

# MEMO

Date: 3 December 2015

To: State Executive Officers

Copy:

From: Glen Stanaway

RE: **Yachting Australia's Direction in Safety Regulation**

Yachting Australia Limited.  
ABN 26 602 997 562

Level 1  
22 Atchison Street  
St Leonards NSW 2065

Locked Bag 806  
Milsons Point NSW 2061  
Australia

T 612 8424 7400  
F 612 9906 2366

office@yachting.org.au  
www.yachting.org.au

Principal Partner



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Dear All,

As you are aware YA is responsible for developing the Special Regulations and other safety related policy or rules. The following memo corrects the one previously distributed, setting out to articulate YA's current direction, which has recently been confirmed by the Board, and explain the rationale and context behind this position.

Specific changes that the states should note include:

- a. New footnote 2 to add clarification to clause 4 (d) and throughout regarding how relevant standards are applied.
- b. Mentioning in clause 9 (b) and throughout the use of notes in the Special Regulations to help boats.
- c. Adding new clause 12 addressing the balance of prescription and where the onus of responsibility lies.
- d. Making changes to clause 14 recognising the experience and competence of many sailors.
- e. Adding to clause 16 (c) mention of the need to maintain balance in how the Special Regulations evolve.

## INTRODUCTION

1. In recent years there have been significant developments in safety management within industry, sports and society in general. Most notable has been the introduction of risk management with careful analysis of risks specific to particular activities and their likelihood and consequence. This has led to the development of safety management systems (SMS) to systematically analyse relevant risks and put in place an organisation and practices to mitigate the identified risks to an acceptable level.

2. These trends are evident in Australian maritime regulation and the sport of sailing but there is an emerging divergence in direction of how they are being managed and implemented. The National Safety Committee (NSC) is seeking the Board's endorsement of its proposed direction for managing YA's Special Regulations (SR) into the future.

## UNDERLYING PRINCIPLES

3. Since 2010, YA has modified its safety practices to remain in step with the external changes. The SR are managed on a risk management basis and wherever practicable the NSC draws on sound

analysis, evidence and research. A risk management template has been developed and distributed to clubs for their use.

4. Other underlying principles and recent developments in the administration of the SR are:
  - a. consistency with National and State or Territory maritime regulations,
  - b. consistency as far as is practicable with the ISAF Offshore Special Regulations (OSR),
  - c. a gradual transition from prescriptive to outcomes based regulation<sup>1</sup>,
  - d. the application of national or international standards wherever practicable<sup>2</sup>
  - e. the provision of an on-line electronic master copy of the SR that is amended to date, and
  - f. ongoing periodic reviews of the SR every four years to coincide with the publication of a new Blue Book,

## DIFFERING APPROACHES

5. In keeping with the listed principles, YA's safety program is guided by two relevant maritime regulators – Australian Maritime Safety Association (AMSA) and the OSR produced by ISAF's Special Regulations Sub-Committee. There is however a divergence in how these organisations and YA manage safety.

### AMSA

6. With the commencement of the *Navigation Act 2012* and *Marine Safety (Domestic Commercial Vessels) National Law Act 2012*, in mid-2013, AMSA is clearly established as the nation's primary maritime regulator. The main change in the two new acts was to transfer control for domestic commercial vessels from the States and Territories to the Federal Government in the pursuit of consistent application of the regulations through one process, one system, one decision maker and one regulator<sup>3</sup>. Recreational vessels, however, remain under the relatively light but differing regulations of the States and Territories and there is a heavy reliance on sporting organisations, such as YA, to administer safety.

7. At AMSA's conference last November, there was a very clear message of the importance of safety and a shift – a new world – in the way it was to be regulated. This involved moving from prescription to the responsibility for safety being placed with the operator through the use of SMS. This was also consistent with the Commonwealth Government's deregulation policy. The statement was made that prescription means the regulator owns safety and that this does not work.

### OSR

8. The OSR is in the process of being reformatted into a document that lists the regulations and does not include any recommendations or advice to assist in their interpretation. This guidance is provided separately in an ISAF book '*Guide to Offshore Personal Safety for Racing and Cruising*'. The guide is an excellent and well-illustrated book but not directly linked to the regulations and not easily amended to reflect changes in equipment, technology and procedures.

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<sup>1</sup> e.g. in the past radio performance was defined by power output and percentage signal loss that could not be practically measured. Current SR requires a rated output power and a communications test, both of which can be easily verified.

<sup>2</sup> All standards will be examined closely. Generally if a standard is specific to a maritime application (e.g. PFDs, liferafts, hull construction, flares etc.) it will be adopted, more general commercial standards with broader community application (e.g. fire extinguishers, engines, pumps, general rigging etc.) will be tested for relevance and consequences if adopted.

<sup>3</sup> Of note this is the situation enjoyed by YA in administering safety in the sport of sailing.

## WHAT DOES THIS MEAN FOR YA

9. In recent years YA's SR and the OSR have drifted apart in the way the regulations are presented but they remain consistent in their intent and requirements with very few contradictions. The numbering system in both documents is close to common and provides easy cross reference. The principal differences are:

- a. The OSR covers a different range of activities governing '*offshore*' racing including Category 0 events. It deals with Category 5 and 6 as separate Appendices and does not include a Category 7 that is popular in Australia for inshore racing.
- b. The YA SR are used more broadly for '*racing boats and recommended for cruising boats*' and include a Part 2 for '*off the beach boats*'. The SR are more prescriptive in parts and use '*recommendations*' and '*notes*' to assist boats in adopting leading practices. They also reflect the findings of Australian inquiries and reports from Coroners.

10. In 2011 the two sets of regulations were examined to determine whether the YA SR could be replaced by the OSR or amended to mirror the OSR. The decision was reached that the two documents were too different to amalgamate. Also the adoption of the OSR for use in Australia would forfeit control of the regulations to an international body and their administration would be less responsive to the needs of sailing in Australia.

11. YA's SR have a mix of prescription, outcomes and standards supplemented with recommendations and notes. This mix is designed to assist persons in charge of a boat prepare the boat for the level of racing or cruising they wish to undertake. It also is designed to assist auditors in their work of checking boats and encouraging consistency in interpretation of the regulations. The future intention is to incorporate more outcomes and relevant standards as regulations are reviewed or require amendment.

12. A delicate balance is required in YA's SR in order to support and not undermine the inescapable responsibility of the person in charge of the boat (SR 1.02.1<sup>4</sup>). The SRs should provide a sound framework for safety that encourages the person in charge to exercise his/her onerous responsibilities. Too much prescription and reliance on audits leads to an unsafe approach and a belief in a boat that safety is somebody else's responsibility. Too little detail fails to provide the necessary guidance, especially for those new to the sport and inexperienced crews.

13. This approach is considered necessary in the recreational environment that the sport of sailing is conducted in Australia. AMSA's approach of operators developing a SMS is not considered appropriate for the sport, noting the wide range of professionalism and competency involved in sailing.

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<sup>4</sup> 1.02.1 The safety of a boat and her crew is the sole and inescapable responsibility of the person in charge who shall do their best to ensure that the boat is fully found, thoroughly seaworthy and manned by an experienced crew who have undergone appropriate training and are physically fit to face bad weather. He must be satisfied as to the soundness of hulls, spars, rigging, sails and all gear. He shall ensure that all safety equipment is properly maintained and stowed and that the crew know where it is kept and how it is to be used. Attention is drawn to Regulation 2.04 that specifies the crew experience required for some races. He shall also nominate a person to take over the responsibilities of the person in charge in the event of his incapacity.

14. Generally the racing crews and cruisers are not professional mariners. Although some are very experienced and competent mariners none are required to hold any qualification to take their boat on the water. Many crews may not have the skills to develop a sound SMS. They need assistance in preparing their boats and the SR have an educational role in specifying the minimum features of a vessel, equipment, supplies and training that are considered necessary for defined levels of sailing. This level of guidance is not provided for recreational or pleasure craft by the state or territory regulators and Australia does not have the assurance of a European CE type conformity system.

15. Similarly, the bland list of regulations being proposed as the OSR is not considered appropriate for Australia's sailing needs. Although the associated guide is an excellent publication and well supported by a series of Royal Yachting Association publications, their direct relevance and issues involved with their amendment and being kept current are limitations.

#### **YA's FUTURE DIRECTION**

16. The Board has determined to:

- a. Note the changing direction of regulation being adopted by AMSA and ISAF;
- b. Note that the new format and presentation of the OSR is likely to be significantly different to the YA's SR but the separate sets of regulations will remain, as far as is practicable, aligned and consistent; and
- c. Endorse the NSC continuing with the current model for YA's SR with a mix of prescription, outcomes and standards supplemented with recommendations and notes, and the intention to incorporate more outcomes and relevant standards as regulations are reviewed or require amendment thereby providing an appropriately balanced and evolving set of regulations.

I hope this correction better explains the direction YA is taking toward safety regulation. If you have any questions please call and I will help you as best I can.

Yours sincerely,



Glen Stanaway  
Sport Services Manager  
[glen.stanaway@yachting.org.au](mailto:glen.stanaway@yachting.org.au)