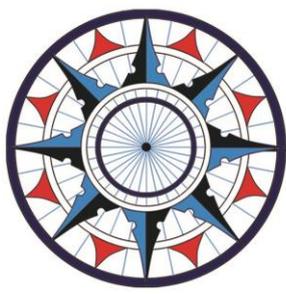


Sailing to Queensland? Check your marine insurance policy!



Every year, as the waters cool, the graceful, elegant creatures emerge and slowly make their way up the coastline, following the sun and its warmer waters. Sometimes singly, and sometimes in groups, their curved shapes effortlessly pushing the waters aside as they glide forwards. In many cases, guided by unerring instinct, these creatures return to the exactly the same place each winter, year after year, before they are called back again to more southern climes.





No, I'm not talking about whales. Not dolphins either. I'm talking about recreational boat owners from New South Wales, who start to think around this time each year that a winter sojourn in Hervey Bay might be just the ticket!

Owners of larger recreational vessels may be completely unaware that the insurance requirements for vessels in Queensland are different to those in NSW, and they apply to any vessel in Queensland waters, not just Queensland-registered vessels. In recent times at Pacific Maritime Lawyers we have seen increasing numbers of operators from NSW falling afoul of this requirement and being charged with offences in Queensland.

So what are the differences?

In NSW, section 174 of the *Marine Pollution Act 2012* places a requirement on the Master and the Owner of a ship to have adequate insurance, which is then defined as "financial security against damage that may be caused by a discharge of oil or a mixture containing oil"

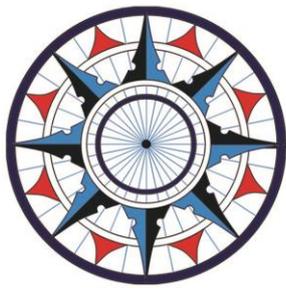
In Queensland, section 67A of the *Transport Operations (Marine Pollution) Act 1995* places a requirement on the owner of the vessel more than 15m in length to have insurance "sufficient to pay for the clean up costs of the discharge of a pollutant from the ship into coastal waters; and the costs of salvage or removal of the ship from coastal waters if the ship is abandoned or wrecked.

Some of the differences between the requirements are immediately noticeable: the Queensland legislation applies to "the discharge of a pollutant" while the NSW requirement is limited to "oil or a mixture containing oil". Therefore the Queensland requirement is for insurance to cover the discharge of any pollutant, and a NSW boat insured only against the discharge of oil will not be compliant with Queensland requirements. The Queensland legislation requires insurance against the vessel being wrecked or abandoned. This is consistent with the Queensland "War on wrecks" and mitigates against the common situation where inexperienced boat owners purchase a boat for a steal, then can't afford the ongoing costs of boat ownership, so the boat is simply left to rot into the water. No similar insurance requirement exists in the NSW legislation.

While these differences are important, the biggest difference of all is the application of these insurance requirements. The Queensland legislation applies to all vessels over 15m which do not hold an exemption. The NSW legislation, however, doesn't apply to vessels over 400 gross tonnes (as these will be regulated by MARPOL requirements), but **it also doesn't apply to vessels being used for wholly recreational or sporting purposes, and it doesn't apply to vessels under 30m in length.**

This means a recreational boat owner needs no insurance in NSW, but they do as soon as they hit Queensland waters. The same goes for boat owners with vessels between 15 and 30m in length. And even those vessels which are picked up by the NSW legislation may only





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be insured against oil spills, not against the spillage of other pollutants, or the vessel being wrecked or abandoned.

In our experience, NSW boat owners who are being hit with fines under this legislation are usually competent and responsible owners who were quite simply unaware of the different requirements. In addition, MSQ may also be using this as a useful “add-on” offence when boat operators are being charged in relation to other matters.

We hope you’re not the next victim! However if you are, we’d be glad to help. We are experienced maritime lawyers who have handled a hunger of similar matters for NSW clients. Give us a call on 1300 797 627



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