

Impact Analysis Statement

Summary IAS

Details

Lead department	Office of Industrial Relations
Name of the proposal	Sunset review of the <i>Safety in Recreational Water Activities Regulation 2011</i>
Submission type	Sunset Summary IAS
Title of related legislative or regulatory instrument	<i>Safety in Recreational Water Activities Act 2011</i> <i>Safety in Recreational Water Activities Regulation 2011</i>
Date of issue	xxxx 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

The harmonised work health and safety laws coordinated by Safe Work Australia and implemented in 2011 do not include specific regulations or codes of practice for recreational diving or snorkelling. At the time, the Queensland Government recognised the need to maintain high safety standards for the recreational snorkelling and diving sector. In order to continue to regulate this important industry in Queensland, the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and the *Safety in Recreational Water Activities Regulation 2011* (SRWA Regulation) commenced on 1 January 2012.

The SRWA Act imposes duties to ensure the health and safety of persons to whom recreational water activities are provided by a person conducting a business or undertaking (PCBU). In addition, the SRWA Regulation describes what must be done to prevent or control certain hazards which can cause injury, illness or death in recreational diving and snorkelling activities.

The legislative framework aims to ensure that persons to whom recreational water activities are provided, including recreational diving and snorkelling, are given the highest level of protection from hazards and risks arising from the recreational water activity as is reasonably practicable.

The SRWA Act and SRWA Regulation together give effect to the Recreational Diving, Recreational Technical Diving and Snorkelling Code of Practice 2018 (the code of practice), which is an approved code of practice under section 274 of the SRWA Act. The code of practice provides practical guidance for dive operators on how to meet the requirements of the SRWA Act and SRWA Regulation.

The SRWA Regulation expires on 1 September 2024 unless it is remade. Therefore, a sunset review was undertaken by the Office of Industrial Relations (OIR) with a proposal to remake the SRWA Regulation with some minor amendments.

Recreational diving and snorkelling in Queensland

The Great Barrier Reef is one of Australia's most important natural assets and one of the most significant contributors to the Australian economy. It has a total economic, social and icon asset value of \$56 billion and contributes more than \$6.4 billion each year to the Australian economy including around 64,000 full-

time jobs¹. Although recreational diving and snorkelling occurs throughout Queensland, the Great Barrier Reef has the most concentrated industry presence.

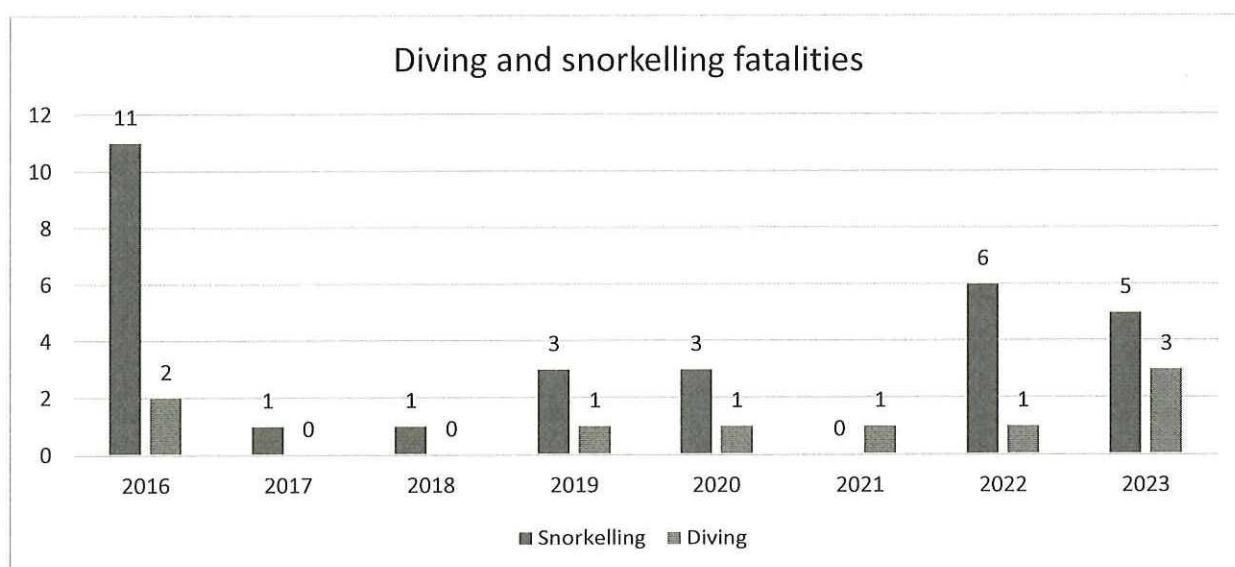
It's estimated that over 1 million people undertake recreational diving and snorkelling activities each year in Queensland². With the important contribution recreational diving and snorkelling makes to Queensland's and regional economies, it is in the interests of all Queenslanders to ensure we continue to have one of the safest recreational diving and snorkelling industries in the world.

Workplace Health and Safety Queensland (WHSQ) estimate that there are approximately 140 dive operators in Queensland. The dive operators vary in size and structure.

Fatalities in snorkelling and recreational diving

Between 2016 to 2023, there were 39 notified fatalities within the jurisdiction of WHSQ. This number is comprised of 9 diving fatalities and 30 snorkelling fatalities; noting that more people undertake snorkelling than diving.

Most of the fatalities were contributed to or caused by pre-existing or unknown medical conditions suffered by the snorkeller or diver and did not include failures by the dive operator. However, 3 fatalities involved a failure by the dive operator under SRWA Act and/or Regulation (either causative or contributed to the fatality) with a further 6 were still under investigation or not known.



Is the regulation meeting its objectives?

Recreational snorkelling and diving are a high-risk activities, with a number of fatalities in recent years. The SRWA Regulation addresses this problem by providing clear requirements to ensure:

- All persons aboard the boat are counted;
- Entry-level certificate divers and non-certified divers complete a medical declaration;
- Entry-level certificate divers provide a medical certificate where required;
- Snorkellers are given advice about medical conditions which may impact their ability to snorkel safely;
- Lookouts (and/or guides for snorkellers), rescuers and first aid facilities are provided;
- Non-certified divers are adequately supervised; and
- A dive safety log is kept.

¹ Reef facts | gbrmpa

² The recreational dive and snorkelling industry in the Great Barrier Reef: profile, economic contribution, risks and opportunities
Great Barrier Reef Marine Park Authority, Jim Binney

Without these clear requirements, some industry members would continue to ensure high safety standards however, there may be other industry members who do not undertake proper safety measures and put participant safety at risk. Compliance data from WHSQ indicates there are dive operators in the industry who need to improve their compliance with safety. Not having the SRWA Regulation would create inconsistency within the industry and an uneven 'playing field' in terms of industry costs and pricing. Inconsistent and lower safety standards may increase injuries and fatalities which has a negative impact upon the tourism economy.

What options were considered?

Option 1 - Regulation expires (base case): Under this option, the SRWA Regulation expires and is not re-made. This option is not supported considering the seriousness of the risks of fatalities and injuries associated with recreational snorkelling and diving, as well as the negative economic impacts on the industry if a safety regulation were to expire and incidents were to rise (thus deterring tourists). Without the SRWA Regulation, compliance for the diving and snorkelling industry would be problematic to enforce given the SRWA Regulation has industry specific safety requirements. Further, the content of the code of practice to provide guidance to the industry to safely undertake activities relies on the SRWA Regulation.

Without the SRWA Regulation, the Model Work Health and Safety Regulation (Model WHS Regulation) would be relied upon and this is not supported. The Model WHS Regulation does not specifically address recreational snorkelling and diving despite it being a high-risk activity and having a vastly different risk-profile to occupational diving (which is addressed in the model WHS Regulation). This was the impetus for Queensland developing its own suite of legislation to address the size and economic importance of Queensland's industry.

Option 2 – Remake 'as-is' (status quo): Under this option, the SRWA Regulation is re-made exactly as is. This option is not preferred given minor amendments are required to ensure the SRWA Regulation is up to date and reflects modern practices and definitions.

Option 3 – Remake 'with amendments' (preferred): Under this option, the SRWA Regulation is re-made with minor amendments. These proposed minor amendments have no additional financial or regulatory impacts on industry, rather, they clarify terminology and standards that have been updated since the commencement of the SRWA Regulation.

Amendments proposed in Option 3

While the SRWA Regulation is functioning as intended and has remained relevant, some minor amendments of the SRWA Regulation are proposed which do not increase the regulatory burden on industry.

The amendments include replacing a now-withdrawn Australian Standard with the current, equivalent standard and updating definitions and terminology to align with modern practices.

Other proposed amendments replace out-dated medical criteria for entry-level certificate diving which triggers a requirement for a medical certificate to be allowed to dive. The medical criteria was replaced with a requirement to complete a medical declaration in the approved form which indicates whether a medical certificate is required based on the individual's answers in the form. This amendment was requested by industry members to more accurately assess risk based on more updated medical information. It is anticipated that this amendment will not result in further costs to industry but rather more effective assessments.

Amendments were made to include that dive operators must advise the snorkellers to tell a worker if they have *any* medical condition rather than a condition the snorkeller *has concerns about*. It is not anticipated this amendment will create any further regulatory burden but will allow the dive operator to properly assess snorkellers and provide appropriate advice based on the snorkeller's medical conditions.

What are the impacts?

Option 1: Regulation expires (base case):

Impacts for industry and community: There would be considerable economic and social impacts associated with this option. If the SRWA Regulation were to expire, failure to clarify the safety standards for managing the risks associated with recreational snorkelling and diving may result in a rise in incidents, including further fatalities. A rise in fatalities would be a deterrent to tourists who put their trust in dive operators to keep them safe when undertaking this activity. Studies indicate that decreased perceptions of tourist safety are estimated to significantly reduce the likelihood of initial and repeat visits and hence impact tourist revenues, placing financial viability of the industry at risk³.

More importantly, there would be a burden on families who lose a loved one – both economically and socially. Without specific medical requirements, advice and assessment for divers, it is likely that divers at significant risk due to medical conditions may be allowed to dive and suffer injury or death. If requirements are not in place to assess and advise snorkellers of the risks associated with certain medical conditions, then it is likely that injuries and deaths would increase. Further, without requirements to conduct counts of persons aboard a vessel, there are increased risks of people being left behind in the water. Without requirements to keep a dive log, there may not be enough information to properly investigate incidents.

The code of practice is based on the requirements in the SRWA Act and SRWA Regulation and industry relies heavily on the code of practice to guide their investment in safety measures and equipment. Without the SRWA Regulation to guide the code of practice content, industry would not have clarity on the appropriately compliant safety investments to make.

It is a challenge to estimate the potential cost burden in terms of increase in incidents associated with the expiry of the SRWA Regulation, particularly given other jurisdictions have no specific regulation for this activity and their industries are significantly smaller. In addition, the SRWA Regulation relates to recreational activities, which means there would be no available Workers Compensation data on indicative costs on injuries from an incident.

The 2017 Best Practice Review of Workplace Health and Safety Queensland⁴ (The BPR) noted the significant changes in Queensland's economy over the decades and that this tests the boundaries of the duty of care owed to 'other persons', particularly in light of the growth of tourism and the impact of business operators providing recreational experiences such as diving and snorkelling. This highlights the critical role of the SRWA Regulation in clearly defining the duty of care to participants in a high-risk industry that continues to grow, and that is of importance to the Queensland economy.

Impacts for government: Under this option, WHSQ and the independent Work Health and Safety Prosecutor will not have a specific regulation to refer to in support of its enforcement and prosecution activities concerning recreational snorkelling and diving. Relying on the model WHS Regulation would make compliance and enforcement difficult. This would also mean there is little deterrent for dive operators who choose to not follow safety measures.

Option 2: Remake 'as-is' (status quo):

Impacts for industry and community: Under this option, industry would have a stable continuation of a regulatory base to guide the safety operations of the business. However, some aspects, such as the medical criteria for entry-level certificate diving, Australian Standard reference and terminology relating to first aid would be out of date and no longer reflect modern practice.

³ Jarvis, Stoeckl, N., & Liu, H.-B. (2016). The impact of economic, social and environmental factors on trip satisfaction and the likelihood of visitors returning. *Tourism Management* (1982), 52, 1–18.

⁴ https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0011/22322/best-practice-review-of-whsq-final-report.pdf

Lookout and guide costs:

The main costs for industry in complying with requirements from the SRWA Regulation are related to the lookout and rescuer requirements for diving and snorkelling. These requirements are in the existing SRWA Regulation with industry currently required to comply with them.

These provisions require dive operators to have a worker to act as lookout for the diving or snorkelling activity. The lookout must be positioned out of the water and be able to see the whole area where the activity is taking place. That person must also be able to rescue a diver or snorkeller in need (or direct another person capable of doing so) and perform CPR or direct another person to do so.

The SRWA Regulation does allow the alternative for a guide (in the water, not outside of) instead of a lookout if they are guiding less than 10 snorkellers, however, the guide must still be a worker.

Workers who undertake lookout duties are generally employed casually with their wage based upon agreements with their employer and may be influenced by the worker's qualifications and whether other duties or roles are performed for the dive operator. For example, a vessel master who acts as a lookout, would be on a wage appropriate for their main role on the vessel with lookout responsibility added as an additional responsibility. The responsibility of lookout duties may also be rotated between different workers on the day who perform multiple duties and roles. The lookout may also be undertaking dive safety logs and counts of persons aboard the vessel (which are requirements of the SRWA Regulation) as well as other duties not related to SRWA Regulation requirements.

Some dive operators have advised that they would continue to employ lookouts (or ensure their workers cover the lookout duty) regardless of the SRWA Regulation requirements and other dive operators indicated the requirement means they hire an additional worker.

The lookout and rescuer requirement has continued to exist in the SRWA Regulation since prior to harmonisation of the work, health and safety laws (s180 of the *Work Health and Safety Regulation 2008*). When harmonisation of the work health and safety legislation occurred, the 2011 inquiry into the safety standards of the state's recreational dive and snorkel industry found that lookouts, headcounts and the identification of missing divers was critical to the safety of recreational divers and snorkellers. As a result of the inquiry, amendments were made to the SRWA Regulation in 2013 to strengthen these provisions. The inquiry was led by the Recreational Dive and Snorkelling Industry Reference Group, consisting of leading industry stakeholders and experts, who conducted state-wide industry consultation.

Coronial investigations into recreational diving deaths have highlighted supervision of divers as a factor in determining poor safety outcomes and fatalities.

Lost income/profits from recreational divers who do not meet medical requirements

If the prospective divers do not meet medical requirements or are unable to obtain a medical certificate certifying them as fit to dive, then the dive operator must not allow them to dive.

While there is no data on the percentage of divers who fail the medical requirements, the cost of a non-certified dive can range between \$80 - \$150 (plus boat/tour costs). The loss of this income should be balanced with the possibility of costs to the dive operator of private legal action, prosecution and investigations that often follow a serious injury or death that can result from a diver's medical conditions while undertaking a recreational diving activity.

First aid requirements

Lookouts/guides are required to be appropriately first aid qualified with a first aid certificate and relevant advanced resuscitation course which in total costs approximately \$280 - \$350 per person. Refresher training in the CPR model should be carried out annually and first aid qualifications should be renewed every three years.⁵

Oxygen resuscitation kits are around \$600 - \$800 (plus cylinder hire) and are required to provide appropriate, and often lifesaving, first aid for divers and snorkellers.

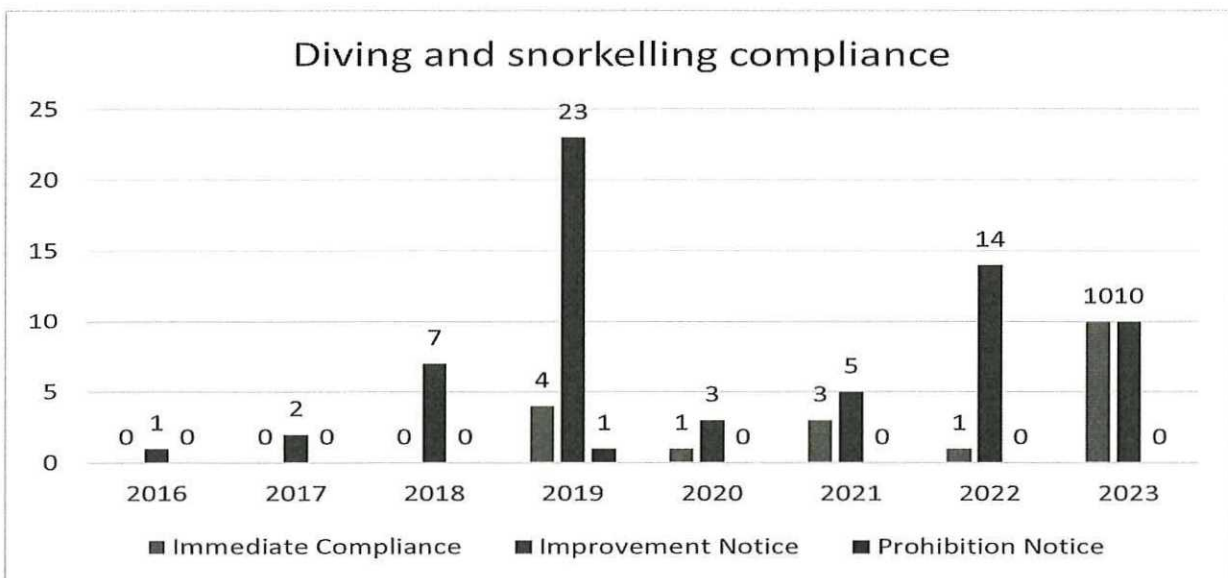
Impacts for Government: Government would continue with a business-as-usual approach to the regulation of the sector with the impact for compliance and enforcement set out below.

Compliance

To support the regulatory framework, WHSQ undertakes a range of activities to assist industry to comply with the relevant regulatory provisions. The establishment of the WHSQ Diving Unit in January 2009 increased WHSQ's ability to provide enhanced services to the recreational dive and snorkel industry.

In addition, WHSQ has an extensive range of information products to support the recreational diving and snorkelling industry to undertake their business safely which are based on the requirements in the SRWA Act, SRWA Regulation and the code of practice.

Since 2016 there have been 85 compliance notices issued by WHSQ to dive operators against the SRWA Act and SRWA Regulation. There was an increase in 2018-2019 partly due to the implementation of a WHSQ state-wide compliance approach and the commencement of the code of practice providing specific guidance. The industry was significantly impacted by the COVID-19 pandemic in 2020-2021 which correlates with a decrease during that time.



The compliance data demonstrates that the SRWA Regulation is an important tool in enforcing safety compliance within the industry and is utilised by WHSQ to achieve this purpose.

⁵ First aid in the workplace Code of Practice 2021

Option 3: Remake with amendments (preferred)

Impacts for industry and community: Under this option, industry would have a stable continuation of the strong regulatory base but with more relevant and modern terms and practices. Some minor amendments of the SRWA Regulation are proposed which do not increase the regulatory burden on industry.

Terminology and definitions

Terminology and definitions have been updated to include:

- The term duty holder has been replaced with 'dive operator' to use plain language.
- The definition of recreational diving has been simplified and the reference to being photographed, filmed or videoed is no longer needed to differentiate between recreational diving and a person being filmed or photographed for profit or gain in a diving work situation.
- Resort dive has been replaced with non-certified dive to reflect that this activity often occurs outside a resort context. The change of term away from 'resort dive' was also a recommendation from the Bethany Farrell coronial inquest.
- Entry-level certificate dive is clarified with a definition of an initial training course to ensure the term is more easily understood by industry.
- Recreational snorkelling is clarified to include free diving which can be undertaken without a snorkel but otherwise is consistent with the activity of recreational snorkelling.
- A definition is provided for certified diver to clarify what constitutes an entry-level certificate dive and a non-certified dive, particularly in situations where certified divers may participate during an entry-level certificate dive or non-certified dive.
- The definition for first aid has been updated to reflect modern practice.
- A definition is now provided for a dive site to ensure dive operators understand when counts of persons aboard a boat are to occur.
- A definition has been added for unique identifier as something for a person or document, meaning a particular code, letter, number, mark or combination of those things, used to identify the person or document, including in an electronic form. This addition rectifies the omission of the definition in the Safety in Recreational Water Activities Regulation 2011.
- Clarification is provided of a requirement to document divers in a group using a unique identifier (previously referred to as buddy system).
- The timeframe for keeping records is now consistent through-out the SRWA Regulation.

Counts of persons aboard a vessel

The requirement of counting persons aboard a vessel to ensure no one is left behind includes comparing counts to ensure both counts agree and there is no discrepancy. Amendments were made to clearly set out what steps need to be taken if the counts do not agree and provides a definition of emergency plan. For consistency, the meaning of emergency plan has been clarified referred to as the requirement of an emergency plan under the Work Health and Safety Regulation 2011.

Reference to Australian Standards

The SRWA Regulation makes reference to a withdrawn Australian Standard (AS 4005.1) in the Dictionary, at the definition for recreational dive training organisation. It is proposed that the reference to the now-withdrawn standard be replaced with the AS ISO 24801 series, which outlines similar requirements for the certification of recreational divers through documented training procedures.

Medical fitness and medical conditions

Amendments were made to replace out-dated medical criteria for entry-level certificate diving which triggers a requirement for a medical certificate. The medical criteria was replaced with a medical declaration in the approved form which indicates whether a medical certificate is required based on the individual's answers in the form. The medical declaration will allow the Regulator flexibility to update medical declarations based on the latest medical information.

Amendments were made to include that dive operators must advise snorkellers to tell a worker if they have any medical condition. This wording was amended from a medical condition a snorkeller was *concerned about*. This allows the dive operator to properly assess the risks for each snorkeller and acknowledges that the snorkeller may not be aware of what medical conditions are relevant when undertaking the activity.

Impacts for government: Under this preferred option, the SRWA Regulation is re-made with minor amendments which will continue WHSQ's enforcement capability through clarity of requirements in the SRWA Regulation and more updated content to better reflect modern practices and terms.

Who was consulted?

In January 2022, initial consultation was conducted with industry and subject experts across Queensland with the majority located in northern Queensland. Following a subsequent major restructure of the SRWA Regulation, further consultation was conducted in December 2022. Industry was broadly supportive of the changes with specific feedback provided on a provision relating to medical requirements. This provision was redrafted in response to the feedback. In October 2023, consultation on the redrafted provision was undertaken with industry and the Undersea and Hyperbaric Medical Society (UHMS) which received a positive response. UHMS is an international diving medical society and globally recognised by industry as the leading body for diving and hyperbaric medicine physiology.

All responses from industry and experts were in support of the re-make with OIR's proposed minor amendments. A small number of requests were made for additional amendments included:

- A change in relation to expired air resuscitation, which OIR agreed was a valid amendment and included in the updated first aid information.
- A minor amendment that the reference to the updated Australian Standard in the definition of recreational dive training organisation be further amended to limit application of the definition to members of the World Recreational Scuba Training Council (WRSTC). OIR did not agree with this proposed amendment as it would intentionally exclude any training provider that is not a member of the WRSTC. There are operators in Queensland who do not belong to the WRSTC.
- A further amendment was requested in relation to existing medical criteria which were considered out-of-date and this proposal was supported by evidence. A proposed alternative was to require a medical declaration that would be in an approved form by the Regulator. There is an existing medical declaration which has been developed by the UHMS and widely used in the industry. UHMS provided support for OIR to refer to this medical declaration as the approved Regulator's form and this amendment was agreed to by OIR.

A further email will be sent to the industry stakeholders in the lead up to the commencement of the re-made Regulation to ensure they are aware of the commencement date.

The Department of Premier and Cabinet (DPC), Queensland Treasury (QT), the Office of Best Practice Regulation (OBPR), the Department of Environment, Science and Innovation (DESI) and Department of Justice and Attorney General (DJAG) were consulted on the Regulation.

The SRWA Regulation does not involve any new offences, however given the nature of a sunset review, Department of Justice and Attorney General (DJAG) was consulted on the offence provisions and did not raise any concerns.

Two pieces of subordinate legislation under the *Marine Parks Act 2004* define a recreational dive training organisation as the definition given under the Regulation. DESI did not raise any concerns when it was advised of the minor amendment to the definition of a recreational dive training organisation and replacing reference to the withdrawn Australian Standard with the current Australian Standard.

DPC and QT did not have any concerns in relation to the proposed amendments. OIR also worked closely with OBPR whose feedback informed the final Summary Impact Analysis Statement.

What is the recommended option and why?

Remaking the SRWA Regulation with minor amendments to ensure consistency is a key enabler for the continuation of a safe and successful recreational diving and snorkelling industry in Queensland.

Reducing risk in tourism is key for successful tourism development in destinations and risk perception is a decisive element in travel decision-making for individuals. Research indicates that most tourists seek safe injury-free experiences – yet they do seek challenges⁶, such as snorkelling and diving – which do contain inherent risks of harm stemming from hazards present in natural environments and from physical exertion.

The SRWA Regulation achieves the risk-equilibrium by ensuring the desired adventure outcomes sought by participants are realised in a situation where participants can undertake this high-risk activity (and the industry and region benefit from that activity), while dive operators, guided by the SRWA Regulation, control the risk through safety measures to ensure that the chances of participants sustaining harm remains very low.

Remaking the SRWA Regulation with minor amendments balances the need to manage safety risk with economic opportunity. Allowing the SRWA Regulation to expire would likely not result in any increase of economic benefit for operators and will likely result in reduced safety outcomes for participants and therefore reduced participation as tourists see these activities as unsafe.

The SRWA Regulation allows WHSQ and the independent Work Health and Safety Prosecutor to refer to a specific regulation in its enforcement and prosecution activities concerning recreational snorkelling and diving. Enforcement and prosecution under the SRWA Act and Regulation act as a deterrent for dive operators who would not choose to follow safety measures.

Minor amendments to the existing SRWA Regulation will improve the effectiveness of the regulatory framework for the industry and ensure it is updated with modern practices and terminology. Pending approval, OIR will communicate with industry on the commencement date and provide updated industry information and resources.

While no other jurisdiction has a specific legislative framework for recreational snorkelling and diving, Queensland cannot be compared to other jurisdictions as the size of the industry in Queensland is much bigger. The economic dependence on Queensland's industry is also greater. There have been fatalities in the industry, which demonstrates a targeted legislative framework for this high-risk activity is still required to ensure dive operators have provide high safety standards for the people to whom they provide these activities for.

⁶ Jie Wang and Marion Karl. 2021. Understanding how tourists perceive and respond to risk: a focus on health risk. Springer.347-354

Impact assessment

	First full year	First 10 years**
Direct costs – Compliance costs*	Depends on a range of factors including the size and structure of each dive operator. See 'what are the impacts' for details.	Depends on a range of factors including the size and structure of each dive operator. See 'what are the impacts' for details.
Direct costs – Government costs	Nil. Expected to be fully absorbed within existing funding allocations	Nil. Expected to be fully absorbed within existing funding allocations.

Signed



Graham Fraine
Director-General
Department of State Development
and Infrastructure
Date: 6/6/24



Grace Grace MP
Minister for State Development and Infrastructure,
Minister for Industrial Relations and
Minister for Racing
Date: 14/06/2024