



Department of Transport

Your Ref: 1881/2008
File:

PO Box 2797
Melbourne, Victoria 3001
Telephone: (03) 9655 6666
Facsimile: (03) 9095 4096
www.transport.vic.gov.au
DX 210410

Our Ref:

Ms Theresa Aberline
Coroners Registrar
Coroners Court of Victoria
Level 1, 436 Lonsdale Street
MELBOURNE VIC 3000

Dear Ms Aberline

Investigation into the deaths of Jennifer and Alexander Elliot

I refer to the inquest finding dated 5 August 2010 in relation to the above matter. I also refer to the statement provided to you by Transport Safety Victoria (TSV) that identifies the *action (if any) that has, is or will be taken in relation to the recommendations made by the coroner (section 72 of the Coroners Act 2008)*.

The Department of Transport (DOT) is responsible for advising Transport Ministers and the Government on changes to transport policy and legislation, including through regulations and other subordinate instruments.

The statement you have received from TSV indicates that DOT will respond separately to recommendations proposing legislative change. The attached provides the supplementary advice that is sought.

Should you require further information from the DOT please contact Paul Salter [REDACTED] [REDACTED] Paul led the development of the recently enacted **Marine Safety Act 2010** and is managing its implementation on behalf of the DOT.

Yours sincerely

Ian Shepherd
Deputy Executive Director
Legal Division
Department of Transport

12 / 11 / 2010

Response to recommendations arising from inquest into the deaths of Jennifer and Alexander Elliot at Pier 35 on 3 May 2008.

The purpose of this attachment is to provide advice on action (if any) that has, is or will be taken in relation to the specific *recommendations* (reproduced in italics below) made by Coroner White, dated 5 August 2010.

B.

- (1) *That the State of Victoria introduce legislation which will require that all non-commercial, petrol powered inboard motor cruisers boats or other similar vessels, operated within Victorian waters, which are greater than 15 years old, be surveyed by a suitably qualified marine surveyor.*

The coroner's recommendation is under consideration.

The **Marine Safety Act 2010** was recently passed by Parliament.

DOT advises that the **Marine Safety Act 2010** provides a capability to impose conditions on a class or type of registered recreational vessel (refer to section 41). This power can be used to require, for example, all recreational vessels with in-board petrol engines that are greater than 15 years old to have periodic safety checks undertaken by persons who are suitably qualified to perform such checks.

To put in place such a system of safety checks it would be necessary to prescribe the details of the system in the new marine safety regulations. The *Marine Safety Regulations 2011* to be made under the **Marine Safety Act 2010** are being developed at present.

DOT can confirm that regulations to give effect to the Coroner's recommendation are under consideration. However, the **Subordinate Legislation Act 1994** and the guidelines made under this Act require statutory rules (i.e. regulations) to be justified with reference to the economic, social and environmental costs and benefits that could reasonably be expected to result from the establishment of the statutory rule. It has not yet been demonstrated that the benefits of introducing a system of safety checks (in accordance with the Coroner's recommendation) would outweigh the costs.

As indicated in the statement provided by TSV, TSV and DOT have jointly commissioned cost-benefit analysis of the Coroner's proposals as well as other variations that are worthy of consideration. This work will inform the Regulatory Impact Statement that is planned to be released with the draft regulations in the 1st quarter of 2011, subject to ministerial approval. The consultation period that will follow the release of the draft regulations will enable public scrutiny of the proposal before it is considered by the relevant Minister in the incoming government. It is the incoming Minister that will determine whether the regulations that are necessary to give effect to the Coroner's recommendation should be made.

- (2) *I further recommend that all new non-commercial petrol powered inboard motor cruisers boats or other similar vessels be surveyed on first registration, and thereafter on each occasion that a change of ownership registration, and thereafter on each occasion that a change of ownership in respect of any such vessel is sought.*

The coroner's recommendation is under consideration.

DOT can advise that the **Marine Safety Act 2010** requires that vessels being registering for the first time, or having registration renewed or transferred, must meet prescribed requirements (refer to section 39). This power can be used to require, for example, all recreational vessels with in-board petrol engines to be certified as being checked by suitably qualified persons before a vessel can be registered, or before registration can be transferred.

To put in place such a system of safety checks it would be necessary to prescribe the details of the system in the new marine safety regulations. The *Marine Safety Regulations 2011* to be made under the **Marine Safety Act 2010** are being developed at present.

DOT can confirm that regulations to give effect to the Coroner's recommendation are under consideration. However, the **Subordinate Legislation Act 1994** and the guidelines made under this Act require statutory rules (i.e. regulations) to be justified with reference to the economic, social and environmental costs and benefits that could reasonably be expected to result from the establishment of the statutory rule. It has not yet been demonstrated that the benefits of introducing a system of safety checks (in accordance with the Coroner's recommendation) would outweigh the costs.

As indicated in the statement provided by TSV, TSV and DOT have jointly commissioned cost-benefit analysis of the Coroner's proposals as well as other variations that are worthy of consideration. This work will inform the Regulatory Impact Statement that is planned to be released with the draft regulations in the 1st quarter of 2011, subject to ministerial approval. The consultation period that will follow the release of the draft regulations will enable public scrutiny of the proposal before it is considered by the relevant Minister in the incoming government. It is the incoming Minister that will determine whether the regulations that are necessary to give effect to the Coroner's recommendation should be made.

(3) *I also recommend that the State of Victoria introduce legislation to establish general design standards, which include as a minimum requirement for the registration of all petrol fuelled leisure vessels,*

- *that all engines and fuel delivery systems are maronised;*
- *that petrol tanks are easily accessible and are capable of being cleaned and tested;*
- *that petrol tanks have adequate venting to atmosphere outside the boat, by reference to volume;*
- *that flammable fuel detectors are attached; and*
- *that carburettors are properly filled to drip trays with collected fuel directed to absorbent material which prevents fuel evaporation.*

The coroner's recommendation is under consideration.

The **Marine Safety Act 2010** provides the power to prescribe (in the regulations) standards for ventilation systems and other systems or components that can be used to reduce the risks of fires and explosions on recreational vessels with in-board petrol engines (refer to schedule 2, items 19 to 22). If Coroner recommendations B(1) or B(2) are implemented then it will be necessary to prescribe relevant standards and equipment requirements in the *Marine Safety Regulations 2011*. Standards and equipment requirements would provide the point of reference against which compliance could be surveyed.

DOT notes that even if B(1) and/or B(2) can not be justified and are not implemented, it may still be possible to justify the introduction of standards and equipment requirements in accordance with the Coroner's recommendations.

DOT can confirm that regulations to give effect to the Coroner's recommendation are under consideration. However, the **Subordinate Legislation Act 1994** and the guidelines made under this Act require statutory rules (i.e. regulations) to be justified with reference to the economic, social and environmental costs and benefits that could reasonably be expected to result from the establishment of the statutory rule. It has not yet been demonstrated that the benefits of introducing relevant standards and equipment requirements (in accordance with the Coroner's recommendation) would outweigh the costs.

As indicated in the statement provided by TSV, TSV and DOT have jointly commissioned cost-benefit analysis of the Coroner's proposals as well as other variations that are worthy of consideration. This work will inform the Regulatory Impact Statement that is planned to be released with the draft regulations in the 1st quarter of 2011, subject to ministerial approval. The consultation period that will follow the release of the draft regulations will enable public scrutiny of the proposal before it is considered by the relevant Minister in the incoming government. It is the incoming Minister that will determine whether the regulations that are necessary to give effect to the Coroner's recommendation should be made.

- (4) *Further I recommend that such legislation make it an absolute offence punishable by the imposition of a significant financial penalty,*

'to own at sea, or to sell rent, or take to, or to control at sea, any petrol driven inboard powered leisure vessel'

which has not passed survey in accordance with these requirements.

The coroner's recommendation has been implemented.

DOT can advise that it is an offence under section 37(3) of the Marine Safety Act 2010 to cause or allow a vessel to be operated in breach of any condition of registration. This provision would be used to enforce the requirement for certain vessel systems and components to be certified as being safe (should such requirements be prescribed). The maximum penalty that could be applied by the courts is 60 penalty units.

Alternatively, if a vessel does not meet the requirements for registration then it can not be registered. Section 37(1) and (2) respectively make it an offence for the owner or master of vessel to cause or allow a vessel to be operated in state waters unless the vessel is registered. The maximum penalty that could be applied by the courts is 60 penalty units.

DOT considers that in the recreational context, the scope to impose a penalty of 60 penalty units is significant and should be sufficient to deter non-compliance.