

8 December 2020

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[Surf Life Saving Australia Policy Document 1.01 'Water Safety'](#) and Division 5, Clause 5M of the [Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#) behooves Manly Life Saving Club to prominently display a large robust Risk Warning sign that informs swimmers not to swim from within 100 metres of the Manly Surf Club across to Shelley Beach from 7:15am and before 7:50am on any day in order to avoid swimmers that presently commence this swim from 7:15am and before 7:50am colliding with swimmers that commence this popular and well established swim prior to 7:10am

I have occasionally swum with *The Bold and the Beautiful* swim group from 7am for about 7 years where I have published at [B&B](#) on my website lots of beautiful photos from the B&B daily email.

Since COVID, the two primary organisers, John and Ian, have understandably desisted supervising the traditional 7am swim to and from Shelley Beach, because compliance with COVID restrictions has been a complex and varied obligation with potential legal considerations upon supervisors of a recreational activity that involves a risk of harm sufferable.

Last Saturday, I swam the return leg (from Shelley Beach) from approx. 7:20am because my ferry from Circular Quay did not arrive until 6:53am at Manly Wharf.

On my return swim leg from Shelley Beach that I commenced at around 7:20am, I collided with three different swimmers about 3 to 5 mins apart. I estimate each of the three commenced their swim after 7:20am from Manly Beach swimming towards Shelley Beach. Post swim, I mentioned my three collisions to former *B&B* supervisor, Ian Forster, who opined that the frequency of trauma collisions had increased significantly after John and he ceased controlling the return time from Shelley Beach due to COVID restrictions and associated obligations.

I have administered a recreational road cycling group, [Muggaccinos.com](#) that has cycled 100km *circa* on road bicycle rides each Sunday for 24 years under the alias of [BankTeller](#). Shortly after the enactment of the [Civil Liability Amendment \(Personal Responsibility\) Bill - Nov 2002](#), I commenced chronicling pertinent Sections of the Act about the legal obligations of an inviter/facilitator to warn of risks of harm sufferable under my web file [Risk Management](#) within [Muggaccinos.com](#). I draw your attention to my notes concerning [Division 5 - Recreational Activities](#). Akin to recreational road cycling, ocean swimming is generally a recreational activity with a risk of harm sufferable.

Manly Life Saving Club is not an organiser of the popular swim across to Shelley Beach and back, but it does facilitate that daily swim and has done so for several years. It formerly and overtly closes Manly beach during dangerous surf conditions by displaying Beach Closed signs

Below is a pertinent extract from [Surf Life Saving Australia 'Policy Document 1.01 'Water Safety'](#) (and attached to my email) that obligates Manly Life Saving Club to display the aforementioned Risk Warning sign to materially mitigate future trauma collisions that could injure the vertebrae or an intervertebral disc/s in the neck of a swimmer, particular an older frail female swimmer, who collided with a large young, broad shouldered male swimmer:

“Surf Life Saving Australia (SLSA) is to the safety, health and wellbeing of its Members, employees and the wider community who visit Australia’s beaches. SLSA is the leader in coastal safety and provide safe and enjoyable aquatic experiences.”

Part 5 ‘Liability of public and other authorities’ of the [Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#) ostensibly concerns the civil liability of public or other authorities, including the Crown, government departments, public health organisations, local councils, as well as organisers of recreational activities for harm arising after being made aware of a particular risk.

Postscript

There is in excess of 12 hours daylight between 23 Sept and 21 March – the Equinox, and over 9½ hours daylight on the winter Solstice of 22 June. Hence, a lot of daylight to swim to/from Shelley Beach. Accordingly and mindful of [“Promoting COVID safety on the Northern Beaches this summer”](#), I do not believe that Manly Life Saving Club prominently displaying a large Risk Warning sign (on the rocks on the RHS in between the Manly Surf Club and the water’s edge) not to commence swimming for 35 mins (each day) from Manly Surf Club to Shelley Beach, will impact the likelihood of catching or transmitting COVID-19 due to the more than adequate daylight hours to complete this popular swim. Due to representations and assurances within [Surf Life Saving Australia Policy Document 1.01 'Water Safety'](#), such a Risk Warning sign would overcome swimmers starting from just below Manly Surf Club by 7:10am suffering a physical trauma collision on the return leg from Shelley Beach.

There is no legal obligation upon a party that provides a Risk Warning, pursuant to Division 5, Clause 5M, to have to enforce the warning therein. If a swimmer or swimmers opt to ignore the Risk Warning and collided with a swimmer that commenced by 7:10am and caused a serious trauma accident, an injured swimmer could commence legal action in the civil courts under the common law tort of negligence against the careless swimmer that had been warned, pursuant to Division 5, Clause 5M of the [Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#).

Conclusion

There is a lot to be gained from providing a prominent Risk Warning sign that warns swimmers not to swim from Manly Beach towards Shelley Beach from 7:15am and before 7:50am, as noted in the title of this letter. I seek Manly Surf Club to acknowledge receipt of this letter via a phone call, reply letter or email scribepj@bigpond.com.

Yours sincerely



Philip Johnston aka [BankTeller](#)