

1992—No. 633

**MARITIME SERVICES ACT 1935—REGULATION**

(Relating to capacity plates for vessels and associated offences)

NEW SOUTH WALES



*[Published in Gazette No. 144 of 11 December 1992]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Maritime Services Act 1935, has been pleased to approve the Regulation made by the Maritime Services Board of New South Wales and set forth hereunder.

BRUCE BAIRD  
Minister for Transport and Minister for Tourism.

The Maritime Services Board of New South Wales, in pursuance of the Maritime Services Act 1935, makes the following Regulation:

**Commencement**

1. This Regulation commences on 1 January 1993.

**Amendments**

2. The Water Traffic Regulations—N.S.W. are amended:

(a) by inserting in Regulation 2 (1) after the definition of “Offices” the following definition:

**“Personal water craft”** means a power-driven vessel not more than 3.5 metres in length which:

- (a) has a fully enclosed hull; and
- (b) does not take on water if capsized; and
- (c) is designed to be operated by a person standing, sitting astride or heeling on the vessel but not seated within the vessel.

(b) by omitting Regulation 3 and by inserting instead the following Regulation:

**Negligent etc. navigation**

3. (I) A person must not navigate a vessel on any enclosed water recklessly or negligently, or at such a speed, or loaded with persons, goods, fuel or any other thing in such a manner, or otherwise in my way that is dangerous to or likely to cause injury or damage to the person or property of, or annoyance or nuisance to, any person.

(2) Without limiting the matters that may be taken into account for the purposes of clause (1), the following matters are to be taken into account by a court in deciding whether a person has navigated a vessel loaded with persons in contravention of clause (1):

(a) the information as to the number of persons the vessel may carry displayed in any capacity plate affixed to the vessel;

(b) the weather conditions at the time.

(c) by omitting Regulation 3A and by inserting instead the following Regulation:

**Vessel capacity**

3A. (1) This regulation applies to all vessels, except:

(a) a vessel used exclusively for racing; or

(b) a sailing vessel with or without any auxiliary means of mechanical propulsion; or

(c) a canoe or kayak without any means of mechanical propulsion; or

(d) a rowing shell.

(2) Despite clause (1), this regulation does not apply to a vessel to which it would otherwise apply if:

(a) the vessel:

• is propelled by oars; and

• has no means of mechanical propulsion; and

• is carrying not more than 4 persons; or

(b) the vessel is a personal water craft and is carrying not more than 2 persons.

(3) The owner of a vessel must affix to the vessel a capacity plate which:

(a) is in a form approved by the Board; and

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- (b) complies with clause (4); and
- (c) is clearly visible from each steering position.

(4) The capacity plate is to display information as to the maximum number of persons the vessel may carry:

- (a) in accordance with the Australian Standard published by Standards Australia numbered AS 1799.1—1992 entitled “Small Pleasure Boats Code, Part 1: General requirements for power boats” as in force on 1 January 1993; or
- (b) in a manner approved by the Board.

(5) The owner and master of a vessel each contravene this regulation if:

- (a) the vessel does not have a capacity plate affixed to it as required by clause (3); or
- (b) a capacity plate affixed to the vessel is in any way defaced, obliterated or concealed.

(d) by inserting in the Second Schedule in numerical order the following matter:

3A (5) (a) .....	\$80
3A (5) (b) .....	\$80

DATED this 27th day of October, 1992.

The *COMMON SEAL* of the *MARITIME SERVICES BOARD OF NEW SOUTH WALES* was hereto duly affixed in the presence of the Chief Executive: }

W. L. GILBERT

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#### EXPLANATORY NOTE

The object of this Regulation is to amend the Water Traffic Regulations—NSW so as:

- (a) to require vessels (from 1 January 1993) to have capacity plates affixed to them which display certain information as to the maximum number of persons the vessel may carry; and
- (b) to enable offences relating to the failure to affix a capacity plate as required by Regulation 3A to be dealt with by penalty notices; and

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- (c) to require certain factors (including the information displayed in any capacity plate affixed to a vessel) to be taken into account by a court when determining whether a person has navigated a vessel loaded with persons in a manner that is dangerous or likely to cause injury or damage to the person or property of, or annoyance or nuisance to, any person.

Certain vessels (e.g. a kayak or canoe used without mechanical propulsion) will not be required to comply with the requirements for capacity plates.

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