

TO LICENSE, OR NOT?

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There has been a lot of media coverage recently on tragedies on our waterways, in both the recreational and commercial sectors.

The recently released findings of Coroner Wallace Bain into the death of Bishop Thompson have caused a stir. Mr Thompson drowned at Lake Okareka in January 2010, after falling off a jet ski and being run over by one of his friends.

Various forms of licensing and registration for vessels have been discussed over the last few years, and each time the conversation dies down and things remain status quo.

WHAT EXACTLY IS THE STATUS QUO?

Maritime Rule Part 91 (Navigation Safety Rules) sets out the requirements for all people in charge of a power driven vessel. This Rule sets out the requirements on carrying lifejackets, speed limitations and distances to be maintained between the vessel and other vessels, water users, and the shore.

The Rules do not require that recreational boaties wear lifejackets. There is an onus on the person in charge of the recreational craft to ensure there are sufficient life jackets for those onboard and that those life jackets are accessible.

Rule 91.4(5) prohibits the use of a recreational craft in circumstances where: *“tides, river flows, visibility, rough seas, adverse weather, emergencies or other situations cause danger or risk to safety of persons on board, unless every person is wearing a properly secured personal flotation device...”*

This positive obligation on the operator of a pleasure craft to ensure all persons onboard are wearing a lifejacket is unique amongst the Rules. At all other times, the requirement is that life jackets are accessible, but not necessarily worn. The Local Government Act 2002 empowers local authorities to make by-laws relating to navigation safety, however, the discussion here centres only around the provisions of Maritime Rule part 91, and the Coroner's recommendations.

WHAT MEASURES HAVE BEEN LOOKED AT?

The Pleasure Boat Safety Advisory Group (PBSAG) is a forum in which concerns over the recreational sector of marine activities is monitored and reviewed. The last significant review was conducted by PBSAG in 2007. This review looked at the causes of various accidents and the resulting fatalities, and what measures would have altered the outcome of the incident had they been in place at the time. There were four factors present in nearly every accident. They were:

- The failure to wear lifejackets in small craft that are prone to capsize (those less than 6m in length)
- The inability to communicate distress following an immersion-type accident

- Bad weather and sea conditions
- Alcohol was a significant cause of accidents and fatalities, but was found to be under-reported as a causal factor

Interestingly, the requirement to register vessels would only have prevented fatalities in 12 percent of the accidents between 2003 and 2006, and the compulsory education and licensing of vessel owners would only have prevented three percent of fatalities.


Understandably, the PBSAG recommended measures to combat the 4 factors common to most of the accidents, rather than registration and licensing.

WHAT HAS THE CORONER RECOMMENDED?

Coroner Bain also conducted the inquest into the death of Genevieve Lewis in 2009 who was run over by a speed boat after falling off water skis. In the findings on that matter, the Coroner advocated registration for vessels and licensing for operators. He cited overseas regimes as an example of what could be done: Australia, Canada and England have varying degrees of control in place, but overall more significant sanctions and enforcement mechanisms available.

The Coroner compared the situation to that of operating a motor vehicle which results in the injury or death of another person. Where the driver's culpability is less than that required for manslaughter, the offences (under the Land Transport Act 1998) descend in seriousness from 'recklessness' to 'dangerous' to 'aggravated' to 'careless'. No similar statutory regime exists under the Maritime Transport Act 1994.

In the findings of the inquest into the death of Miss Lewis, the Coroner recommended examination and licensing of every person who operates a vessel. He asserts that such measures would ensure that boats are not operated by people who lack an awareness of the dangers inherent in operating boats. He also asserts that such controls would ensure owners of boats took responsibility for those they lent their boats to, that such measures would reflect the seriousness and culpability of those who cause injury to others or behave in a dangerous manner, and finally, that such measures would bridge the gap that currently exists in New Zealand. The Coroner reiterated all of these recommendations in the findings that were released following the investigation into Mr Thompson's death.

It remains to be seen whether another review is commissioned into the registration of vessels and licensing of vessel owners and operators. Previous findings have directed funding into the education of the recreational sector rather than into stricter regulations. Will this remain the case? 

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