

28 February 2022

RJ Houston
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Royal Life Saving Society Australia

Sent via email: aquatics@rlssa.org.au

Dear Mr Houston

MAV Submission to the draft *Guidelines for Inland Waterway Safety*

Thank you for the opportunity to respond to Royal Life Saving Australia's *Draft Guidelines for Inland Waterway Safety*.

The Municipal Association of Victoria (MAV) is the statutory peak body for Victoria's 79 councils. The MAV was formed in 1879, with the *Municipal Association Act 1907* officially recognising us as the voice of local government in Victoria.

The draft guidelines have been shared with all Victorian councils and they have been encouraged to respond directly.

Role of local government

The MAV appreciates the intent of the guidelines is to reduce drownings through collaborative planning and mitigation activity around inland waterways. We note the guidance seeks to complement more detailed advice from State and Territory Governments and is not intended to prescribe specific approaches.

Despite this stated intent, it is the MAV's view that the draft guidelines currently put an unreasonable level of responsibility on local councils, by designating them as the default agency for adhering to the guidelines.

It is disappointing that the guidelines do not acknowledge the differences in the operating environment in each state and territory, beyond providing detail on the local government legislation in each jurisdiction. To be effective, the guidelines should acknowledge that responsibilities for waterways and emergency management planning vary from state to state.

For example, in Queensland, councils are responsible for local emergency management planning, whereas in Victoria it is a shared responsibility (more detail below). In New South Wales, councils are responsible for beaches, and appear to have more extensive water safety responsibilities than Victorian councils. In Victoria, Catchment Management Authorities (CMAs), water authorities and the Department of Land, Water, Planning and Environment (DELWP) have significantly more management and regulatory responsibilities in and around waterways than councils.

It is the MAV's view that the following clauses are not appropriate, and should be removed from final version of guidelines:

1.2.2 In the event of a failure to reasonably identify who the land manager is, such as the owner or operator of the waterway and/or adjacent land, the responsibility for adherence with this guideline should rest with the nearest Local Government Authority (LGA) who are best placed to know and understand their local community, areas, populations, visitors and who have sufficient resources, powers (See IW1.6), networks and access to address and mitigate risks to users and visitors of inland waterways in their community or LGA area. (p 45)

2.2.2 In the event of a failure to reasonably identify who the land manager is, such as the owner or operator of the waterway and/or adjacent land, the responsibility for adherence with this guideline should rest with the nearest Local Government Authority (LGA)...(p 55)

4.2.3 In the event of a failure to reasonably identify who the land manager is, such as the owner or operator of the waterway and/or adjacent land, the responsibility for adherence with this guideline should rest with the nearest Local Government Authority (LGA)...(p. 71)

12.2.1 The owner or operator of the inland waterway, or the Local Government Authority, should make provisions for the availability of Public Rescue Equipment at known swimming and recreation locations on the inland waterway. (p. 135).

This level of responsibility may be appropriate in some jurisdictions (the MAV is not in a position to comment on behalf of other state local government associations), but not in Victoria. Victorian councils have many roles in relation to inland water safety, but should not be the default agency responsible for adhering to the guideline.

Similarly, the following clause relating to the Risk Management Framework (p 46) puts unreasonable responsibility onto local government:

1.4.3 In circumstances where the inland waterway is owned by a statutory authority or where access to the waterway is via private land, owners and local governments should ensure that public risk is managed to the extent reasonably practicable by the owner or local government authority.

And the following clause relating to control measures:

2.14.2 The owner or operator of an inland waterway, or the controller of access to the inland waterway, or inland waterway program or activity operator, or failing that, the Local Government Authority should implement risk control measures designed to minimise the event of major incidents occurring, their magnitude and the severity of their consequences to persons. (p.67)

The entire section *1.6 Responsibilities and powers of local government*, should also be removed for reasons outlined above. It is neither accurate nor reasonable to focus on the role of local government in relation to these guidelines.

Victorian arrangements

Victoria's recently released Water Safety Strategy (Dec 2021) acknowledges the complexity of the water safety landscape. It outlines steps taken to better collaborate and define roles and responsibilities. It also acknowledges capacity constraints at the local level. Some key actions to be taken include:

- Establish a governance model and supporting arrangements for coordinating the sector-wide response to water safety issues
- Clarify the roles and responsibilities of key stakeholders that contribute to water safety outcomes
- Clarify water safety liabilities and responsibilities for public land/water managers, and others
- Establish more coordinated risk assessment by public land and waterway managers (supported by state-wide agencies) and controls for both common and target risks (e.g. floods).

In Victoria, Catchment Management Authorities and water authorities are the waterway managers. Land managers can include councils, but also the State Government, water authorities and private landowners.

Councils also have an emergency management planning role, as members of Municipal Emergency Management Planning Committees (MEMPCs). MEMPCs are multiagency committees formed under the Victorian Emergency Management Act (2013). They are chaired by the council CEO (or delegate); however, they are not a council committee.

Each MEMPC undertakes a risk assessment called a Community Emergency Risk Assessment to identify the highest risks in the municipality. The top risks are addressed in the Municipal Emergency Management Plan (a multiagency plan for the LGA footprint), or in sub-plans. MEMPs often also reference 'complementary' plans, which are plans of relevance to the MEMPC, but not the responsibility of the MEMPC.

Local Water Safety Plans

The MAV supports the advice to develop local water way safety plans (from p 40), where risk is identified, and resources are available. We support the following statement, noting capacity of local agencies (including councils) to support community committees will vary:

The plan should be developed with the involvement of cross-stakeholder consultation with all relevant stakeholders. This may include relevant personnel from the local government authorities and regional agencies for the State government, emergency services representatives and local safety organisations.

We also support clause 4.5.5 - *The LWSP should ideally be properly integrated with local municipal and/or state emergency management plans and resourcing as applicable.*

However, the MAV does not support much of the advice in sections 4 and 5 of the guidelines including:

4.3.6 Each local community should convene a local working group to guide the development of a Local Water Safety Plan (LWSP).

4.7.1 The owner or operators of the waterway and/or the local LGA should ensure that a local community working group or committee (hereafter referred to as the Committee) is established to facilitate and guide the development of a Local Water Safety Plan.

4.8.1 The owner or operators of the waterway and/or the local LGA should appoint a chair to oversee its administration and governance.

4.9.6 The Local Government Authority should convene a Local Water Safety Plan Development, Consultation and Review Process

5.4.1 The parties to the plan (or if there are no other parties, the LGA) should document and set targets for the LWSP.

The development of local, community-led plans is resource intensive, and could not be done on a broad scale in Victoria without significant investment and ongoing support from State Government. It is asking too much of communities and local agencies to establish a committee and develop a community-led plan for each community without additional resources, expertise and oversight.

It is the MAV's view that the level of detail and complex governance arrangements outlined in sections 4 and 5 of the draft are too prescriptive and formal for community-level and community (volunteer) committees. The prescriptive nature of the guidelines is likely to act as a deterrent to community participation.

The MAV would support a State or Federally funded pilot approach to local planning in targeted, high-risk communities.

Legal and regulatory compliance

The MAV has some concerns with the scope of section 1.5. It is considered this should be restricted to legal requirements in the context of 'compliance' and avoid expanding into things such as 'moral obligations'. This muddies the advice relating to compliance and liability. It is misleading as it implies there is a legal obligation to comply with lesser instruments such as industry standards.

The comparison of workplace safety obligations for aquatic facilities and the risk to human health and safety in waterways in clause 1.5.4 is unhelpful. It compares the risk to human safety without consideration of the very different types of environments and the different measures that would need to be taken (not to mention resources) to prevent risk to human safety. There is also a very different community perception of safety when someone attends an aquatic facility to a waterway. It is also noted on this point that in Victoria the *Wrongs Act* will apply in relation to an occupier's duty of care to those entering the land. Under the *Wrongs Act* a number of matters will be considered including a voluntary assumption of risk, obvious risks etc.

Control measures

The control measures described do not take into account the number of inland waterways and the resources required to implement them. For example, the provision of rescue devices will not be feasible in most locations.

The guidelines also do not properly identify the roles of different parties in implementing control measures. For example, there is a statement on page 36 that prohibitions should be actively enforced. Most inland waterways will have signage, and some will have fencing. However, actively enforcing prohibitions is extremely difficult. Ultimately, enforcing prohibitions such as unlawful entry would be the role of the police.

The MAV and Victorian councils are committed to working with our partners to increase water safety and reduce drownings. However, as is clear from this submission, the MAV has serious concerns about the scope, prescriptive nature and onus on local government in the draft guidelines.

We would welcome the opportunity to discuss our concerns with the project leads. Please contact Emma Lake, Manager Infrastructure & Community Strengthening via elake@mav.asn.au or 03 9667 5555 for more information on the issues raised or to set up a meeting to discuss further.

Kind regards



KERRY THOMPSON
Chief Executive Officer