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

## **Navigable Waters Amendment Regulations (No. 2) 2005**

Made by the Lieutenant-Governor and Administrator in Executive Council.

### **1. Citation**

These regulations are the *Navigable Waters Amendment Regulations (No. 2) 2005*.

### **2. The regulations amended**

The amendments in these regulations are to the *Navigable Waters Regulations\**.

[\* *Reprint 11 as at 21 March 2003.*

*For amendments to 6 October 2005 see Western Australian Legislation Information Tables for 2004, Table 4, p. 375, and Gazette 24 June 2005.]*

### **3. Regulation 1 amended**

Regulation 1 is amended by inserting after “*Regulations*” —  
“ 1958 ”.

### **4. Regulation 3 amended**

Regulation 3(2) is amended by deleting “51B,”.

### **5. Regulations 47 to 47I inserted**

After regulation 46 the following regulations are inserted —  
“

#### **47. Interpretation for regulations 47 to 47I**

(1) In regulations 47 to 47I —

“**CEO**” means the chief executive officer of the department;

“**examiner**” means a person or body approved for the purpose of regulation 47C(2)(a);

**“foreign skipper’s ticket”** means an equivalent of a recreational skipper’s ticket granted outside Western Australia the prerequisites for which, in the CEO’s opinion, require a person to meet or exceed the recreational skipper’s competency requirements;

[Note: “owner” is defined in regulation 2 to include the master or person in charge of a vessel.]

**“recreational skipper’s ticket”** means a ticket granted by the CEO under regulation 47C;

**“RST vessel”** means a vessel that —

- (a) is a registrable vessel for the purposes of Part VA; and
  - (b) is propelled by motored power that exceeds 4.5 kilowatts.
- (2) For the purposes of regulations 47 to 47I a person meets the recreational skipper’s competency requirements if he or she has knowledge of, and is able to demonstrate, the minimum competencies set out in the *Guidelines for Recreational Boat Operator Competencies* published by the National Marine Safety Committee in 2000.
- (3) For the purposes of regulation 47 to 47I, an applicant for a recreational skipper’s ticket is taken to have lodged an application if he or she has —
- (a) lodged an application with the CEO; or
  - (b) given a completed application to the examiner to be lodged in accordance with regulation 47C(3)(c)(ii).

**47AA. Who may drive motor boat — before 1 April 2007**

- (1) This regulation ceases to apply on 1 April 2007.
- (2) A person who is under 10 years of age must not drive a motor boat.
- (3) A person who is at least 10, but under 16, years of age must not drive an RST vessel unless he or she is under the direct supervision of a person who is at least 18 years of age.
- (4) The owner of an RST vessel must not knowingly permit it to be driven in contravention of subregulation (2) or (3).
- (5) A person who contravenes this regulation commits an offence.

**47AB. Who may drive motor boat — 1 April 2007 to 31 March 2008**

- (1) This regulation applies on and after 1 April 2007 and ceases to apply on 1 April 2008.
- (2) A person who is under 10 years of age must not drive a motor boat.
- (3) A person who is at least 10, but under 14, years of age must not drive an RST vessel unless he or she is under the direct supervision of a person —
  - (a) who is at least 25 years of age; or
  - (b) who is at least 18, but under 25, years of age and holds a recreational skipper's ticket.
- (4) A person who is at least 14, but under 16, years of age must not drive an RST vessel unless he or she —
  - (a) holds a recreational skipper's ticket and is driving the vessel —
    - (i) at a speed not exceeding 8 knots; and
    - (ii) between sunrise and sunset;or
  - (b) is under the direct supervision of a person —
    - (i) who is at least 25 years of age; or
    - (ii) who is at least 18, but under 25, years of age and holds a recreational skipper's ticket.
- (5) A person who is at least 16, but under 25, years of age must not drive an RST vessel unless he or she —
  - (a) holds a recreational skipper's ticket; or
  - (b) is under the direct supervision of a person —
    - (i) who is at least 25 years of age; or
    - (ii) who is at least 18, but under 25, years of age and holds a recreational skipper's ticket.
- (6) The owner of an RST vessel must not knowingly permit it to be driven in contravention of subregulations (2) to (5).
- (7) A person who contravenes this regulation commits an offence.

**47A. Who may drive motor boat — from 1 April 2008**

- (1) This regulation applies on and after 1 April 2008.
- (2) A person who is under 10 years of age must not drive a motor boat.

- (3) A person who is at least 10, but under 14, years of age must not drive an RST vessel unless he or she is under the direct supervision of a person who holds a recreational skipper's ticket and is at least 18 years of age.
- (4) A person who is at least 14, but under 16, years of age must not drive an RST vessel unless he or she —
  - (a) holds a recreational skipper's ticket and is driving the vessel —
    - (i) at a speed not exceeding 8 knots; and
    - (ii) between sunrise and sunset;
  - or
  - (b) is under the direct supervision of a person who holds a recreational skipper's ticket and is at least 18 years of age.
- (5) A person who is at least 16 years of age must not drive an RST vessel unless he or she —
  - (a) holds a recreational skipper's ticket; or
  - (b) is under the direct supervision of a person who holds a recreational skipper's ticket and is at least 18 years of age.
- (6) The owner of an RST vessel must not knowingly permit it to be driven in contravention of subregulations (2) to (5).
- (7) A person who contravenes this regulation commits an offence.

**47B. Learner deemed to be directly supervised**

- (1) If a learner is driving an RST vessel under the supervision of an examiner, the learner is taken to be under the direct supervision of the examiner —
  - (a) if the vessel is within 400 metres of the examiner; and
  - (b) even if the examiner is also instructing or assessing one or more other learners.
- (2) In this regulation —

**“learner”** means a person who is learning to drive an RST vessel or is being assessed for the purpose of seeking to obtain a recreational skipper's ticket.

**47C. Recreational skipper's ticket**

- (1) Subject to regulation 47G, the CEO is to grant a recreational skipper's ticket to a person who applies in accordance with subregulation (3), if satisfied that the person meets the recreational skipper's competency requirements.

- (2) The CEO may, in satisfaction of the requirement imposed by subregulation (1) —
  - (a) accept evidence from a person or body approved by the CEO for that purpose; or
  - (b) accept possession by the applicant of a higher qualification or a foreign skipper's ticket.
- (3) An application for a recreational skipper's ticket —
  - (a) is to be made to the CEO in writing in a form specified by the Minister;
  - (b) is to be accompanied by evidence that the applicant meets the recreational skipper's competency requirements; and
  - (c) may be lodged —
    - (i) by the applicant; or
    - (ii) if lodged with evidence of the kind referred to in subregulation (2)(a), by the examiner on behalf of the applicant.
- (4) If an applicant has lodged an application together with evidence of the kind referred to in subregulation (2)(a), the applicant is taken to hold a recreational skipper's ticket until he or she receives —
  - (a) a recreational skipper's ticket; or
  - (b) written notice that the CEO has refused the application.
- (5) The CEO is to issue a replacement recreational skipper's ticket —
  - (a) when the CEO is notified under regulation 47I of a change to the ticket holder's name or address; or
  - (b) at the request of the ticket holder, if the CEO is satisfied that the original ticket has been lost or destroyed.
- (6) The CEO may issue a replacement recreational skipper's ticket at any other time if the CEO considers it appropriate.
- (7) In this regulation —

**“higher qualification”** means —

  - (a) a certificate of competency or certificate of proficiency granted or recognised under the *W.A. Marine (Certificates of Competency and Safety Manning) Regulations 1983* other than a certificate of competency as —
    - (i) Coxswain Instructor of commercial ski-boat;
    - (ii) Marine Engineer Class III;

- (iii) Marine Engine Driver Grade I; or
- (iv) Marine Engine Driver Grade II;
- or
- (b) any other qualification the prerequisites for which, in the CEO's opinion, require a person to meet or exceed the recreational skipper's competency requirements.

**47CA. Transitional — prior ownership or qualifications**

- (1) If a person —
  - (a) has been the owner, or one of the owners, of a registered vessel for all of the 5 years immediately preceding the commencement date; and
  - (b) lodges an application for a recreational skipper's ticket —
    - (i) before 1 April 2007; and
    - (ii) together with evidence from an examiner that the applicant has a theoretical knowledge of the recreational skipper's competency requirements,

the CEO may accept that ownership and evidence of theoretical knowledge as evidence in satisfaction of the requirement imposed by regulation 47C(1).

- (2) For the purposes of regulation 47C(2)(b) a person who lodges an application for a recreational skipper's ticket before 1 April 2007 is taken to possess a higher qualification if the person holds one of the following qualifications, which he or she obtained before the commencement date —
  - (a) a certificate granted by the CEO certifying that the holder has completed the boating safety course known as "BoatSmart";
  - (b) a National Power Boat Scheme TL3 Certificate granted by the Australian Yachting Federation;
  - (c) a National Motor Cruising Scheme TL5 Certificate granted by the Australian Yachting Federation.

- (3) In this regulation —

**"commencement date"** means the date on which the *Navigable Waters Amendment Regulations (No. 2) 2005* came into operation;

**"owner"** has the meaning given to that term in regulation 45A.

**47D. Conditions on recreational skipper's ticket**

- (1) The CEO may grant a recreational skipper's ticket subject to any conditions the CEO considers appropriate for ensuring the safety of any person or the public generally.
- (2) A person who holds a recreational skipper's ticket that is subject to a condition is taken not to hold a recreational skipper's ticket if the condition is not being complied with.
- (3) The CEO may revoke a condition by giving written notice to the ticket holder.

**47E. Interstate or overseas ticket valid for 3 months**

A person who holds a foreign skipper's ticket and enters Western Australia, whether as a visitor or with the intention of permanently residing in the State, is taken to hold a recreational skipper's ticket until 3 months have elapsed since the person entered the State.

**47F. Exemptions**

- (1) The CEO may exempt a person or class of persons from all or any of the provisions of regulation 47AA, 47AB or 47A.
- (2) The CEO may grant an exemption subject to any conditions the CEO considers appropriate for ensuring the safety of any person or the public generally.
- (3) A provision of regulation 47AA, 47AB or 47A in respect of which an exemption has been granted does not apply to a person —
  - (a) to whom the exemption applies; and
  - (b) who is driving a vessel in accordance with the exemption and any conditions to which it is subject.

**47G. Power to refuse, cancel or suspend recreational skipper's ticket**

- (1) The CEO may refuse an application for, or cancel or suspend, a recreational skipper's ticket if satisfied that the applicant or ticket holder —
  - (a) is seeking to obtain, or obtained, the ticket by fraud, dishonesty or misrepresentation; or
  - (b) should not hold a recreational skipper's ticket because he or she would be likely to be a danger to the public if permitted to be in charge of an RST vessel.

- (2) The CEO must not cancel a recreational skipper's ticket until the ticket holder has been given a reasonable opportunity to satisfy the CEO that the ticket should not be cancelled.
- (3) If the CEO refuses an application for, or cancels or suspends, a recreational skipper's ticket the CEO must give written notice of the refusal, cancellation or suspension, and the reasons for it, to the applicant or ticket holder.
- (4) The power under subregulation (1) to cancel or suspend a recreational skipper's ticket includes a power to cancel or suspend the application of regulation 47E to a person who is taken under that regulation to hold a recreational skipper's ticket.
- (5) A person aggrieved by a decision of the CEO under this regulation may apply to the State Administrative Tribunal for a review of the decision.

**47H. Ticket to be produced on request**

- (1) The holder of a recreational skipper's ticket must produce it for inspection when requested to do so by an authorised person (as defined in section 98 of the *Western Australian Marine Act 1982*).
- (2) A person who is taken under regulation 47C(4) to hold a recreational skipper's ticket complies with subregulation (1) if the person produces written evidence that —
  - (a) the person has demonstrated, to the satisfaction of an examiner, that the person meets the recreational skipper's competency requirements; and
  - (b) the person has lodged an application in accordance with regulation 47C(3).
- (3) A person who is taken under regulation 47E to hold a recreational skipper's ticket complies with subregulation (1) if he or she produces —
  - (a) his or her foreign skipper's ticket; and
  - (b) evidence of the date of his or her entry into Western Australia.
- (4) A person who contravenes this regulation commits an offence.

**47I. Ticket holder to notify change of details**

- (1) The holder of a recreational skipper's ticket who changes his or her name or address must give written notice of the change to the CEO within 21 days of the change being made.



- (2) A person who contravenes this regulation commits an offence.

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**6. Regulation 48 amended**

Regulation 48(c) is amended by deleting “weigh” and inserting instead —

“ way ”.

**7. Regulation 49A repealed**

Regulation 49A is repealed.

By Command of the Lieutenant-Governor and Administrator,

G. M. PIKE, Clerk of the Executive Council.