

MA301*

Shipping and Pilotage Act 1967
Jetties Act 1926
Western Australian Marine Act 1982

Navigable Waters Amendment Regulations (No. 3) 2014

Made by the Administrator in Executive Council.

1. Citation

These regulations are the *Navigable Waters Amendment Regulations (No. 3) 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 August 2014.

3. Regulations amended

These regulations amend the *Navigable Waters Regulations 1958*.

4. Regulation 3 amended

In regulation 3(2) delete “regulation,” and insert:

regulation and except where otherwise expressly provided,

5. Regulation 18A amended

In regulation 18A(1) delete “any vessel” and insert:

any vessel, other than a recreational paddle craft (as defined in regulation 46(2)) that is a vessel,

6. Regulation 27 amended

In regulation 27 delete “section 7(1) of the *Explosives and Dangerous Goods Act 1961*.” and insert:

the *Dangerous Goods Safety (Explosives) Regulations 2007* regulation 8.

7. Regulation 45 amended

In regulation 45 delete “\$500 or to imprisonment not exceeding one month.” and insert:

\$500.

8. Regulation 46 amended

- (1) In regulation 46(2) insert in alphabetical order:

Emergency Position Indicating Radio Beacon means an Emergency Position Indicating Radio Beacon that satisfies the requirements of regulation 52BAB(1)(a) and (b);

personal locator beacon means a personal locator beacon that complies with AS/NZS 4280.2:2003 and is registered with the Australian Maritime Safety Authority established under the *Australian Maritime Safety Authority Act 1990* (Commonwealth);

recreational paddle craft means a canoe, a kayak, a surfski, an inflatable craft or any other similar craft, whether or not a vessel, that is propelled by paddle or otherwise by the movements of a person operating the craft, but does not include such a craft that is or may be propelled by mechanical power;

sailboard means a sailboard, a kite surfboard or any other similar recreational equipment that is principally propelled by wind;

sailboard riding means sailboard riding, windsurfing, kitesurfing, kiteboarding or otherwise using a sailboard for the purpose of engaging in a water related recreational activity;

- (2) In regulation 46(3) delete “Regulations” and insert:

Except where otherwise expressly provided, regulations

9. Regulations 47AA and 47AB deleted

Delete regulations 47AA and 47AB.

10. Regulation 47CA deleted

Delete regulation 47CA.

11. Regulation 47F amended

In regulation 47F(1) and (3) delete “47AA, 47AB or”.

12. Regulation 50C inserted

After regulation 50B insert:

50C. Restrictions on sailboard riding

- (1) The chief executive officer may, by notice published in the *Gazette* —
 - (a) define and set aside any area of navigable waters where sailboard riding is prohibited;
 - (b) vary or cancel any previous notice under this subregulation.
- (2) A person must not engage in sailboard riding in an area defined and set aside by the chief executive officer under subregulation (1).
- (3) A person who contravenes subregulation (2) commits an offence.

13. Regulation 51C amended

- (1) In regulation 51C delete “A” and insert:

(1) A

- (2) At the end of regulation 51C insert:

- (2) For the purposes of subregulation (1) —
 - (a) a sailboard is to be taken to be a vessel; and
 - (b) a recreational paddle craft that is not a vessel is to be taken to be a vessel.

14. Regulation 51D amended

Before regulation 51D(1) insert:

- (1A) This regulation does not apply to a recreational paddle craft that is a vessel if —
- (a) it is being used within 400 m of any shore; or
 - (b) it is self-draining.
- (1B) In subregulation (1A) —
- shore* includes a jetty, wharf or similar structure connected to the shore.

15. Regulation 52A amended

Delete regulation 52A(2) and insert:

- (2) Subregulation (1) does not apply to —
- (a) a personal watercraft being used within 400 m of any shore; or
 - (b) a recreational paddle craft that is a vessel.

16. Regulation 52B amended

- (1) In regulation 52B(1)(a) and (b) delete “not less than —” and insert:

not fewer than —

- (2) In regulation 52B(1a):

- (a) in paragraph (a) delete “not less than” and insert:

not fewer than

- (b) in paragraph (b) delete “not less than —” and insert:

not fewer than —

- (3) Delete regulation 52B(2a) and insert:

- (2A) Subregulations (1) and (1a) do not apply to —

- (a) a personal watercraft being used within 400 m of any shore; or
- (b) a recreational paddle craft that is a vessel.

17. Regulation 52BAA amended

After regulation 52BAA(2) insert:

- (3A) This regulation does not apply to a recreational paddle craft that is a vessel.

18. Regulation 52BAB amended

- (1) In regulation 52BAB(1A) delete the definitions of:

MS 241

prescribed standard

- (2) In regulation 52BAB(1A) insert in alphabetical order:

prescribed standard means AS/NZS 4280.1:2003.

- (3) In regulation 52BAB(1)(a) delete “a prescribed” and insert:

the prescribed

- (4) After regulation 52BAB(1) insert:

- (2A) Subregulation (1) does not apply to a recreational paddle craft that is a vessel.

19. Regulations 52BAC and 52BAD inserted

After regulation 52BAB insert:

52BAC. Sailboard riders to carry personal flotation devices, distress signals and emergency beacons

- (1) For the purposes of this regulation, a person who is sailboard riding is to be taken not to be carrying a particular distress signal —
- (a) if the distress signal has a date of expiry marked on it by its manufacturer and the date of expiry has passed; or
 - (b) if applicable to the distress signal — if subregulation (6) or (7) is not complied with.
- (2) A person who is sailboard riding outside protected waters and more than 400 m from any shore must wear a PFD Type 1, a PFD Type 2 or a PFD Type 3.

- (3) Unless subregulation (4) or (5) applies, a person who is sailboard riding outside protected waters and more than 400 m from any shore must carry —
 - (a) an Emergency Position Indicating Radio Beacon or personal locator beacon; or
 - (b) the following distress signals —
 - (i) not fewer than —
 - (I) 2 red hand held flares; or
 - (II) 2 parachute distress rockets;
 - (ii) not fewer than —
 - (I) 2 hand held orange smoke signals; or
 - (II) one orange smoke canister.
- (4) Unless subregulation (5) applies, a person who is sailboard riding more than 2 nautical miles from the mainland, or more than 400 m from an island situated more than 2 nautical miles from the mainland, must carry an Emergency Position Indicating Radio Beacon or a personal locator beacon.
- (5) A person who is sailboard riding more than 5 nautical miles from the mainland, or more than one nautical mile from an island situated more than 5 nautical miles from the mainland, must carry —
 - (a) an Emergency Position Indicating Radio Beacon or personal locator beacon; and
 - (b) not fewer than 2 parachute distress rockets; and
 - (c) not fewer than —
 - (i) 2 hand held orange smoke signals; or
 - (ii) one orange smoke canister.
- (6) The parachute distress rockets required by subregulations (3)(b)(i)(II) and (5)(b) must comply with the *Marine Orders Part 25* (Commonwealth).
- (7) The other distress signals required by subregulations (3)(b) and (5)(c) must comply with —
 - (a) the *Marine Orders Part 25* (Commonwealth); or
 - (b) Australian Standard 2092-2004 *Pyrotechnic marine distress flares and signals for pleasure craft* published by Standards Australia on 10 May 2004.
- (8) A person who is required to wear or carry any equipment while sailboard riding under subregulation (2), (3), (4) or (5) must —
 - (a) maintain the equipment in a serviceable condition; and

- (b) produce the equipment to an officer of the department on demand.
- (9) A person who contravenes subregulation (2), (3), (4), (5) or (8) commits an offence.

52BAD. Owners to ensure recreational paddle craft are equipped with personal flotation devices, distress signals and emergency beacons

- (1) In this regulation —
owner, in relation to —
 - (a) a recreational paddle craft that is a vessel, has the meaning given in regulation 2;
 - (b) a recreational paddle craft that is not a vessel, includes the person in charge of the recreational paddle craft;

shore includes a jetty, wharf or similar structure connected to the shore.
- (2) For the purposes of this regulation, a recreational paddle craft is to be taken not to be equipped with a particular distress signal if —
 - (a) the distress signal has a date of expiry marked on it by its manufacturer and the date of expiry has passed; or
 - (b) if applicable to the distress signal, subregulation (8) or (9) is not complied with.
- (3) The owner of a recreational paddle craft that proceeds outside protected waters and more than 400 m from any shore must ensure that the recreational paddle craft is equipped with —
 - (a) a PFD Type 3 for each person on board who has reached 12 months of age, appropriate in terms of the buoyancy and size to the body mass of every such person; and
 - (b) a bailer, if the recreational paddle craft is not self-draining.
- (4) Unless subregulation (5) or (6) applies, the owner of a recreational paddle craft that proceeds outside protected waters and more than 400 m from any shore must ensure that the recreational paddle craft is equipped with —
 - (a) an Emergency Position Indicating Radio Beacon or personal locator beacon; or
 - (b) distress signals as required by regulation 52BAC(3)(b).
- (5) Unless subregulation (6) applies, the owner of a recreational paddle craft that proceeds more than

- 2 nautical miles from the mainland, or more than 400 m from an island situated more than 2 nautical miles from the mainland, must ensure that the recreational paddle craft is equipped with an Emergency Position Indicating Radio Beacon or personal locator beacon.
- (6) The owner of a recreational paddle craft that proceeds more than 5 nautical miles from the mainland, or more than one nautical mile from an island situated more than 5 nautical miles from the mainland, must ensure that the recreational paddle craft is equipped with —
- (a) an Emergency Position Indicating Radio Beacon or personal locator beacon; and
 - (b) a marine transceiver approved by the Spectrum Management Authority of the Commonwealth; and
 - (c) not fewer than 2 parachute distress rockets; and
 - (d) not fewer than —
 - (i) 2 hand held orange smoke signals; or
 - (ii) one orange smoke canister.
- (7) A recreational paddle craft is to be taken not to be equipped with a personal locator beacon for the purposes of subregulation (4)(a), (5) or (6)(a) unless the personal locator beacon is securely attached to a person on board the recreational paddle craft.
- (8) The parachute distress rockets required by subregulations (4)(b) and (6)(c) must comply with the *Marine Orders Part 25* (Commonwealth).
- (9) The other distress signals required by subregulations (4)(b) and (6)(d) must comply with —
- (a) the *Marine Orders Part 25* (Commonwealth); or
 - (b) Australian Standard 2092-2004 *Pyrotechnic marine distress flares and signals for pleasure craft* published by Standards Australia on 10 May 2004.
- (10) A person who is required to ensure that a recreational paddle craft is equipped in accordance with subregulation (3), (4), (5) or (6) must —
- (a) maintain the equipment in a serviceable condition; and
 - (b) produce the equipment to an officer of the department on demand.
- (11) A person who contravenes subregulation (3), (4), (5), (6) or (10) commits an offence.

20. Regulation 52C amended

In regulation 52C(2) delete “sailboard.” and insert:

recreational paddle craft that is a vessel.

21. Regulation 52CA amended

(1) Before regulation 52CA(1) insert:

(1A) For the purposes of this regulation, a reference in subregulations (1) and (2) to a vessel is to be taken to include a reference to a sailboard and to a recreational paddle craft that is not a vessel.

(2) After regulation 52CA(1) insert:

(2A) Subregulation (1) has effect in relation to a sailboard as if that subregulation referred to a provision of regulation 52BAC instead of referring to a provision of regulations 52A, 52B and 52C.

(2B) Subregulation (1) has effect in relation to a recreational paddle craft as if that subregulation referred to a provision of regulation 52BAD instead of referring to a provision of regulations 52A, 52B and 52C.

Note: The heading to amended regulation 52CA is to read:

Chief executive officer may grant exemption from compliance with r. 52A, 52B, 52BAC, 52BAD and 52C

22. Regulation 52D amended

(1) In regulation 52D delete “When” and insert:

(1) When

(2) At the end of regulation 52D insert:

(2) For the purposes of subregulation (1) —

(a) a sailboard is to be taken to be a vessel; and

(b) a recreational paddle craft that is not a vessel is to be taken to be a vessel.

Note: The heading to amended regulation 52D is to read:

Person in charge of vessel, sailboard or recreational paddle craft in unsafe circumstances to obey directions of departmental officer

23. Regulation 53 amended

- (1) In regulation 53(1):
- (a) delete “in this Part,” and insert:

in this Part that does not itself provide that the contravention is an offence,
 - (b) delete “offence and is liable on conviction to a fine not exceeding \$500.” and insert:

offence.
- (2) In regulation 53(2) delete “offence and is liable on conviction to a fine not exceeding \$500.” and insert:

offence.
- (3) After regulation 53(3) insert:
- (4) For the purposes of subregulation (3) —
- (a) a sailboard is to be taken to be a vessel; and
 - (b) a recreational paddle craft that is not a vessel is to be taken to be a vessel.
- (5) A person who commits an offence under this Part is liable on conviction to a fine not exceeding \$500.

Note: The heading to amended regulation 53 is to read:

Offences and penalties

24. Part VII Division 1 heading deleted

Delete the heading to Part VII Division 1.

25. Regulation 54 amended

In regulation 54 delete “Division” and insert:

Part

Note: The heading to amended regulation 54 is to read:

Application of Part

26. Part VIII heading inserted

After regulation 67 insert:

Part VIII — Miscellaneous

N. HAGLEY, Clerk of the Executive Council.
