Reviewed 26 October 2011

Marine Information Bulletin

Appropriate registration of club, school and sporting association boats

Purpose
This marine information bulletin is about whether boats used in connection with the activities of clubs, schools and sporting associations should be registered as recreational or commercial boats.

Legislation
The *Transport Operations (Marine Safety) Regulation 2004* defines a recreational boat as one that is being used only for private recreation.
So a boat not used only for private recreation is by default a commercial boat, and must meet different regulatory requirements for registration, licensing, safety equipment, and areas of operation.

To whom does the recreational test apply?
The obligation to register a boat, and hence to nominate whether it will be used only for private recreation, rests with the owner.

In practical terms an owner is a person who has control over the boat. It is the owner, rather than the person having command or charge of the boat at a particular time, (the master) who determines how the boat is used.

Under the *Transport Operations (Marine Safety) Act 1994*, an owner includes not only anyone registered as the owner, but also anyone else who:

- exercises the powers of an owner, and
- either operates the boat or causes or allows it to be operated by someone else.

So a boat may have more than one owner (for example a legal registered owner and another person to whom that owner has given control of the boat). Each owner must use the boat only for private recreation.

Whether the boat is, or will be used, only for private recreation is a test of intended use determined at the time of registration by reference to the owner or owners rather than the master, passengers, or any other people on the boat.

The elements of the recreational test
There are three elements to the legal definition of a 'recreational ship'

1. **Only** – the ship cannot be used for anything else. The owner or owners must use it exclusively for private recreation at all times. In other words, a boat that is used in any way that is not both recreational and private cannot be recreationally registered.

2. **Private** – the use of the boat is private if it is either direct personal use for a recreational purpose by a private owner, or operation by someone with whom the owner has a private relationship, for an activity directly related to a recreational use by the owner. A private relationship is one between a private individual or entity and another private entity in a definable class – for example, between a person and the person's family, circle of friends, or agent.

   For the use of the ship to be classed as private:
   - The owner or owners must be private, not public entities (such as government agencies).
   - The owner or owners must operate the boat themselves, or give ownership control of the boat only to persons (or a definable class of persons) who are themselves private entities.
   - If there is more than one owner, the relationship between the owners must be private.
   - The owner's use of the boat should not include operating it as a business, or providing a service, in relation to persons who are not themselves in a private relationship to the owner.

   All four elements must be met for the use to qualify as private.

   One exception to this principle is the gazetted exemption allowing government schools to register under six metre boats recreationally in certain circumstances. See below under the heading 'the government schools exemption'.

   Charitable institutions, not for profit incorporated associations (such as sporting clubs), and non-government schools are treated as private entities, whereas corporations and government entities are not.

   The relationship between such private entities and the definable class of people comprising bona fide club members or affiliates or school students is treated as a private relationship.

3. **Recreation** – for the use of the ship to be recreational, the ship must only be used for private recreation by the owners as distinct from use in connection with a commercial transaction of any kind, such as operations as a business, as a service (including a service provided by the Crown) for profit, or for research.

Recreational use may include use for or in connection with sporting or leisure activities, and could include training, competition, coaching, support, escort, or rescue functions.

Use of a boat by a school for a marine studies course or in connection with in-school BoatSafe training, that is any use that forms part of the school's educational programme – is not recreational.

How to apply the test

For a ship to be properly classified as a recreational ship, its use must comply with all three elements — it must at all times be used only for private recreation.

The appropriate classification of any particular boat is a question of fact that will depend on applying the test outlined above to the particular circumstances and how that boat is used. If in doubt, contact Maritime Safety Queensland on the contact numbers at the foot of this Marine Information Bulletin.

The government schools exemption

Because the application of this test under the legislated definition would result in different registration requirements for government and non-government schools using boats in similar ways, an exemption from the commercial registration requirements that would otherwise apply was gazetted on 5 August 2011.

This exemption allows the following to register as recreational boats:

- Boats under six metres.
- Providing coaching, rescue or ancillary services.
- In smooth or partially smooth waters.
- In connection with *bona fide* extra-curricular sporting or leisure activities.
- For students of a Queensland school (that is, government or non-government).

Policy

The policy distinguishing recreational and commercial registration requirements may be summarised as follows:

- When a boat is used only for private recreation, no mandatory design or construction standards apply other than the requirement to display an Australian builder's plate describing the boat's characteristics. People board the boat in reliance on their private relationship to the owner, and their confidence that the owner will discharge the owner's duty of care towards them.
- Maritime Safety Queensland does not check the seaworthiness of recreational boats at the point of registration.
- When on the other hand people board a boat operated by an owner with whom no such private relationship exists, whether or not a financial transaction has taken place, there exists a legitimate expectation on the part of the passengers that the boat is fit for its intended purpose, for example that it is seaworthy.
- Maritime Safety Queensland as the safety regulator plays a role in ensuring such boats are seaworthy by requiring them to meet commercial registration standards.

Application to typical circumstances

- A boat owned by a diving club and used in connection with recreational diving by club members could be registered recreationally.
- If the club accepted money from a research institute to do marine research in association with the recreational diving, the use of the boat is then not **only** for private recreation.
- Using a boat for coaching a sporting activity (such as rowing) for members of a non-government school community is regarded as recreational, even if the boat is skippered by an employed teacher or coach.
- By statutory exemption, government schools are also entitled to register under six metre boats recreationally if they meet the criteria set out above (see **the government schools exemption**).
- Using a boat as a rescue boat for the defined class of people comprising the members or affiliates of a not for profit sailing club would be regarded as a private recreational use.
- Providing rescue services at large (for example to members of the public participating in a regatta) would not be regarded as private recreational use.
- Similarly, a charity or not for profit association providing recreational use of a boat to the public, or to a broad or unascertainable class of people would not be entitled to recreational registration – the people being taken on the boat (or their carers or guardians) should be able to rely on the boat having been certified as seaworthy.
- Use of a boat by a government or non-government school for a marine studies course or in connection with in-school BoatSafe training, that is any use that forms part of the school's educational programme – is not recreational.
- Use of a boat by a charitable institution for recreational activities for a defined class of people such as the residents of a retirement village is both private and recreational so the boat may be registered recreationally.
- It is consistent with private recreational use for a sporting club or not for profit association to require members to contribute to defray the legitimate expenses of that recreational use, including for example the costs of fuel, registration, insurance and maintenance.
- Similarly, a sporting club or not for profit association could accept sponsorship in relation to a private recreational activity such as a sporting event, provided any such funds were used to defray legitimate expenses of the recreational use.

Information
For further information about this Marine Information Bulletin, email msqmail@msq.qld.gov.au.

Other Marine Information Bulletins covering various topics relating to the safe operation of ships can be obtained from Maritime Safety Queensland's website www.msq.qld.gov.au and from the following Maritime Safety Queensland regional offices:

Airlie Beach	(07) 4946 2200
Bundaberg	(07) 4131 8500
Cairns	(07) 4052 7400
Gladstone	(07) 4973 1200
Hervey Bay	(07) 4194 9600
Mackay	(07) 4944 3700
Mooloolaba	(07) 5477 8425
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