



Queensland

# Safety in Recreational Water Activities Regulation 2011

## Explanatory Notes for SL 2011 No. 241

made under the

*Safety in Recreational Water Activities Act 2011*

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## General outline

### Short title

*Safety in Recreational Water Activities Regulation 2011*

### Authorising law

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

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objective of the Regulation

The *Safety in Recreational Water Activities Regulation* will support the policy objective of the *Safety in Recreational Water Activities Act 2011*, which is to maintain Queensland's high standards of safety in the recreational water activities industry. This objective will be achieved by ensuring the health and safety of people for whom recreational water activities are provided by a person conducting a business or undertaking.

The *Safety in Recreational Water Activities Regulation* (the regulation) will apply to recreational water activities, defined as activities carried out for the purposes of recreation on, in or under waters. Examples of

recreational water activities given in the *Safety in Recreational Water Activities Act 2011* (the SIRWA Act) include diving and snorkelling. The regulation will apply specifically to recreational diving and snorkelling.

## **Reasons for the regulation**

The harmonisation of work health and safety (WHS) laws is part of the Council of Australian Governments' National Reform Agenda aimed at reducing the regulatory burden and creating a seamless economy. The objects of harmonising WHS laws through a model framework are to protect the safety of workers, improve safety outcomes, reduce compliance costs for business and improve efficiency for health and safety regulators.

During the harmonisation of work health and safety laws coordinated by Safe Work Australia, a majority of jurisdictions decided that the model WHS laws would not include specific regulations or codes of practice for recreational diving and snorkelling. It was considered that to include such regulations would shift the focus of the model WHS laws further in favour of regulating public safety than is currently the case in those jurisdictions.

As a result, the national model WHS Act and regulations will not specifically regulate recreational underwater diving and snorkelling. In order to continue to regulate this important industry sector in Queensland, it was necessary to enact new stand-alone legislation, the *Safety in Recreational Water Activities Act 2011* (the SIRWA Act), to maintain Queensland's high standards of safety for the recreational water activities industry. The SIRWA Act will commence on a date to be fixed by proclamation.

Recreational diving and snorkelling are currently regulated in Queensland under the *Workplace Health and Safety Act 1995* (the WHS Act 1995). The provisions made under the WHS Act 1995 are the *Workplace Health and Safety Regulation 2008* — Part 14, Division 4 (Conducting recreational diving or recreational technical diving), and Part 15 (Conducting recreational snorkelling), and the *Recreational Diving, Recreational Technical Diving and Snorkelling Code of Practice 2010*. The regulations and code of practice for recreational diving and snorkelling will be remade under the SIRWA Act.

## **How the policy objectives are to be achieved**

The regulation will achieve the objective of maintaining Queensland's high standards of safety in the recreational water activities industry by ensuring the health and safety of people for whom water activities are provided by a person conducting a business or undertaking. That objective will be met primarily by remaking the provisions for recreational diving and snorkelling in the *Workplace Health and Safety Regulation 2008* without significant change as the regulation, in order to maintain current Queensland health and safety standards for the recreational water activities industry.

The regulation, the SIRWA Act and the *Work Health and Safety Act 2011* will operate in tandem, with the SIRWA Act and the regulation covering the field only in relation to the health and safety of people for whom recreational activities are provided by a person conducting a business or undertaking. The key provisions of the *Work Health and Safety Act 2011* (the Work Health and Safety Act) have been adopted by the SIRWA Act. For example, the work health and safety regulator for the Work Health and Safety Act is the regulator for the SIRWA Act and the regulation, and work health and safety inspectors appointed under the Work Health and Safety Act will monitor and enforce compliance with the SIRWA Act and the regulation.

The current Queensland regulations and code of practice for recreational diving and snorkelling will be remade under the SIRWA Act. The SIRWA Act, the regulation and the Work Health and Safety Act will commence at the same time to ensure the continuity of the regulation of the recreational diving and snorkelling industry.

## **Estimated cost for the implementation**

The remaking of the recreational diving and snorkelling regulations and code of practice to the SIRWA Act will not impose any additional costs on recreational diving and snorkelling operators.

## **Consistency with Fundamental Legislative Principles**

The main purpose of the regulation is to continue to ensure the health and safety of people for whom recreational water activities are provided by a person conducting a business or undertaking. The SIRWA Act and the regulation will operate in tandem with the Work Health and Safety Act and

mirror its provisions in order to support the harmonisation of WHS laws, while preserving Queensland's regulations and code of practice for recreational diving and snorkelling. The SIRWA Act was modelled on the Work Health and Safety Act, so issues relating to Fundamental Legislative Principles in that Act are also applicable to the SIRWA Act and regulation. The Fundamental Legislative Principles are set out in the explanatory notes for the Work Health and Safety Act.

## **Consultation**

Dive operators and other recreational scuba diving and snorkelling industry stakeholders have been consulted about the implications of the SIRWA Act for their industry, specifically its role in ensuring the continuation of their health and safety regulations and code of practice for recreational diving and snorkelling. The SIRWA Act and the regulation have strong support from recreational dive operators, as they will maintain Queensland's high safety standards among stakeholders in the industry.

# **NOTES ON PROVISIONS**

## **Part 1 Preliminary**

### **Short title**

*Clause 1* sets out the short title of the regulation to be the *Safety in Recreational Water Activities Regulation 2011* (the regulation).

### **Commencement**

*Clause 2* states that the regulation commences on the commencement of section 45 of the SIRWA Act.

### **Definitions**

*Clause 3* states that the dictionary in the schedule to the regulation sets out particular words used in the regulation.



gives the duty holder a medical declaration in the form approved by the regulator about his or her medical fitness to dive, and the duty holder, or someone on his or her behalf, has—

- read the declaration; and
- does not know or suspect that the declaration is false or misleading; and
- has assessed the person's fitness to dive, having regard to the declaration; and
- decided it is reasonable to allow the person to dive.

### **Lookout and rescuer**

*Clause 8* applies if a duty holder is conducting recreational diving or recreational technical diving for one or more persons. The duty holder may allow the persons to do the diving only while there is at least one person acting as lookout for the diving. The clause sets out the responsibilities of the lookout, and outlines circumstances in which a duty holder does not have to have another person available to act as a backup lookout.

### **Supervision of resort divers**

*Clause 9* applies if a duty holder is conducting resort diving for one or more persons. The duty holder must ensure that each person doing resort diving is supervised in the water by a dive instructor or a dive instructor assisted by a certified assistant, and outlines the maximum number of resort divers that these persons can supervise in the water at a time. Clause 9 includes definitions of *certified assistant* and *dive instructor*.

### **Dive safety log**

*Clause 10* applies if a duty holder intends to conduct recreational diving or recreational technical diving for one or more persons. Clause 10 requires the duty holder to ensure that a written dive safety log is kept as required under the clause.

Subclause 10(3) specifies that the dive safety log must contain the required information about each dive conducted by the duty holder and each dive done by the duty holder or the duty holder's workers in conducting the dive.

Subclause 10(4) specifies the information that must be contained in the dive safety log and verified as set out in subclauses 10(7), (8) (9) (10) and (11).

Subclauses 10(5) and (6) contain requirements for additional information in the dive safety log if specified breathing equipment is used.

Subclause 10(12) states that the duty holder must keep the dive safety log for at least one year.

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 after the dive.

## **Part 3                      Conducting recreational snorkelling**

Part 3 requires duty holders to implement systems that focus on the safety of the recreational snorkeller and involve conducting counts of all people on board a boat, both before leaving port and before leaving a recreational snorkelling site.

### **Application**

*Clause 11* states that Part 3 sets out the requirements for a duty holder who provides recreational snorkelling.

### **Count of all persons on board to be made and recorded**

*Clause 12* prescribes what a duty holder must do when using a boat to transport persons to, or to the vicinity of, a recreational snorkelling site, to ensure no persons are left behind at the site.

Subclauses 12(2) to (4) prescribe how the count of all persons on board the boat must be carried out and recorded at certain times.

Subclause 12(5) states that the duty holder must keep each record made under clause 12 for at least one year.

## **Advice about medical conditions**

*Clause 13* applies if a duty holder intends to provide recreational snorkelling for one or more persons. The duty holder must ensure that each person who intends to do recreational snorkelling is advised of certain information and to tell the lookout, snorkelling supervisor or snorkelling guide if the person has any concerns about a medical condition.

## **Lookout, guide and rescuer**

*Clause 14* applies if a duty holder is providing recreational snorkelling for one or more persons. Clause 14 states that the duty holder may allow persons to do recreational snorkelling only if there is at least one person acting as lookout for the snorkelling or the snorkelling is done with a guide. Further, clause 14 specifies when it is appropriate to use a lookout or a guide.

Subclauses 14(3) and (4) outlines the responsibilities of the lookout or guide.

Subclause 14(5) describes the circumstances when a duty holder does not have to provide another person to act as a back-up lookout or guide.

## **Schedule—Dictionary**

The schedule to the regulation contains a dictionary that provides definitions of words and terms used in the regulation. Some substantial definitions include—

### ***recreational diving***

***This term*** means any of the following underwater diving for recreation using compressed air, other than diving in a swimming pool or decompression diving—

- resort diving;
- diving by a person undertaking training in diving for recreation, whether or not the person is being photographed, filmed or videoed while diving;

- diving for recreation by a person with a qualification in underwater diving, whether or not the person is being photographed, filmed or videoed while diving.

***recreational snorkelling***

***This term is stated not to*** include snorkelling in a swimming pool.

***recreational technical diving***

***This term means*** underwater diving for recreation, other than in a swimming pool—

- using EANx or mixed gas; or
- that is decompression diving using compressed air or other gas.

***resort diving***

***This term*** means an introductory scuba experience, or introductory educational diving program, conducted according to a recreational dive training organisation's program whether or not the person is being photographed, filmed or videoed while diving.

***underwater diving***

***This term*** does not include snorkelling or free diving.

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ENDNOTES

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