, the duty holder is taken to have complied with the Duty.
- 11 This Code is made under section 272 of the Act and approved by the Minister responsible for Part 8 of the **Marine Safety Act 2010**. Under the general orders published 1 January 2019, the **Marine Safety Act 2010** is jointly and severally administered by the Minister for Fishing and Boating and the Minister for Ports and Freight. This Code relates to a boating matter and so the relevant Minister for the making of the Code is the Minister for Fishing and Boating, the Hon. Jaala Pulford MP.
- 12 Section 272 of the Act specifies that a code of practice may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, formulated or published from time to time. This Code incorporates the following documents published and amended from time to time by Standards Australia and Australian Sailing:
  - Australian risk management standard – Australian Standard AS4360, as amended from time to time by Standards Australia

- The Racing Rules of Sailing, as amended from time to time by Australian Sailing
  - Australian Sailing Special Regulations, as amended from time to time by Australian Sailing
- 13 In interpreting this Code, statements specifying that a duty holder ‘must’ or is ‘required’ to do any thing must be followed by the duty holder in order to comply with the code and be deemed to comply with the duty holder’s safety duty. Statements specifying that a duty holder ‘should’ do a thing are advisory and are not mandatory.

## 1. OVERVIEW

### Background

- 14 The Duty was established by legislative amendment in 2017 in response to several incidents that occurred on State waters where the safety of participants and others was compromised. The Duty mirrors obligations that already existed in the **Occupational Health and Safety Act 2004**. The Duty was established in the Act to enable Transport Safety Victoria (instead of Worksafe) with the capacity to monitor and promote compliance with the Duty.
- 15 Duty holders who manage Boating activity events are best placed to identify hazards and control the risks that may arise in the course of an event. The Duty, and the corresponding duty under the **Occupational Health and Safety Act 2004**, assigns the obligation to ensure the safety of such events to the employer that is responsible for organising and managing the event (i.e. the conduct of the undertaking of the employer).

### Purpose of the Code

- 16 The Code provides a certain means of compliance. A Duty holder is taken to have complied with the Duty if the Duty holder complies with the Code.
- 17 While the Code indicates in some cases that specific sailing rules and regulations must be followed. In other cases, the Code provides flexibility and requires Duty holders to make judgements about the extent to which risks to safety have been minimised so far as is reasonably practicable.
- 18 Providing a level of flexibility is necessary to avoid unnecessary prescription and associated cost burdens that result from imposing requirements (or prohibitions) that are disproportionate to risk. However, the trade-off is that Duty holders must accept accountability for judgements that the Duty holder makes in respect to minimising risks to safety.
- 19 A further purpose of the Code is to provide practical guidance on what is a Boating activity event and who is a duty holder.

### Scope of the Code

- 20 The Code may be adopted and followed by any yacht club involved in undertaking a Boating activity event of the type identified in section 3 of the Code. Yacht clubs may be involved in undertaking other types of Boating activity events and may continue to apply this Code, provided its application is varied as necessary to ensure that safety risks are minimised, so far as is reasonably practicable.

### Structure of the Code

- 21 The Code is made up of six sections as follows:
- Section 2: explanation of the duty
  - Section 3: what is Boating activity event and who is the duty holder
  - Section 4 the concept of ensuring safety
  - Section 5: applying a risk management approach
  - Section 6: developing a Boating activity event safety plan
  - Section 7: application of risk controls to yacht club Boating activity events

**2. DUTY TO ENSURE THE SAFETY OF BOATING ACTIVITY EVENTS**

- 22 The Duty requires a duty holder who manages a Boating activity event to ensure, so far as is reasonably practicable, the safety of participants in the Boating activity event, or persons affected by the event.
- 23 A Duty holder ‘manages’ a Boating activity event if that duty holder organises, facilitates or controls the event.
- 24 A person is only a duty holder if the organisation is an employer, or a self-employed person, in respect to the undertaking of the event. The implication of this is that in many cases, yacht clubs and associations are not Duty holders because they are not employers. Instead, activities are undertaken using volunteer support or through contracts for services.
- 25 Individual volunteers and employees are not Duty holders.

**The Duty: section 25A of the Act****Duty of a person who manages a boating activity event to ensure safety of participants and other affected persons**

- (1) A duty holder who manages a boating activity event must, so far as is reasonably practicable, ensure the safety of participants in the boating activity event or persons affected by the boating activity event.  
Maximum Penalty: In the case of a natural person, 1800 penalty units;  
In the case of a body corporate, 9000 penalty units.
- (2) An offence against subsection (1) is an indictable offence.
- (3) Without limiting subsection (1), a duty holder contravenes that subsection if the duty holder fails to do any of the following –
- (a) provide, so far as is reasonably practicable, participants with information to enable those participants to participate in the boating activity event safely;
  - (b) comply, so far as is reasonably practicable, with accepted safety standards or manuals that are specific to the type of boating activity event being undertaken;
  - (c) ensure, so far as is reasonably practicable, that rescue and first aid capabilities or services are available to participants in boating activity events.
- (4) For the purposes of this section, a duty holder manages a boating activity event if that duty holder organises, facilitates or controls a boating activity event.
- (5) In this section –
- boating activity event** –
- (a) means an event on State waters that directly or indirectly involves vessel operations; and
  - (b) does not include –
    - (i) a pyrotechnic display or show on State waters; or
    - (ii) groups of people cruising together in vessels on State waters in an informal manner;
- duty holder** means an employer or self-employed person (within the meaning of the **Occupational Health and Safety Act 2004**) but does not include –
- (a) an employee (within the meaning of that Act) of a duty holder who manages a boating activity event; or
  - (b) a volunteer (within the meaning of that Act).

### 3. WHAT IS A BOATING ACTIVITY EVENT AND WHO IS A DUTY HOLDER?

#### What is a Boating activity event?

- 26 A **Boating activity event** is defined as an event on State waters that directly or indirectly involves vessel operations.
- 27 ‘Event’ is not separately defined and is intended to have its ordinary dictionary meaning. The Oxford, Cambridge and Collins dictionaries define ‘event’ to be ‘anything that happens, especially something important or unusual’. Other definitions refer to an event as a thing that happens that is ‘noteworthy’ and is ‘planned’.
- 28 Vessels may be directly involved because the vessels are being raced. Vessels may be indirectly involved to provide support services (e.g. as a start boat or a rescue boat for a yacht race).
- 29 Section 25A(5) of the Act provides the following examples of the kinds of activities that may be a Boating activity event:
- a. a boat race (e.g. an individual sailing race or regatta involving a number of races)
  - b. open-water swimming race (e.g. the swim leg of a triathlon)
  - c. water sports competition or exhibition (e.g. a water-skiing competition)
  - d. filming a promotional event (e.g. for a television program which includes a boating demonstration)
  - e. school kayak excursion.
- 30 For yacht clubs, it is important to note that the following would be considered Boating activity events:
- a. club racing fixtures
  - b. regattas involving multiples races and participating clubs
  - c. sail training days and exhibitions
  - d. organised cruising
- 31 A Boating activity event may involve one or many vessels, as well as one or many separate events taking place on one day or over a number of days.
- 32 The provision of planned training can constitute an event e.g. one or more trainers teaching a group of children to sail each Saturday morning is a Boating activity event. However, the provision of training by a trainer (not a club employee) to an individual is not an event – it is merely the delivery of a service. The club does not plan this activity, it merely advertises the trainer’s services as being available to members.
- 33 In circumstances where it is arguable whether the provision of training is an event, it is important to note that employers that organise, facilitate or control the provision of training by an employee trainer would, regardless of whether the provision of training is an ‘event’, owe a statutory duty of care to both the trainer and the person(s) being trained. Accordingly, the employer organisation has a duty to identify, assess and control safety risks. This Code provides guidance on how best to do this.

#### What is not a Boating activity event?

- 34 The following activities are expressly excluded by the Act from the definition of a Boating activity event:<sup>1</sup>
- a. a pyrotechnic display or show on State waters (e.g. New Year’s Eve fireworks being launched from a barge on the Yarra River); or
  - b. groups of people cruising together in vessels on State waters in an informal manner.

<sup>1</sup> Section 25A(5)(b), **Marine Safety Act 2010** (Vic.).

- 35 For yacht clubs, it is important to note that the following activities are not considered to be a Boating activity events:
- a. social unorganised cruising in yachts or power boats (e.g. a group of friends, that may or may not belong to a club, going sailing or boating)
  - b. members utilising club vessels in an unorganised recreational activity e.g. use of kayaks, surf skis, paddle boards, wind surfers etc that are owned by the club and used by club members.
- 36 Operating a vessel in the normal course of operation is not captured by the Duty, as it is not an 'event'. For example, an individual operating a vessel for recreational activities (e.g. sailing, fishing, power boating, paddle boarding) is not covered because it is not an 'event'.

### **Duty holder must be employer**

- 37 It is fundamental to the definition of 'Duty holder' that the person is either self-employed or an employer. An organisation that directly employs people, rather than using contractors, is an employer.
- 38 The OHS Act defines **employer**, **self-employed person** and **volunteer** as below:

**employer** means a person who employs one or more persons under contracts of employment or contracts of training.

**self-employed person** means a person, other than an employer, who works for gain or reward otherwise than under a contract of employment or training.

**volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses)

- 39 An organisation made up entirely of volunteers, that only enters into contracts for service, is not an employer, and is not subject to the Duty. Volunteer organisations may have a variety of contracts for service with businesses and professionals, such as cleaners and accountants ('independent contractors'). Having these service contracts do not make a volunteer organisation an employer.
- 40 An independent contractor is a worker who is responsible for delivering a certain result, and he or she decides how to achieve that result. The level of control applied by clubs is what distinguishes a contractor from an employee.
- 41 The following factors help to determine whether a person is an employee or an independent contractor.
- a. Generally, independent contractors do the job as they see fit. They set their own hours and work how and when they want. If the club defines the work hours, then this may be indicative of an employer/employee relationship.
  - b. A hallmark of independent contractors is the fact they supply their own tools, equipment and supplies. If the club provides the equipment or supplies, then this may be indicative of an employer/employee relationship.
  - c. The more permanent – or even long-term – the relationship, the more likely the worker is an employee. Contractors are contracted for a specified time period and have no guarantee of on-going work. If the relationship between the club and the person is for an indefinite period or involves unspecified tasks, then this may be indicative of an employer/employee relationship.
  - d. The contractor should be treated as a vendor under accounts payable. The club should receive invoices, and payment cheques should be written to the business name – never the individual. If the club doesn't pay a worker on invoices with the contractor's ABN, then this may be indicative of an employer/employee relationship.

- e. Independent contractors typically work with multiple clients. Contractor status is more apparent if the worker is servicing other customers at the same time he or she is carrying out the club's requirements. If the worker only works for the club, then this may be indicative of an employer/employee relationship.
  - f. A written agreement should exist. The agreement should specify how much the club is going to pay for specified services and under what terms. If there isn't a contract, then this may be indicative of an employer/employee relationship.
  - g. Contractors should provide supplemental services but shouldn't play an integral role in the running of the club's activities. If the worker performs core business services (e.g. runs the club on behalf of members), then this may be indicative of an employer/employee relationship.
- 42 A key example of an employee arrangement for clubs relates to the provision of training. A club that engages one of its members to conduct its sail training activities: under direct instructions as to when training activities will take place; using club vessels and equipment; paying them as an individual by the hour; on an indefinite basis without a written agreement, has entered into an employment arrangement with the instructor.
- 43 Even if there is only the one employee at a club, the club would be considered to be an employer for the purposes of the Duty. The person engaged as an employee by the club does not need to have any involvement in the conduct of Boating activity events. The club would still be defined to be an employer for the purpose of the duty and would be a Duty holder in relation to all and any Boating activity events the club organises, facilitates or controls.
- 44 By contrast, a club may periodically seek expressions of interest for qualified persons to run a coaching program on behalf of the club. Under this scenario, the party contracted to deliver the training program: has flexibility and choice in respect to when training courses are to be offered and provided; is contracted for a specified period; invoices the club for services rendered; and is free to provide similar services to other clubs. Under this scenario the coach is an independent contractor.
- 45 It is important to note that individual volunteers and employees working for Duty holders are not taken to be managing the event themselves and are not subject to the Duty.
- 46 The reimbursement of volunteers for out of pocket expenses does not make volunteers employees.

#### **Scope of Boating activity event**

- 47 A Boating activity event may be constituted by a single yacht race that may take up to a day, or more, such as an ocean race to Apollo Bay. A Boating activity event may also be constituted by a number of yacht races held on one or more days, either consecutively or simultaneously, such as in a regatta like the Geelong Festival of Sails.
- 48 The Duty applies for the duration of the whole event and duty holders who manage those activities need to ensure that they implement appropriate safety strategies to eliminate or reduce risks to participants, and others affected by the activities, so far as is reasonably practicable, for the duration of the event.

#### **Preparatory activities linked to the main activity**

- 49 Training or practice activities may constitute part of a Boating activity event where those activities are part of, or undertaken to prepare for, an event. For example, a duty holder may organise, facilitate or control pre-event training for performers or participants, or practice runs on a race course.
- 50 Where activities are undertaken to prepare for the main part of a Boating activity event, the Duty applies and duty holders who manage those activities need to ensure that they implement appropriate safety strategies to eliminate or reduce risks to participants, and others affected by the activities, so far as is reasonably practicable.



**Activities on and off the water**

- 51 A Boating activity event's scope will vary according to the particular circumstances. For example, a yacht race may be considered to have commenced at a pre-race briefing at a club, and to conclude once all vessels have been retrieved from the water.
- 52 The definition provides that the Boating activity event take place 'on State waters'. However, an event on State waters may affect persons on land, and the duty to ensure the safety of participants, or persons affected by the Boating activity event, is not limited to ensuring people's safety only on State waters. However, there must be some causal link between the Boating activity event and the risks it imposes on participants or affected persons on land for the Duty to apply and require consideration and control of those risks.
- 53 For example, there will likely be safety risks to participants, event staff or volunteers at a sailing event in the course of loading and unloading, and launching and retrieval of yachts, dinghies and safety boats into and out of the water. These activities form part of the Boating activity event as they are undertaken in the course of setting up for, and concluding, the race, and so a duty holder must manage these risks so far as is reasonably practicable. The degree to which a duty holder has control over how participants manage their set up will vary according to the nature of the event. In this example, a duty holder could meet their obligation by ensuring participants have information regarding where and how to launch and retrieve their boats.

**Shared responsibilities**

- 54 Depending on the circumstances, there may be more than one duty holder for a Boating activity event.

**Example**

A yacht club, which has several employees, also engages a self-employed professional race officer to run a regatta for the club. The club retains overall control of the event but contracts the professional race officer to run the races in the regatta. Both the club and the professional race officer are duty holders for the purposes of that event.

- 55 Volunteers, participants, employees and other persons involved in conducting a Boating activity event are not Duty holders under section 25A of the Act. However, to the extent that an individual is the master of a vessel, involved in operating a vessel, or a passenger on a vessel then each have a duty under the Act (since 1 July 2012) to take reasonable care to protect their own safety and the safety of others. Persons involved in operating a vessel or acting as a passenger or crew member on a vessel also have an obligation to follow the instructions of the master of the vessel in the interests of safety.
- 56 For Boating activity events to be planned and conducted safely, masters, other vessel operators and passengers and crew members on vessels need to work constructively with Duty holders in the interests of ensuring safety, so far as is reasonably practicable. This may include providing information and input in advance of the event; taking responsibility for ensuring vessels are in a fit for purpose condition; ensuring master and crew are sufficient competent and medically fit; carrying the safety equipment that is required; and during the conduct of the event, following the instructions that are given by the Duty holders and their representatives.

**Parties not directly involved in managing the Boating activity event**

- 57 Depending on the circumstances, a person may not be a duty holder despite exerting some control or management over an aspect of a Boating activity event. For example:
- a. Waterway managers may facilitate a Boating activity event in the course of performing their functions under Part 5.3 of the Act by establishing an exclusion zone on application. However, waterway managers are not considered Duty holders when performing these functions.

- b. Sailing peak bodies, such as Australian Sailing, could be considered facilitators of a Boating activity event conducted by their affiliated clubs where a sailing club conducts a yacht race under the Racing Rules of Sailing. However, without direct involvement in the Boating activity event, the peak body is not considered to be a Duty holder in this scenario.

**To whom does a duty holder owe a duty of safety?**

- 58 A duty holder owes a duty of safety to ‘participants in the Boating activity event and persons affected by the Boating activity event (if any)’.
- 59 Persons affected by a Boating activity event may include race officials or other staff and volunteers, spectators, other users of the waters in which the event is taking place (e.g. fishermen) and people who sail or drive boats through the race area. The duty holder needs to consider who are the participants and who else may be affected by the event, to accurately determine what risks and hazards are associated with the event and appropriate control measures.

**4. THE CONCEPT OF ENSURING SAFETY UNDER THE ACT**

- 60 The Duty is based on an objective of ensuring safety by eliminating or minimising risks to safety so far as is reasonably practicable. In order to determine what safety measures are reasonably practicable, section 23(2) of the Act provides a list of the matters that must be considered by duty holders.

**23 The concept of ensuring safety**

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person to –
- (a) eliminate risks to safety so far as is reasonably practicable; and
  - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, [...] regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety –
- (a) the likelihood of the hazard or risk concerned eventuating;
  - (b) the degree of harm that would result if the hazard or risk eventuated;
  - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
  - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
  - (e) the cost of eliminating or reducing the hazard or risk.

**Identify hazards and risks associated with the Boating activity event**

- 61 Hazards such as collisions between vessels, man overboard and vessel swamping are a product of a range of contributing factors such as participant skill levels, inclement weather, unforeseen tidal conditions, traffic and congestion. Duty holders need to be able to demonstrate they understand these hazards and potential causes.

**The likelihood of the hazard or risk eventuating**

- 62 Duty holders should assign higher significance to hazards that are more likely to occur. Duty holders should note this in their Boating activity event safety plan (refer to section 6 below)

**The degree of harm that would result if the hazard or risk eventuated**

- 63 When assessing potential hazards, duty holders should assign greater significance to the hazards that could result in greater levels of harm.

- 64 Some risks may have a low chance of occurring but have extreme consequences. For example, it may be unlikely that a yacht will crash into an on water spectator vessel during a race, but the consequences of such an accident occurring could be extreme (multiple injuries, possible fatalities). A risk matrix assessment can help duty holders weigh up risks and consequences when determining which risks and hazards need to be prioritised and what degree of control is reasonably practicable (refer to section 5 below).

**What the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk**

- 65 Duty holders must demonstrate that they have considered the likelihood of any hazards occurring, and how the risk can be eliminated or reduced. This should be documented in the Boating activity event safety plan for an event, or in a club's on-water risk management plan. Ignorance of hazard or risk, or the means available to reduce it, is not a defence because compliance with the Duty takes into account what the Duty holder ought reasonably to know. A Duty holder ought reasonably to be aware of the main sources of risk identified in this Code and inform themselves of good club practices aimed at reducing risks. Not to do so is a breach of duty.

**The availability and suitability of ways to eliminate or reduce the hazard or risk**

- 66 Finding a way to eliminate or reduce a hazard or risk may be reasonably practicable if:
- it is feasible to implement;
  - it is effective in eliminating or reducing the likelihood or degree of harm;
  - it does not introduce new and higher risks;
  - it is a practical measure having appropriate regard to the circumstances.
- 67 A Duty holder may need to use a combination of different controls to ensure an identified risk is reduced so far as is reasonably practicable.
- 68 In assessing risk controls, a Duty holder should apply the hierarchy of risk controls. This hierarchy helps a duty holder determine which controls should be applied.

**Table 1. Hierarchy of risk controls**

<b>Risk control</b>	<b>Boating activity event example</b>
Elimination	<ul style="list-style-type: none"> <li>Cancel the event if the risk cannot be controlled (e.g. adverse weather conditions)</li> </ul>
Isolation	<ul style="list-style-type: none"> <li>Set up an exclusion zone if the risks associated with other vessels entering the course are too high</li> </ul>
Substitution	<ul style="list-style-type: none"> <li>Postpone the event or delay the start</li> <li>Move location of event</li> <li>Shorten the course</li> <li>Limit the number of vessels that can enter the event</li> </ul>
Engineering controls	<ul style="list-style-type: none"> <li>Ensuring support vessels are adequate for the conditions on the course</li> <li>Require in-built safety features in vessel designs</li> </ul>
Administrative controls	<ul style="list-style-type: none"> <li>Requiring declarations that vessels are fit for purpose and that crew are competent, medically fit and not under the influence of drugs and alcohol.</li> <li>Safety briefings for participants and persons working on the undertaking of the event.</li> </ul>
Safety equipment	<ul style="list-style-type: none"> <li>Requiring the wearing of life jackets (personal flotation devices)</li> <li>Requiring the use of tracking devices and carrying of personal locator beacons</li> </ul>

**The cost of eliminating or reducing the hazard or risk**

- 69 When determining the cost of eliminating a hazard or risk, there must always be a clear presumption in favour of safety.
- 70 Duty holders should implement identified risk control measure unless the cost of doing so outweighs the benefit and it would be clearly unreasonable to justify the expenditure.
- 71 Duty holders should determine the question of what is reasonably practicable objectively, and not by reference to their capacity to pay. Duty holders should not continue with an event in cases where they cannot afford to implement reasonable or appropriate measures or controls.

**Summary**

- 72 Determining what is ‘reasonably practicable’ is an objective assessment of what a reasonable person would do in the duty holder’s position.
- 73 What constitutes good practice is the starting point for any assessment of compliance with the Duty because good practice is practicable and is evidently reasonable to apply because others have already proven that the benefits in terms of risk reduction outweigh the costs.
- 74 The best way to accurately assess potential risks and what can be done to control them is to apply a structured risk management process – refer to section 5 below.
- 75 Section 7 of this code identifies good practices that should be implemented in relation to identified sources of risk. If risk controls specified in this code are implemented, then Duty holders will be deemed to comply with their safety duty.

**5. APPLYING A SAFETY RISK MANAGEMENT APPROACH**

- 76 A safety risk management approach is a structured and process-driven method to assist people to comply with their safety duties. Safety risk management is good event management and can be readily accommodated within the planning, preparation and operational stages of a Boating activity event.
- 77 All effective risk management processes have common elements. Four key steps should be undertaken as part of an effective risk management process: identify risk; assess risk; implement risk controls; and monitor and review.
- 78 Staff, volunteers, contractors (e.g. event managers), industry associations, safety regulators, and potential participants may all have valuable insights into risks and options for controls for an event. Consultation and participation are therefore an important part of the process.
- 79 Effective risk management is responsive to changing conditions. Monitoring and review of risks and controls leading up to, and throughout the event will help duty holders ensure the safety of participants and persons affected by the event.
- 80 For the purposes of complying with the Code, Duty holders for sailing events are required to adopt and apply risk management processes that are consistent with the Australian risk management standard (Australian Standard AS4360 as amended from time to time) when planning and preparing for Boating activity events.
- 81 Australian Sailing provides a range of different risk management resources on its website at:  
<https://www.sailingresources.org.au/safety/risk-management/>  
 for the purpose of supporting clubs to implement good risk management and comply with their legal safety obligations. These resources include:
- a. how to create a risk management plan in 10 steps;
  - b. club risk management handbook;
  - c. risk register template; and
  - d. a guide to preparing incident management plans

- 82 Duty holders must seek out and use publicly available information and data about the likelihood of hazards (e.g. weather forecasts from the Bureau of Meteorology, charts showing details of the waters to be sailed in). Duty holders must also seek out and use information held by their clubs (e.g. local environmental hazards generally known to most of its members) or Australian Sailing about the likelihood of hazards. This information must be used to objectify the assessment of likelihood so far as is reasonably practicable.
- 83 When identifying and assessing risks there are often gaps in information about likelihood and consequence. In practice, neither likelihood or consequence are certain and, as a result, judgements will need to be made. Duty holders must ensure that persons involved in making judgements about the likelihood and consequence have suitable knowledge and expertise and have been provided with all available information so that informed judgements can be made.
- 84 Duty holders must use a structured risk assessment tool. At minimum, a qualitative matrix-based approach of the type identified in AS 4360 (see example box below) must be applied.

**Example of risk assessment tool**

<b>Risk impact Matrix</b>		<b>POTENTIAL IMPACT</b>				
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>A</b>	Extreme (1)	Extreme (1)	Major (2)	Major (2)	Major (2)	Medium (3)
<b>B</b>	Extreme (1)	Extreme (1)	Major (2)	Major (2)	Medium (3)	Minor (4)
<b>C</b>	Extreme (1)	Major (2)	Major (2)	Medium (3)	Medium (3)	Minor (4)
<b>D</b>	Major (2)	Major (2)	Medium (3)	Minor (4)	Minor (4)	Minor (4)
<b>E</b>	Medium (3)	Medium (3)	Minor (4)	Minor (4)	Minor (4)	Minor (4)

  

<b>Likelihood Scale</b>	
<b>Rating</b>	<b>LIKELIHOOD</b> The potential for problems to occur in a year
<b>A</b>	<b>ALMOST CERTAIN:</b> Will probably occur, could occur several times per year
<b>B</b>	<b>LIKELY:</b> High probability, likely to arise once per year
<b>C</b>	<b>POSSIBLE:</b> Reasonable likelihood that it may arise over a five-year period
<b>D</b>	<b>UNLIKELY:</b> Plausible, could occur over a five to ten year period
<b>E</b>	<b>RARE:</b> Very unlikely but not impossible, once in 100 years

  

<b>Severity Scale</b>	
<b>Rating</b>	<b>POTENTIAL IMPACT</b> In terms of the objectives of the organisation
<b>A</b>	<b>CATASTROPHIC:</b> One or more fatalities.
<b>B</b>	<b>MAJOR:</b> Permanent disabling injury. Vessels lost or damaged beyond repair.
<b>C</b>	<b>MODERATE:</b> Serious reversible injury requiring medical treatment and rehabilitation. Vessels unable to complete series, race or passage
<b>D</b>	<b>MINOR:</b> Reversible temporary illness/injury requiring medical treatment. Damage to equipment that requires repair before being operable.
<b>E</b>	<b>NEGLIGIBLE:</b> Minor injuries possible requiring first aid. Minor damage to equipment.

  

<b>Key:</b>	
<b>1</b>	Extreme risks that are likely to arise and have potentially serious consequences requiring urgent attention
<b>2</b>	Major risks that are likely to arise and have potentially serious consequences requiring urgent attention or investigation
<b>3</b>	Medium risks that are likely to arise or have serious consequences requiring attention
<b>4</b>	Minor risks and low consequences that may be managed by routine procedures

85 It is good practice to record the reasons for scoring of hazards in relation to likelihood and potential impact. Written records enable future review of the currency and adequacy of risk assessment and enables risks to be monitored, reviewed and reassessed (if necessary), should circumstances change or new information become available in advance of (or during) the conduct of the Boating activity event.

86 The cost of risk controls is a factor in any decision. If the cost of an effective control is prohibitive, that should be documented, along with alternative measures considered. The duty holder must record in the safety plan (refer to section 6 below) any relevant assumptions, options considered, uncertainties and limitations that impact on the safety of the Boating activity event.

## 6. THE BOATING ACTIVITY EVENT SAFETY PLAN

87 A Boating activity event safety plan (**safety plan**) is a structured written plan. It needs to be easily understood by all parties with a role in implementing it.

88 Duty holders must prepare and regularly review safety plan(s) for sailing events undertaken at their clubs.

89 This requirement may be satisfied by having a safety plan, reviewed annually, that covers the types of boating activity events that are undertaken at a club. However, it is good practice to review safety plans more frequently (if necessary) in response to incidents and new information about safety risks.

90 A safety plan must include the following information at a minimum:

- a. the outcomes of the risk identification and assessment process undertaken;
- b. a specification of the controls that will be implemented to reduce risks so far as is reasonably practicable;
- c. a clear articulation of roles and responsibilities of the Duty holder, employees, volunteers and participants and how information will be shared and communicated in advance of the event, on the day of the event and during the event; and
- d. an incident management plan which sets out resources available and procedures that will be implemented in the event of an emergency.

91 A duty holder may have general safety policies and plans in place to cover the ordinary types of boating activity events undertaken at the club. However, these safety plans may not be sufficient for the purposes of identifying, eliminating or reducing risks as far as is reasonably practicable for a specific Boating activity event. Duty holders will need to consider local conditions and other circumstances unique to the event, if it does not fall within their general club safety plan.

92 Duty holders should also review safety plan requirements in the week leading up to an event to ensure that it is current and covers the safety risks of the event. If there is any reason to believe that the safety risks for the upcoming event are different to that considered when the safety plan was established, then the adequacy of controls should be reviewed.

93 Duty holders should make a copy of the safety plan available to employees and volunteers involved in facilitating, organising and controlling events so that it may be referenced and applied as needed (for example, when an incident occurs).

94 Section 7 of the code specifies specific risk management and safety plan requirements that Duty holders must implement to comply with the Code. Duty holders that comply with the Code are deemed to comply with the Duty.

## 7. APPLICATION OF RISK MANAGEMENT APPROACH TO SAILING EVENTS

95 Through the conduct of sailing events over time key sources of risk have been identified as:

- **Environment:** weather conditions and their impact on water conditions in the particular location(s) the event is proposed to be undertaken.

- **Traffic:** risks associated with vessel operations under race conditions as well as interfaces with other vessel traffic in the location where the race is being undertaken.
  - **Vessel design and condition:** vessels must be designed to operate in specified race types and maintained in a fit for purpose condition.
  - **Master and crew competency:** The master and crew of the vessel must have an operational knowledge of how to operate the vessel, navigate in traffic and respond to emergency situations. Crew members should also be medically fit make the master aware of any issues that may affect their ability to perform safety critical functions.
- 96 Duty holders must consider these sources of risk, identify any other sources of risk, assess these risks using methods that comply with section 5 of this Code and implement controls specified in their safety plans that minimise risks to safety, so far as is reasonably practicable.
- 97 Race classes and categories have been developed over time to match location specific weather and water conditions with vessel types and levels of crew competency and experience. To control and mitigate the consequences of hazards that may eventuate (e.g. man overboard, vessel swamping, disablement) safety equipment carriage requirements have also been matched to race type and associated conditions i.e. there is a graduated set of safety equipment requirements ranging from those applicable to off the beach sailing activities to those that apply to ocean racing.

### Environment

- 98 To comply with this Code, safety plans must specify environmental limits beyond which it would be unsafe conduct specified types of Boating activity events. Sailing events must not be undertaken if the prevailing environmental conditions exceed the limits specified.
- 99 Duty holders will identify and specify environmental limits in a way that best reflects their knowledge of the best indicators of escalating environmental risks for Boating activity events being organised. These environmental limits may include, but are not limited to, the forecast wind speeds and wave heights throughout the area and duration of the event.
- 100 If environmental conditions are expected to be close to specified limits then the Duty holder must consider the possible means available to reduce the risks to participants (e.g. delay or postpone the start, shorten the course, increase number of support boats, improve incident response capability). Such considerations should be made in accordance with a defined decision-making process (e.g. meeting of relevant club officials before the event). It is good practice to record the decision and the reasons for it.

### Traffic

- 101 To comply with this Code, the Duty holder must ensure that the race is conducted in compliance with the Racing Rules of Sailing or COLREGS as updated from time to time. The necessity to adhere to the rules must be clearly communicated to all participants, including the sanctions that will be applied if there is non-compliance.

### Vessels

- 102 Vessels are often owned and maintained by prospective participants in events. In such circumstances Duty holders will have limited capability to determine whether vessels meet specified standards for categories or classes or whether vessels have been maintained in a fit for purpose condition.
- 103 Given these circumstances Duty holders should establish eligibility criteria for specified types of sailing events so that vessels that are not designed to participate in specified types of events are not permitted to do so (e.g. off the beach sailing vessel is not permitted to participate in an ocean race). Duty holders should clearly communicate eligibility criteria in advance of proposed events.



- 104 Duty holders must require a participant in a particular event to declare that their vessel meets the standards and requirements applicable to its specified type and class as per the Australian Special Regulations and applicable class rules. Duty holders must also inform participants of the sanctions that will be applied if a vessel is found not to comply with those standards and requirements.

**Master and crew**

- 105 It is the obligation of the Duty holder to have an awareness and understanding of the various ages, abilities and other risks of which they have been informed, associated with the participants taking part in the club's sailing event/s. Duty holders must provide an appropriate level of rescue capability that meets the particular needs of the participants taking part in the event and the nature of the event itself as defined in the Australian Sailing Special Regulations.

**Safety equipment**

- 106 All participants in Boating activity events are required carry the safety equipment specified in the Australian Sailing Special Regulations as being required for the type of race or event being undertaken. Duty holders are required to communicate clearly to proposed participants what safety equipment is required to be carried and make participants declare that safety equipment is being carried and is in a fit for purpose condition. Duty holders must also communicate what sanctions will be implemented if a vessel is found to not be carrying required safety equipment or carrying safety equipment that is not in a fit for purpose condition.

**Support and rescue services**

- 107 Duty holders are required to ensure, as far is reasonably practicable, that rescue and first aid capabilities or services are available to participants, in line with the skill level, age and fitness levels of the participants taking part in the event.

**Communications**

- 108 Duty holders are required to communicate all relevant information to participants to enable them to understand the safety requirements of the event. This communication should be through, but not limited, to the following processes (if appropriate):
- a. Notice of Race
  - b. Sailing Instructions
  - c. Official Participant briefing
  - d. Radio and SMS during an event if appropriate
- 109 Duty holders are required to communicate with relevant authorities when required by law for the type and location of the event. These authorities could include, but are not limited to,
- a. Port authorities
  - b. Water Police

**Variations**

- 110 Nothing in this Code prohibits Duty holders from varying their approach to the management of risks relating to Boating activity events under their management. However, to the extent that the Code is not followed then Duty holders will not be deemed to comply with the Duty. In such circumstances, a Duty holder would need to be in a position to demonstrate that in those specific risk areas where they have departed from the Code that risks have been eliminated or minimised so far as is reasonably practicable.
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