



New South Wales

Marine Safety Amendment Regulation 2016

under the

Marine Safety Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Safety Act 1998*.

DUNCAN GAY, MLC
Minister for Roads, Maritime and Freight

Explanatory note

This Regulation amends the *Marine Safety Regulation 2016* as a consequence of the proposed commencement of Schedule 1 to the *Marine Legislation Amendment Act 2016* and Schedule 2 to the *Marine Safety Act 1998*. The objects of this Regulation are as follows:

- (a) to restrict the time a vessel can be at anchor in NSW waters during a calendar year,
- (b) to ensure towing provisions extend to wake surfing and wake boarding,
- (c) to make it an offence for a person to interfere with any safety equipment located in the vicinity of navigable waters,
- (d) to ensure the definition of *operating a personal watercraft in an irregular manner* is not limited to the actions listed in that definition,
- (e) to prescribe the fees for storage and towing of an impounded vessel,
- (f) to make provision for the disposal of impounded vessels forfeited to the Crown,
- (g) to prescribe the laboratory for analysis of oral fluid, blood and urine samples,
- (h) to insert safety provisions relating to submarine cables, diving operations and carriage of offensive matter,
- (i) to transfer certain provisions from the *Management of Waters and Waterside Lands Regulations—N.S.W.*,
- (j) to provide that an immediate boat driving licence suspension notice may be issued when the holder of the boat driving licence is charged with an offence under section 13A of the *Marine Safety Act 1998 (the Act)*,
- (k) to transfer the marine pilotage exemption for recreational vessels from the Act,
- (l) to clarify the meaning of an appropriate lifejacket for a person being towed by a vessel,
- (m) to prescribe various matters for the camera recorded offence scheme,
- (n) to insert transitional provisions in relation to certificate evidence for drug and alcohol testing provisions and provisions consequent on the repeal of the *Management of Waters and Waterside Lands Regulations—N.S.W.*,

(o) to make other minor review changes.

This Regulation is made under the *Marine Safety Act 1998*, including sections 19, 19K (1), 19M, 37, 67, 75 (1) (e), 125M and 137 (the general regulation-making power) and clauses 6 and 7 of Schedule 1A.

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1 Name of Regulation

This Regulation is the *Marine Safety Amendment Regulation 2016*.

2 Commencement

This Regulation commences on 7 October 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Marine Safety Regulation 2016

[1] Clause 17A

Insert after clause 17:

17A Restrictions on time at anchor

- (1) The operator of a vessel must not allow a vessel to be at anchor in NSW waters for more than 90 days in any calendar year.
- (2) The operator of a vessel must not allow a vessel to be at anchor in any one place in NSW waters for more than 28 days in any calendar year.
Maximum penalty: 50 penalty units.

[2] Clause 18A

Insert after clause 18:

18A Blocking of channel

- (1) If a vessel is blocking a channel or part of a channel in a port (other than a pilotage port), the master of that vessel is to warn all approaching vessels that the channel or part is blocked:
 - (a) between sunrise and sunset—by displaying or causing to be displayed the day signal, and
 - (b) between sunset and sunrise—by displaying or causing to be displayed the night signal, and
 - (c) if the vessel is in or near an area of restricted visibility, whether by day or night:
 - (i) by displaying or causing to be displayed the night signal, and
 - (ii) by sounding or causing to be sounded the sound signal.
- (2) Subclause (1) does not apply in respect of a dredger.
- (3) If a day or night signal is being displayed or a sound signal made by the master of a vessel or by any other person (whether in a channel or port or from a position on the shore of a channel or port), the master of any other vessel must not proceed or attempt to proceed along the channel or enter or attempt to enter the port without ensuring that it is safe to do so.
- (4) In this clause:

day signal means a black triangle or cone, point up, between 2 black balls in a vertical line.

dredger means any vessel used for the purpose of removing any material or article from the bed of waters, whether for the purpose of deepening such waters or otherwise, and includes any vessel secured in any navigable waters for the purposes of carrying out such work.

night signal means a green light between 2 red lights in a vertical line.

sound signal means 3 short distinct rapid rings of a bell, each ring being of approximately 5 seconds duration, at intervals of not more than 2 minutes duration.

Maximum penalty (subsections (1) and (3)): 50 penalty units.

[3] Clause 33 Restrictions on securing vessels and interfering with safety equipment

Insert at the end of clause 33 (1) (c):

, or

- (d) the relevant harbour master or a member of staff of the Port Authority of New South Wales acting in the exercise of his or her functions.

[4] Clause 33 (1A)

Insert after clause 33 (1):

- (1A) Despite subclause (1), a person must not cause a vessel that is secured to become unsecured contrary to a direction of the relevant harbour master.

[5] Clause 33 (2)

Omit the subclause. Insert instead:

- (2) A person must not make improper use of, remove, damage, obstruct access to or otherwise interfere with any safety equipment located in the vicinity of navigable waters.

[6] Part 2, Division 8, heading

Omit the heading. Insert instead:

Division 8 Towing, wake boarding and wake surfing

[7] Clause 43 Towing wake boarders and wake surfers

Omit clause 43 (3). Insert instead:

- (3) This clause does not apply if:
- (a) the operator considers, and mitigates, the risks associated with carbon monoxide emissions, and
 - (b) the vessel is not fitted with a propeller at the aft most position of the hull.

[8] Clause 44 Restriction on number of persons being towed, wake boarding or wake surfing

Insert “or allow more than 3 people to wake board or wake surf from the vessel” after “capacity”.

[9] Clause 45 Restriction on time of day when towing, wake boarding or wake surfing can occur

Insert “, or allow any person to wake board or wake surf from the vessel,” after “person”.

[10] Clause 47 Observer requirements for towing, wake boarding or wake surfing

Insert “, or allow any person to wake surf or wake board from the vessel,” after “person” where firstly occurring in clause 47 (1).

[11] Clause 47 (5) (a) (iv)

Omit “second”. Insert instead “spare”.

[12] Clause 52 Operation of personal watercraft at any speed

Omit “means” from the definition of *operating a personal watercraft in an irregular manner* in clause 52 (4).

Insert instead “includes, but is not limited to”.

[13] Part 2, Divisions 11–13

Insert at the end of the Part:

Division 11 Impounded recreational vessels

55A Storage fee

For the purposes of section 19K (1) of the Act, the prescribed fee for storage of an impounded vessel is the fee specified in Schedule 11.

55B Towing fee for impounded vessel

- (1) A fee is payable to the Commissioner of Police or Chief Executive of RMS by the owner of a vessel that is towed under section 19A or 19D of the Act, except as otherwise provided by this clause.
- (2) The fee payable is the fee specified in Schedule 11.
- (3) A fee is not payable under this clause (and if paid, is refundable) unless:
 - (a) a person is convicted of the offence referred to in section 19A (1) of the Act, or
 - (b) a penalty notice, issued in relation to any such alleged offence, is dealt with by payment of the penalty prescribed or by a penalty notice enforcement order under the *Fines Act 1996* that is made, or is taken to have been made, against the person and that is not subsequently quashed or set aside.
- (4) The Commissioner of Police or Chief Executive of RMS is to give notice of any fee payable under this clause to the owner or operator of the vessel concerned and, except as otherwise provided by this Regulation, the fee is due and payable 14 days after the notice is given.

55C Disposal of impounded vessels forfeited to the Crown

- (1) If a vessel that was impounded under section 19D of the Act has not been released in accordance with Division 2 of Part 2 of the Act at the end of the period for which it was liable to be impounded, the Commissioner of Police or Chief Executive of RMS may, by notice given to the owner of the vessel, warn the owner that the vessel is liable to be offered for sale unless appropriate steps are taken to procure the release of the vessel.
- (2) For the purposes of section 19M of the Act, a vessel that has been forfeited to the Crown under section 19E or 19F of the Act, or that remains duly impounded for 28 days after the service of a notice referred to in subclause (1), may be offered for sale, except as provided by subclause (3) or by the order of any court.
- (3) A vessel may not be offered for sale while any application under section 19J of the Act, or any subsequent proceedings arising out of such an application, are pending.
- (4) At any time within 12 months after a vessel has been sold in accordance with this Regulation, a person may apply to the Commissioner of Police or Chief Executive of RMS for payment to the person of the balance of the proceeds of

sale of the vessel, after deduction of any movement, towing and storage fees payable under the Act and the Commissioner's reasonable costs of or incidental to the sale.

- (5) The balance of the proceeds of sale may be paid by the Commissioner of Police or Chief Executive of RMS to any applicant who satisfies the Commissioner or Chief Executive, on such evidence as the Commissioner or Chief Executive may reasonably require, that:
- (a) the applicant was lawfully entitled to the vessel immediately before its sale, and
 - (b) there was a reasonable excuse for the applicant's failure to obtain the release of the vessel before it was sold.

Division 12 Alcohol and other drug use

55D Analysis of oral fluid, blood and urine samples—prescribed laboratory and authorised laboratory

- (1) For the purposes of clause 23 (3) of Schedule 1 to the Act, the laboratory at Lidcombe of the NSW Forensic & Analytical Science Service is prescribed as an *authorised laboratory*.
- (2) For the purposes of clause 24 of Schedule 1 to the Act, the laboratory at Lidcombe of the NSW Forensic & Analytical Science Service is prescribed as a *prescribed laboratory*.

Division 13 Miscellaneous safety provisions

55E Restrictions on securing vessels near submarine cables

- (1) A person must not cause a vessel to be anchored within 200 metres of a line indicated on a submarine cables line warning sign.
- (2) A person must not cause a vessel to be anchored within 200 metres of a submarine cable marked on:
 - (a) an appropriate chart that meets the minimum standards specified in Schedule 7, or
 - (b) an appropriate map that meets the minimum standards specified in Schedule 7.
- (3) For the purposes of this clause, a *submarine cables line warning sign* means any sign in or adjacent to any navigable waters which states in a legible manner that submarine cables are laid in or under those waters on a line indicated.

Maximum penalty: 50 penalty units.

55F Diving operations

The master of a vessel must not use any vessel on any enclosed waters in connection with any diving operations within 100 metres of any fairway or channel without the prior consent of RMS, the Port Authority of New South Wales or the relevant harbour master.

Maximum penalty: 50 penalty units.

55G Carriage of offensive matter

If a vessel is used on any navigable waters for the carriage of refuse or other offensive matter, the master and owner of the vessel must ensure:

- (a) the vessel:
 - (i) is not secured to any public wharf, except where necessary for loading or unloading operations, and
 - (ii) is not secured in the vicinity of any recreation reserve or launching ramp or among other secured vessels, and
- (b) the refuse or matter is, except during loading or unloading operations, effectively covered with canvas or such other material as RMS, the Port Authority of New South Wales or the relevant harbour master may approve.

Maximum penalty: 50 penalty units.

[14] Clause 77 When immediate boat driving licence suspension notice may be issued

Insert “or 13A” after “13” in clause 77 (2) (b).

[15] Clause 83 Return of a marine safety licence

Omit “and documentation for a vessel” from clause 83 (1).

[16] Section 85 Vessels exempt from registration

Omit “the State Emergency Service or” from clause 85 (2).

[17] Clause 85 (1) (a) (iii) and (b) (i)

Omit “an occupation licence under the *Management of Waters and Waterside Lands Regulations—N.S.W.*” wherever occurring.

Insert instead “a mooring licence under the *Ports and Maritime Administration Regulation 2012*”.

[18] Section 85 (3)

Omit the definition of *official duties*. Insert instead:

official duties, in relation to Surf Life Saving New South Wales, means operating a vessel while carrying out rescue or lifesaving activities, including authorised training activities.

[19] Clause 102 Certain vessels and persons exempt from requirements relating to boat driving licences

Insert “in respect of the operation of a personal watercraft” after “Act” in clause 102 (4).

[20] Clause 104 Additional requirements for applications for boat driving licences

Omit “bar crossing” from clause 104 (3). Insert instead “boat driving”.

[21] Clause 104 (4)

Omit the subclause.

[22] Clause 104 (5)

Omit the subclause. Insert instead:

- (5) Practical boating training is conducted in accordance with this clause if the training organisation providing the practical boating training has an agreement with RMS to provide such training.

[23] Clause 107A

Insert after clause 107:

107A Renewal of boat driving licences

- (1) The holder of a boat driving licence may renew that licence at any time before, on or within 5 years of the licence expiry date.
- (2) If a licence holder does not renew the holder's boat driving licence within 5 years after the licence expiry date, the holder is not entitled to the renewal of that licence but can apply for a new licence.

[24] Part 5, Division 6, heading

Omit the heading. Insert instead:

Division 6 Marine pilotage exemptions

[25] Clause 109A

Insert before clause 110:

109A Recreational vessels exempt from compulsory pilotage

For the purposes of section 75 (1) (e) of the Act, a recreational vessel is declared to be an exempt vessel for the purposes of Part 6 of the Act.

[26] Clause 120 Meaning of "appropriate lifejacket"

Insert at the end of clause 120 (1) (c):

, and

- (d) in the case of a person being towed by any vessel or wake boarding or wake surfing from a vessel (whether or not the person is using a rope)—a lifejacket level 50S or greater.

[27] Clause 123 Circumstances in which lifejacket must be worn on board certain vessels

Insert after clause 123 (1):

- (1A) This clause applies in relation to kiteboards and sailboards only when these vessels are used more than 400 metres from the shore.

[28] Clause 123 (2) (d)

Insert "on the vessel" after "accompanied".

[29] Clause 127 Lifejacket must be worn when being towed by a vessel or when wake boarding or wake surfing

Omit "while engaged in any recreational activity" from clause 127 (1).

Insert instead "or is wake boarding or wake surfing from a vessel (whether or not the person is using a rope)".

[30] Clause 127 (2)

Omit "while engaged in recreational activity".

Insert instead "or wake boarding or wake surfing from the vessel".

[31] Clause 132 Inspection reports on public ferry wharves

Omit “*Procedure for the assessment of public ferry wharf safety*” from clause 132 (2) (b).
Insert instead “*Guideline for the Assessment of Public Ferry Wharf Safety (2016)*”.

[32] Clause 134 Security of blood and urine samples taken under Part 2, 3, 4 or 5 of Schedule 1 to the Act

Omit the clause.

[33] Clause 135 Penalty notice offences and penalties

Insert after clause 135 (4):

- (4A) For the purposes of section 126 (9) of the Act, an OSR employee is prescribed as belonging to a class of persons who are law enforcement officers in relation to detectable offences within the meaning of Schedule 1A to the Act.

[34] Clause 135 (6)

Insert after clause 135 (5):

- (6) For the purposes of this clause, **OSR employee** means a person who:
- (a) is employed, including under a temporary hire arrangement, secondment or other arrangement, in the Office of State Revenue in the Department of Finance, Services and Innovation, and
 - (b) is authorised by the Commissioner of Fines Administration and is subject to the control and direction of the Commissioner of Fines Administration as an authorised officer.

[35] Clause 135A

Insert after clause 135:

135A Testing and security indicators for approved enforcement devices

- (1) For the purposes of clause 6 (b) of Schedule 1A to the Act:
- (a) an approved enforcement device that is approved for speed measurement and is a radar based device of a kind to which the Australian Standard entitled AS 2898.1—2003, *Radar speed detection, Part 1: Functional requirements and definitions* applies must be tested for accuracy and functional requirements in accordance with that Standard, and
 - (b) any other approved enforcement devices that are approved for speed measurement must be tested for accuracy and functional requirements in accordance with the manufacturer’s recommended calibration method as approved by the Commissioner of Police or (in the case only of a device that is used in conjunction with, or forms part of, a digital camera device) by RMS, and
 - (c) the prescribed period is 12 months.
- (2) Each of the following is prescribed as a security indicator for the purposes of clause 7 (1) of Schedule 1A to the Act:
- (a) a series of 40 characters produced by a SHA-1 algorithm,
 - (b) a series of 56 characters produced by a SHA-224 algorithm,
 - (c) a series of 64 characters produced by a SHA-256 algorithm,

- (d) a series of 96 characters produced by a SHA-384 algorithm,
- (e) a series of 128 characters produced by a SHA-512 algorithm.
- (3) The prescribed period for the purposes of clause 7 (2) (b) of Schedule 1A to the Act is 90 days.
- (4) For the purposes of this clause, *character* includes a letter, number or symbol.

[36] Schedule 6 Requirements relating to Sydney Cove

Insert “northernmost” before “fixed red beacon” where firstly occurring in the definition of *Sydney Cove* in clause 1.

[37] Schedule 6, clause 2 (1) (a) and (b)

Omit “RMS or Transport for NSW” wherever occurring.

Insert instead “RMS, Transport for NSW, the Port Authority of New South Wales or the harbour master”.

[38] Schedule 6, clause 11 (2)

Omit “Sydney Ports Vessel Traffic Service”.

Insert instead “the Port Authority of New South Wales’ Vessel Traffic Service, Sydney”.

[39] Schedule 9 Penalty notice offences—offences under Marine Safety Act 1998

Omit the matter relating to clause 121. Insert in appropriate order:

Clause 17A	4
Clause 18A	2
Clause 55E	2
Clause 55F	2
Clause 55G	2
Clause 121 (1), (2), (3) or (5) in respect of one item of safety equipment other than a lifejacket	1
Clause 121 (1), (2), (3) or (5) in respect of one or more lifejackets or more than one item of safety equipment	2

[40] Schedule 11 Fees relating to State matters

Omit the matter relating to “Marine safety licence late payment fee”.

[41] Schedule 11

Insert at the end of the table:

Daily fee for storage of an impounded vessel	\$21
Towing fee for vessels impounded and towed under section 19A or 19D	Actual towing costs

[42] Schedule 13

Insert after Schedule 12:

Schedule 13 Savings, transitional and other provisions

Part 1 Provisions consequent on enactment of Marine Safety Act 1998

1 Licences and permissions issued under the Management of Waters and Waterside Lands Regulations—N.S.W.

- (1) Any licence or other permission that, immediately before the repeal of the *Management of Waters and Waterside Lands Regulations—N.S.W.*, had effect under a provision of that regulation:
 - (a) continues to have effect (despite that repeal), and
 - (b) may be withdrawn, varied, revoked or cancelled in accordance with the repealed regulation (as if those regulations remained in force), and
 - (c) ceases to have effect as provided for by the repealed regulation (as if those regulations remained in force) or as provided for by this clause (whichever happens first).
- (2) Accordingly, any function conferred on any person under the repealed regulation in connection with any such licence or permission may continue to be exercised after the repeal of the repealed regulation as if that regulation remained in force.
- (3) A reference to a mooring licence in the marine legislation or any other law includes a reference to a licence or other permission that continues to have effect in accordance with this clause and that permits the activity for which the mooring licence would otherwise be required.

Part 2 Provisions consequent on enactment of Marine Legislation Amendment Act 2016

2 Evidentiary certificates and other documents

- (1) Any document that, immediately before the relevant day, had effect under a provision of former Schedule 1 continues to have effect under the provision of new Schedule 1 that corresponds (or substantially corresponds) with that former provision.
- (2) Without limiting subclause (1), a form of evidence certificate that was prepared in accordance with a former clause specified in Column 1 of the table to this clause before the relevant day so that it could be used under that clause when completed:
 - (a) is taken to be, and is to be construed as, a form of evidence certificate prepared in accordance with the corresponding new clause in Column 2, and
 - (b) may, during the transitional period, be completed in accordance with and used under that clause.
- (3) In this clause, a reference to a *former clause* or *former Schedule 1* means the specified clause in Schedule 1 to the Act, or Schedule 1, respectively, as in force immediately before the relevant day.

- (4) In this clause, a reference to a *new clause* or *new Schedule 1* means the specified clause in Schedule 1 to the Act, or Schedule 1, respectively, as substituted by the *Marine Legislation Amendment Act 2016*.
- (5) In this clause:
relevant day means the day on which Schedule 1 [63] to the *Marine Legislation Amendment Act 2016* commences.
transitional period means the period of 12 months commencing on the relevant day.

Column 1	Column 2
former clause 27 (1) or 29 (1)	new clause 37 (2)
former clause 27 (2) or 29 (2)	new clause 36 (2)
former clause 27 (4)	new clause 37 (2)
former clause 27 (5)	new clause 37 (4)
former clause 27 (6)	new clause 37 (5)
former clause 27 (7)	new clause 37 (6)
