

# MARINE LEGISLATION AMENDMENT BILL 2016

## *First Reading*

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) ( 14:49 ): I move:

That this bill be declared an urgent bill.

**Motion agreed to.**

## *Second Reading*

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) ( 14:50 ): I move:

That this bill be now read a second time.

The main purpose of the Marine Legislation Amendment Bill 2016 is to improve enforcement, to help protect the safety and amenity of our waterways, and to further consolidate marine legislation. The bill expands the objects of the Marine Safety Act "to provide an effective framework for enforcement". It also introduces new provisions aligned with existing road safety legislation covering dangerous and menacing "hoon" behaviour by some vessel operators; camera recording and detection of serious offences such as speeding; and drug and alcohol testing, penalties and disqualification periods. A range of other improvements identified through the 2014 Review of the Marine Safety Act are also included, and the bill further consolidates marine legislation and enables the repeal the legacy Maritime Services Act 1935. I will now turn to the detail of the bill.

New South Wales has outstanding waterways for everyone to enjoy and share—whether they are boating, swimming, sailing, fishing, water skiing or wakeboarding, paddling, jet skiing or just plain relaxing on the beach or riverbank. Most of the State's half a million licensed boaters operate safely, responsibly and with regard to the amenity of other people. These people appreciate and listen to our safety messages. Lifejacket wearing is up and fatalities and serious injuries are trending down—while the number of licenced boaters and registered vessels continues to grow.

Let me say to boaters who are safe and considerate, who do not speed or menace, or unreasonably interfere with others out on the water, who maintain a safe distance, stay under the legal alcohol limit, and do not operate a boat while affected by drugs, this bill is only good news for you. This is because this bill aims to better protect you, your family and friends on the water by better targeting those who willingly break the law. Unfortunately, a rogue element of jet skiers believe the rules do not apply to them and they can do what they like on the water. They have no regard for the safety and amenity of other people—the objects of the Marine Safety Act. These riders are clearly not getting the message—slow down, keep a safe distance and show respect for other boaters and water users.

Community concerns about the antisocial and menacing behaviour of some jet ski riders, including in southern Sydney, are longstanding and growing. So too are jet ski registrations, at the rate of 10 per cent per annum. I have had representations from State and Federal members of Parliament, other boaters and residents; and I have answered questions in this House on this issue from Opposition and cross bench members—the Hon. Lynda Voltz and the Hon. Robert Brown. The Botany Bay, Georges River and Port Hacking Regional Boating Plan was finalised in early 2015 with local council, boating stakeholder and waterway user inputs. It found that "personal water craft [PWC] were involved in a high percentage of incidents and also attributed to a large percentage of safety issues". The plan calls for action "to improve user behaviour and safe boating practices, particularly amongst PWC users", as have earlier plans.

Transport for NSW and Roads and Maritime Services [RMS] staff have been working closely with industry advocates and boating organisations over many years on targeted education programs, including the "ride right" campaign to help improve on-water behaviour. These efforts have helped and are to be commended. In fact, Peter Hunter, an advocate for PWC riders and recreational vessel advisory group representative, was awarded the maritime medal last year for his longstanding efforts. But even responsible

riders know there is much more work to do, and I know many jet ski riders are as affronted by hoon behaviour as the rest of us.

In August 2015 a jet skier hit a tree on the Georges River and was seriously injured. In September, a kayak fisher on the Georges River at Picnic Point was seriously injured and hospitalised when a jet skier riding in a pack collided with him. This serious matter is before the courts and the kayaker has endured months of rehabilitation. Attitudinal research conducted for Transport for NSW identifies safe behaviour as one of the most important issues for residents and waterway users. Almost half—that is, 45 per cent—of those surveyed had witnessed antisocial behaviour from jet ski riders. The public also recognise the need for and support increased on-water enforcement of laws around speeding, drink driving and safety zones. They value safety patrols on the water. I too am convinced that stronger enforcement is needed and I initiated a police and RMS crackdown on dangerous and antisocial riding of jet skis in and around the Georges River, Botany Bay and Port Hacking.

Increased patrols, additional resources, extension of speed restrictions and a complaints hotline have been implemented, and 1,600 PWC checks were completed over summer. In excess of 400 PWC riders failed to comply with safety regulations and were issued penalty notices or given warnings. The most common penalty notice offences were speeding, with 98 penalty notices, irregular riding, with 76 penalty notices; and unlicensed riding, with 36 penalty notices. Despite the efforts of manufacturers to reduce jet ski noise emissions, 68 riders were given defect notices for illegal exhaust modifications which make the jet skis even noisier. Around 150 complaints about jet ski rider behaviour were made to the hotline. Clearly these are disappointing results. We have a problem and we need a more effective framework to support enforcement, as envisaged by this bill.

There is no place for driving in a dangerous and menacing manner. We do not accept it on our roads and we should not accept it on our waterways. We need to target offenders and hit them hard to put a stop to it, and avoid penalising responsible jet skiers with waterway-wide restrictions. This is why a new offence of operating a vessel in a menacing manner is introduced in this bill under section 13A. It mirrors a similar offence in road transport law and can result in a penalty of a fine of up to \$3,300, imprisonment for 18 months or both. Higher penalties apply in the case of a second offence.

An example of menacing behaviour could include the situation where one or more jet ski riders repeatedly circle a fisherman in a tinnie or a kayak at speed, in close proximity, and generate wash and spray, with the aim of intimidating, harassing and causing annoyance. Additionally, new sanctions apply to menacing "hoon" behaviour under part 2 division 2, enabling New South Wales police and Roads and Maritime Services officers to seize and impound a vessel used in the hoon offence. This is similar to the successful vehicle "anti-hoon" powers introduced in 2008.

Importantly, a vessel may also be seized and impounded when a person has committed a reckless, dangerous, negligent navigation offence under section 13 and a court attendance notice has been issued. The new sanctions allow an authorised officer to seize a vessel, including the boat trailer, used in a designated "hoon" offence and move the vessel to a place where it can be impounded. Alternatively, an authorised officer may give the owner of the vessel a notice requiring the vessel to be produced at a specified time and place so that it can then be impounded.

A vessel may be impounded for a period of three months in the first instance. A vessel used in a second designated "hoon" offence within a five-year period will be forfeited to the Crown. Forfeited vessels may be offered for sale, or disposed of, and vessels cannot be transferred to a relative or an innocent party to circumvent these sanctions. These new sanctions provide a significant incentive for vessel owners to be more responsible and accountable for the safe use of the vessels, including by other people. Alongside new sanctions we are also strengthening safety regulations. From 1 July the NSW Police Force and Roads and Maritime Services will be able immediately to suspend the boat driving licence of a person who has committed a serious offence such as reckless, dangerous or negligent navigation.

Antisocial behaviour unfortunately extends to the interactions that some offenders have with our boating safety officers. In January two officers patrolling near Brighton-Le-Sands witnessed a jet ski operator riding irregularly and dangerously close to shore and other vessels, and clearly breaching safety regulations. When he was stopped and informed that a penalty notice would be issued, the offender became aggressive, abused compliance officers and sped off deliberately spraying water at the maritime vessel. Importantly, this bill creates a new offence for assaulting, threatening or using abusive language to or impersonating an authorised officer. Similar provisions already apply to the State's fisheries officers.

Boaters north and south of our borders regularly converge on the Tweed River and Murray River respectively, and who would blame them? New powers to require interstate boat licence holders to produce their licence if requested by an authorised officer are also in the bill. The summer jet ski enforcement

campaign on the Georges River and in Botany Bay was resource intensive for police and Roads and Maritime Services and cannot be sustained for a long period. A smart, efficient and cost-effective enforcement framework that better targets, detects and deters serious non-compliant behaviour is needed.

We know, and community members also tell us, that non-compliant behaviour restarts as soon as police and Roads and Maritime Services patrols leave an area. Hoons use their mobile phones to report the movements of patrol vessels and evade detection. Permanently basing officers at various locations during the peak boating season is not an efficient option and would draw resources away from many other important programs. In response, the bill establishes a camera recording scheme for enforcement purposes. Camera technology has long been used for safety enforcement on the roads and sensible use of this technology on our waterways is long overdue.

This bill includes provisions for the Governor to approve camera detection devices and for camera recorded evidence to be used in proceedings for offences covering using a vessel in a menacing manner, negligently, recklessly or at a speed or in a manner dangerous to the public; exceeding the speed limit, or not keeping a safe distance from other vessels, people, land and structures; operating a jet ski in an exclusion zone, irregular riding in a restriction zone or within 200 metres of shore near dwellings or without a life jacket; causing wash that damages or unreasonably impacts other vessels, structures or banks; operating an unregistered vessel; and using a wharf without authorisation.

The new scheme will be used only in certain declared areas where there is a history of non-compliance and safety issues. This will initially be introduced on the Georges River and in Port Hacking and Botany Bay. An evaluation will be completed at the end of the 2016-17 boating season before any other declared areas are considered. It is envisaged that a mix of fixed and temporary cameras could be located on land or water, including vessels, and used to target hotspot on-water enforcement locations identified by police and RMS. The use of existing community safety closed-circuit television infrastructure will be explored where feasible.

Operational issues, including appropriate signage and notification requirements, and privacy considerations will be properly addressed during the development of the maritime camera detection scheme, enabled by this bill. Let me be clear: Cameras will be used only in declared areas which have had a history of non-compliance with marine legislation and will not be deployed across the State's waterways to catch people out for minor offences. This scheme will supplement, rather than replace, police and boating safety officer patrols. Use of camera technology is about safety outcomes, not revenue raising. Any penalty revenue generated will be quarantined within the Waterways Fund and only be spent delivering boating safety education, communications and signage programs, that is, on initiatives to help our boaters comply with our laws, not to catch them. Owner liability, nomination and defence provisions will operate in the same way as equivalent road-related camera offences.

Driving a vessel under the influence of alcohol is already an offence. The bill does not change existing limits but simply aligns alcohol and drug offences while driving a vessel with equivalent provisions for driving a vehicle under road transport law. Significantly, new powers allow police officers to conduct random drug testing of vessel operators on New South Wales waterways. The bill aligns penalties and licence disqualification periods under roads and maritime laws. While we are strengthening the enforcement framework there are some changes to maximum penalties which are worthy of explanation.

The bill proposes the lowering of some maximum penalties to a level more consistent with equivalent offences under road transport law. This also reflects the transfer of commercial vessels regulation to a uniform national law scheme in 2013. For example, the maximum penalty for operating a vessel while disqualified from holding a boat driving licence is \$11,000, whereas the maximum penalty for operating a vehicle while disqualified is \$3,300. Higher penalties under the Marine Safety Act 1998 applied when these offences also captured commercial vessels. That is no longer the case and the penalties are adjusted to levels more appropriate for recreational vessel related offences.

The option of a prison term of nine months has been added to the offence of operating a vessel recklessly, dangerously or negligently in cases where the behaviour of the vessel operator does not result in death or grievous bodily harm. This is one of the most serious marine safety offences and the current maximum penalty of \$5,503 is not sufficient.

Imprisonment can be applied as an alternative to or in addition to the fine. This approach is consistent with penalties for driving a vehicle in a manner that is reckless to the public under road transport law.

Other minor changes to the Marine Safety Act 1998 to improve efficiency include: changes to some definitions and application provisions; new arrangements for gazettal of notifications; changes requiring courts to provide details of licence suspensions, cancellations and disqualifications to RMS; clarification of

the direction powers of authorised officers; extension of powers requiring a person to supply information about the identity of the owner and master of a vessel to the operator of the vessel; new requirements for vessel masters to provide information requested by a harbour master and to provide assistance to people in distress; and allowing certificates to be admissible in legal proceedings as evidence in relation to marine safety licences.

Existing provisions from the Maritime Services Act 1935 will be transferred to the Ports and Maritime Administration Act 1995 to maintain the status quo and enable the Maritime Services Act 1935 to be finally repealed. This includes provisions establishing the relationships with various other Acts and those protecting port facilities and operations—for example, powers to remove unauthorised structures, and existing offences for occupying a mooring without a licence and using a wharf without authorisation. The bill also provides new regulation-making powers under the Ports and Maritime Administration Act 1995 to allow Roads and Maritime Services and the Port Authority of New South Wales to issue safety directions to regulate access to and activities on its land and infrastructure, including wharves. New powers will cover the commuter wharf permit scheme, the wharf booking system and mooring licences.

The review of the Marine Safety Act was subject to extensive consultation and is a significant precursor to the reforms identified in this bill. Similarly, Regional Boating Plans finalised in 2015 following extensive consultation identify safety and community concerns and call for action to improve user behaviour on the State's waterways. This bill will clearly help to tackle the most serious user behaviour issues by providing a more effective enforcement framework. Transport for NSW consulted with Roads and Maritime Services, the Department of Justice, NSW Police Marine Area Command and the Maritime Advisory Council during the development of this bill. Further consultation will of course occur during the implementation of these reforms. I trust all members will see merit in and support the bill. I commend the bill to the House.

**Debate adjourned.**