

South Australia

Harbors and Navigation Variation Regulations 2008

under the *Harbors and Navigation Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Harbors and Navigation Variation Regulations 2008*.

2—Commencement

These regulations will come into operation on 4 August 2008.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Harbors and Navigation Regulations 1994*

4—Variation of regulation 8—Interpretation

- (1) Regulation 8(1)—after the definition of *moor* insert:

navigation pass, in relation to a bridge, means the marked channel under the bridge through which vessels are intended to navigate when passing under the bridge;

- (2) Regulation 8(1)—after the definition of *personal watercraft* insert:

Port River Expressway Bridges means—

- (a) the road bridge (including any fendering that forms part of the navigation pass of the bridge); and
- (b) the rail bridge (including any fendering that forms part of the navigation pass of the bridge),

constructed as part of the authorised project (within the meaning of the *Highways Act 1926*) known as the Port River Expressway Project (and a reference to a *Port River Expressway Bridge* will be taken to be a reference to the road bridge or the rail bridge (as the case requires));

5—Insertion of regulation 14A

After regulation 14 insert:

14A—Special rule in relation to sailing on Port Adelaide River

- (1) A person must not, without the approval of the CEO, operate a vessel in the waters of the Port Adelaide River south of the Port River Expressway Bridges under sail power alone.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (2) It is a defence to a charge of an offence under subregulation (1) for the defendant to prove that the defendant was taking part in a rescue operation or otherwise acting in an emergency.
- (3) Without limiting regulation 5, an application for approval under subregulation (1) may be made by an applicant on the applicant's own behalf or on behalf of a group of persons and, if an approval is granted to a group of persons, each member of the group is bound by the conditions (if any) to which the approval is subject.

6—Variation of regulation 149—Birkenhead Bridge

- (1) Regulation 149(1)—delete subregulation (1) and substitute:

- (1) The master or operator of a vessel approaching the Birkenhead Bridge during its operating times and requiring the bridge to be opened must contact the person operating the bridge—
 - (a) in accordance with the procedure determined by the CEO for the purposes of this subregulation—

- (i) by mobile phone on a telephone number determined by the CEO for the purposes of this subregulation; or
 - (ii) by VHF radio on a frequency determined by the CEO for the purposes of this subregulation; or
 - (b) by sounding 1 long blast followed by 3 short blasts.
- (2) Regulation 149(2)—delete subregulation (2) and substitute:
 - (2) The master or operator of a vessel who does not intend to navigate under the bridge after requesting the opening of the bridge in accordance with subregulation (1) must immediately notify the person operating the bridge of that fact—
 - (a) by mobile phone on a telephone number determined by the CEO for the purposes of this subregulation; or
 - (b) by VHF radio on a frequency determined by the CEO for the purposes of this subregulation; or
 - (c) by sounding 2 long blasts followed by 1 short blast.

Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) Regulation 149(4)—delete "150" and substitute:

100
- (4) Regulation 149(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.
Expiation fee: \$315.
- (5) Regulation 149—after subregulation (4) insert:
 - (5) Subject to any direction of the operator of the bridge to the contrary, the master or operator of a vessel must ensure that the vessel, when being navigated under the bridge, is only operated within the navigation pass.

Maximum penalty: \$5 000.
Expiation fee: \$315.
 - (6) The master or operator of a vessel must not cause or allow the vessel to approach the bridge or attempt to negotiate the navigation pass unless the vessel can be maintained under safe control throughout the manoeuvre.

Maximum penalty: \$5 000.
Expiation fee: \$315.

- (7) If 2 vessels are approaching the bridge from opposite directions simultaneously, the master or operator of the vessel proceeding upstream must give the vessel proceeding downstream priority of passage through the navigation pass unless it is safe for both vessels to pass through the navigation pass simultaneously.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (8) In this regulation—

operating times, in relation to the Birkenhead Bridge, means the operating times determined by the CEO for the purposes of this regulation.

7—Insertion of regulation 149AA

After regulation 149 insert:

149AA—Port River Expressway Bridges

- (1) The master or operator of a vessel approaching a Port River Expressway Bridge during its operating times and requiring the bridge to be opened must contact the person operating the bridge in accordance with the procedure determined by the CEO for the purposes of this subregulation—
- (a) by mobile phone on a telephone number determined by the CEO for the purposes of this subregulation; or
 - (b) by VHF radio on a frequency determined by the CEO for the purposes of this subregulation.
- (2) Without limiting subregulation (1), the procedure determined by the CEO for the purposes of that subregulation may include a requirement that the master or operator of a vessel provide the person operating the bridge with the following information:
- (a) the registration number or other identification number of the vessel;
 - (b) the name of the vessel;
 - (c) a description of the vessel;
 - (d) the location of the vessel;
 - (e) a mobile phone number, or a VHF radio frequency, on which the master or operator can be contacted.
- (3) The CEO may, by notice in the Gazette, exempt the master or operator of a vessel, or class of vessels, referred to in subregulation (1) from complying with the requirements of that subregulation in the circumstances set out in the notice.

- (4) The master or operator of a vessel who does not intend to navigate under a Port River Expressway Bridge after requesting the opening of the bridge in accordance with subregulation (1) must immediately notify the person operating the bridge of that fact—
- (a) by mobile phone on a telephone number determined by the CEO for the purposes of this subregulation; or
 - (b) by VHF radio on a frequency determined by the CEO for the purposes of this subregulation.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) The master or operator of a vessel approaching or navigating under a Port River Expressway Bridge during its operating times and requiring the bridge to be opened must, if the vessel is fitted with a VHF radio, cause a radio watch to be maintained on the frequency determined by the CEO for the purposes of this subregulation while the vessel is within 100 metres of the bridge.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (6) The master or operator of a vessel navigating under a Port River Expressway Bridge, or approaching a Port River Expressway Bridge, must comply with the following provisions:
- (a) he or she must comply with any vessel traffic control signals operating at the time on, or in relation to, the bridge;
 - (b) he or she must comply with any directions of the person operating the bridge;
 - (c) he or she must not allow the vessel to approach within 100 metres of the bridge with the intention of navigating under the bridge while the bridge is in the process of opening or closing;
 - (d) without limiting paragraph (a) or (b), if the vessel does not require the bridge to be opened to navigate under the bridge, he or she must give way to any vessel approaching a Port River Expressway Bridge or passing through the navigation pass of a Port River Expressway Bridge that does require the bridge to be so opened;
 - (e) if no vessel traffic control signals are operating at the time on, or in relation to, the bridge and the vessel is approaching the bridge proceeding upstream, he or she must give any vessel proceeding downstream priority of passage through the navigation pass (and he or she must wait until the vessel proceeding downstream is clear of the bridge before proceeding under the bridge) unless it is safe for both vessels to pass through the navigation pass simultaneously;

- (f) subject to any direction of the person operating the bridge to the contrary, he or she must ensure that the vessel, when being navigated under the bridge, is only operated within the navigation pass;
- (g) subject to any direction of the person operating the bridge to the contrary, he or she must not reverse direction while passing through the navigation pass;
- (h) he or she must not approach the bridge or attempt to navigate under the bridge unless the vessel can be maintained under safe control throughout the manoeuvre;
- (i) he or she must not remain in—
 - (i) the navigation pass; or
 - (ii) the area within 100 metres of the bridge, unless intending to navigate under the bridge (and, having navigated under the bridge, must not remain in the area within 100 metres on the opposite side of the bridge);
- (j) he or she must not allow the vessel to approach within 100 metres of the bridge or attempt to navigate under the bridge with the vessel's sail or sails (if any) wholly or partly raised or unfurled;
- (k) in the case of a vessel with a beam of more than 10 metres, or a displacement of more than 200 tonnes—he or she must not allow the vessel to approach within 100 metres of the bridge or attempt to pass through the navigation pass without the approval of the CEO;
- (l) a person who contravenes a provision of this subregulation is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (7) Subregulation (6)(i)(ii) does not apply to the master or operator of a vessel entering or leaving a lawfully constructed temporary berthing facility located within 100 metres of a Port River Expressway Bridge.
- (8) It is a defence to a charge of an offence under subregulation (6) for the defendant to prove that the defendant was taking part in a rescue operation or otherwise acting in an emergency.

- (9) If a vessel appears from evidence obtained through the operation of a camera installed by the CEO on, or in the immediate vicinity of, the Port River Expressway Bridges to have been involved in the commission of an offence against subregulation (6), the owner of the vessel is guilty of an offence against this subregulation unless it is proved—
- (a) that although the vessel appears to have been involved in the commission of the offence, no such offence was in fact committed; or
 - (b) that the owner, or, if the owner is a body corporate, an officer of the body corporate acting with the authority of the body corporate, has furnished to the CEO a statutory declaration stating the name and address of some person other than the owner who was the master or operator of the vessel at the time; or
 - (c) that—
 - (i) if the owner is a body corporate—the vessel was not being operated at the time by any officer or employee of the body corporate acting in the ordinary course of his or her duties as such; and
 - (ii) the owner does not know and could not by the exercise of reasonable diligence have ascertained the identity of the person who was operating the vessel at the time; and
 - (iii) the owner, or, if the owner is a body corporate, an officer of the body corporate acting with the authority of the body corporate, has furnished to the CEO a statutory declaration stating the reasons why the identity of the master or operator is not known to the owner and the inquiries (if any) made by the owner to identify the master or operator.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (10) If there are 2 or more owners of the same vessel—
- (a) a prosecution for an offence against subregulation (9) may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
 - (b) if the case for the prosecution is proved and a defence is not established under subregulation (9)(a), the defendant or each of the defendants who does not establish a defence under subregulation (9)(b) or (c) is liable to be found guilty of an offence against subregulation (9).

- (11) If an offence against subregulation (6) or (9) is alleged, and the allegation is based (wholly or in part) on evidence obtained through the operation of a camera installed by the CEO on, or in the immediate vicinity of, the Port River Expressway Bridges, an expiation notice, an expiation reminder notice or summons in respect of the offence must be accompanied by a notice containing the information set out in Schedule 13.
- (12) If—
- (a) an expiation notice for an offence against subregulation (6) is given to a person named as the alleged master or operator in a statutory declaration under this regulation; or
 - (b) proceedings for an offence against subregulation (6) are commenced against a person named as the alleged master or operator in such a statutory declaration,
- the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged master or operator.
- (13) The particulars of the statutory declaration provided to the person named as the alleged master or operator must not include the address of the person who provided the statutory declaration.
- (14) If a person is found guilty of, or expiates, an offence against subregulation (6), neither that person nor any other person is liable to be found guilty of, or to expiate, an offence against subregulation (9) in relation to the same incident.
- (15) If a person is found guilty of, or expiates, an offence against subregulation (9), neither that person nor any other person is liable to be found guilty of, or to expiate, an offence against subregulation (6) in relation to the same incident.
- (16) A person who, without proper authority or reasonable excuse, interferes with a camera installed on, or in the immediate vicinity of, the Port River Expressway Bridges by the CEO, or a vessel traffic control signal, or the proper functioning of such devices, is guilty of an offence.
- Maximum penalty: \$5 000.
Expiation fee: \$315.
- (17) In proceedings for an offence against this regulation—
- (a) a data storage device produced by the prosecution will be admitted in evidence if the images recorded on the device were recorded by a camera installed by the CEO on, or in the immediate vicinity of, the Port River Expressway Bridges, and a denotation as to date, time and location that appears as part of such a device, or on such images, is, in the absence of proof to the contrary, proof of the date, time and location at which the images on the device were recorded by the camera;

- (b) a certificate produced by the prosecution and apparently signed by the CEO or a delegate of the CEO certifying that a specified camera used at a specified location during a specified period was a camera installed by the CEO is, in the absence of proof to the contrary, proof of that fact;
- (c) a certificate produced by the prosecution and apparently signed by the CEO or a delegate of the CEO that a specified camera was designed and set to operate according to a specified system during that period is, in the absence of proof to the contrary, proof that the camera was designed and set to operate according to that system during that period and did, in fact, so operate;
- (d) a certificate produced by the prosecution and apparently signed by the CEO or a delegate of the CEO certifying that a specified vessel traffic control signal—
 - (i) was designed and set to operate automatically according to a specified system during a particular period; or
 - (ii) was designed and set to be operated manually according to a specified system during a particular period,is, in the absence of proof to the contrary, proof that the vessel traffic control signal was designed and set to operate automatically or manually (as the case requires) according to the system and did, in fact, so operate;
- (e) a certificate produced by the prosecution and apparently signed by the CEO or a delegate of the CEO certifying that a specified person was the person operating a Port River Expressway Bridge at a specified time and on a specified date is, in the absence of proof to the contrary, proof of the matters so certified;
- (f) a certificate produced by the prosecution and apparently signed by the CEO or a delegate of the CEO certifying that a specified vessel traffic control signal was operated manually in a specified manner at a specified time and on a specified date by the person operating a Port River Expressway Bridge is, in the absence of proof to the contrary, proof of the matters so certified.

(18) For the purposes of this regulation, the master or operator of a vessel complies with a vessel traffic control signal if he or she complies with the following provisions:

- (a) the master or operator of a vessel that is more than 100 metres from a Port River Expressway Bridge must not approach to within 100 metres of the bridge if a vessel traffic control signal is showing an illuminated solid or flashing red light to vessels travelling in the same direction as the vessel;
- (b) the master or operator of a vessel that is within 100 metres of a Port River Expressway Bridge must navigate through the navigation pass of the bridge if a vessel traffic control signal is showing an illuminated solid green light to vessels travelling in the same direction as the vessel;
- (c) subject to a direction of the person operating the bridge to the contrary, the master or operator of a vessel that is within 100 metres of a Port River Expressway Bridge but outside of the navigation pass of that bridge—
 - (i) must not enter the navigation pass of the bridge; and
 - (ii) must immediately reverse direction and exit the area within 100 metres of the bridge,

if a vessel traffic control signal is showing an illuminated solid red light to vessels travelling in the same direction of the vessel (whether or not the vessel traffic control signal was showing an illuminated solid green light to vessels travelling in the same direction as the vessel at the time the vessel approached to within 100 metres of the bridge);

- (d) subject to a direction of the person operating the bridge to the contrary, the master or operator of a vessel that is within 100 metres of a Port River Expressway Bridge but outside of the navigation pass of that bridge must either—
 - (i) pass through the navigation pass; or
 - (ii) immediately reverse direction and exit the area within 100 metres of the bridge,

if a vessel traffic control signal is showing an illuminated flashing red light to vessels travelling in the same direction of the vessel (whether or not the vessel traffic control signal was showing an illuminated solid green light to vessels travelling in the same direction as the vessel at the time the vessel approached to within 100 metres of the bridge);

- (e) in the case of a vessel traffic control signal consisting of a sign (whether electronic or otherwise) displaying directions in writing to vessels approaching a Port River Expressway Bridge—the master or operator of a vessel within 100 metres of a Port River Expressway Bridge must comply with any direction displayed on the vessel traffic control signal.
- (19) Subregulation (18)(b), (c) and (d) do not apply to the master or operator of a vessel moored at a lawfully constructed temporary berthing facility located within 100 metres of the bridge.

- (20) In this regulation—

operating times, in relation to a Port River Expressway Bridge, means the operating times determined by the CEO for the purposes of this regulation;

owner of a vessel means—

- (a) a person who is the sole owner, a joint owner or a part owner of the vessel; or
- (b) a person who has possession or use of the vessel under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vessel to be registered in the name of someone else,

and includes a registered owner of the vessel;

registered owner, in relation to a vessel, means the person to whom a certificate of registration for the vessel has been issued;

vessel traffic control signal means a visual or audible device, or a combination of visual and audible devices, (whether electronic or otherwise) installed on, or in the immediate vicinity of, a Port River Expressway Bridge regulating 1 or more of the following:

- (a) entry of vessels to the area lying within 100 metres of a Port River Expressway Bridge;
- (b) navigation of vessels (including direction of travel) within the area lying within 100 metres of a Port River Expressway Bridge;
- (c) entry to and exit from the navigation pass of a Port River Expressway Bridge;
- (d) any other matter related to the prevention of damage to a Port River Expressway Bridge.

149AB—Exemptions

- (1) The CEO may, on such conditions as the CEO thinks fit, exempt the owner or master of a vessel from the obligation to comply with a requirement of regulation 149AA.

- (2) The CEO may, by notice in writing to the holder of an exemption, revoke the exemption or impose further conditions if there are, in the CEO's opinion, proper reasons for doing so.

8—Variation of regulation 149A—Hindmarsh Island Bridge

- (1) Regulation 149A(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) Regulation 149A(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) Regulation 149A(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (4) Regulation 149A(5), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (5) Regulation 149A(6), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (6) Regulation 149A(7)—delete "structure" and substitute:
bridge
- (7) Regulation 149A(7), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (8) Regulation 149A(8)—delete subregulation (8)

9—Insertion of regulation 149B

After regulation 149A insert:

149B—Jervois Bridge

- (1) The master or operator of a vessel must ensure that the vessel, when being navigated under the Jervois Bridge, is only operated within the navigation pass.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The master or operator of a vessel must not approach the bridge or attempt to navigate under the bridge unless the vessel can be maintained under safe control throughout the manoeuvre.
Maximum penalty: \$5 000.
Expiation fee: \$315.

- (3) If 2 vessels are approaching the bridge from opposite directions simultaneously, the master or operator of the vessel proceeding upstream must give the vessel proceeding downstream priority of passage through the navigation pass.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) The master or operator of a vessel proceeding upstream that has had to wait for a vessel proceeding downstream to navigate under the bridge must wait until the vessel proceeding downstream is clear of the bridge before proceeding under the bridge.

Maximum penalty: \$5 000.

Expiation fee: \$315.

10—Variation of regulation 150—Kingston Bridge

- (1) Regulation 150(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Regulation 150(3)—delete subregulation (3)

- (3) Regulation 150(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) Regulation 150(6), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) Regulation 150(7), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (6) Regulation 150(8), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (7) Regulation 150(9), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (8) Regulation 150(10), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (9) Regulation 150(11), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (10) Regulation 150(12)—delete "structure" and substitute:
bridge
- (11) Regulation 150(12), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (12) Regulation 150(13)—delete subregulation (13)

11—Variation of regulation 151—Paringa Bridge

- (1) Regulation 151(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) Regulation 151(3)—delete "150" and substitute:
100
- (3) Regulation 151(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (4) Regulation 151(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
Expiation fee: \$315.

12—Variation of regulation 158—Anchors not to be used in certain areas

Regulation 158(1)—after paragraph (c) insert:

- (ca) the area comprising the area of the Port Adelaide River situated within 100 metres from a Port River Expressway Bridge;

13—Variation of Schedule 10—Speed restrictions in certain waters

Schedule 10 clause 2(ca)—after subparagraph (ii) insert:

or

- (iii) lying 100 metres upstream or downstream of the Birkenhead Bridge, a Port River Expressway Bridge or the Jervois Bridge.

14—Insertion of Schedule 13

After Schedule 12 insert:

Schedule 13—Notice requirements (regulation 149AA)

A notice required under regulation 149AA(11) must contain—

- (a) a statement that a copy of the evidence obtained through the operation of a camera installed by the CEO on, or in the immediate vicinity of, the Port River Expressway Bridges on which the allegation is based may be viewed on application to the CEO;

- (b) a statement that the CEO will, in relation to the question of withdrawal of the expiation notice, reminder notice or complaint, give due consideration to any exculpatory evidence that is verified by statutory declaration and furnished to the CEO within the period specified in the notice.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor's Deputy

with the advice and consent of the Executive Council
on 5 June 2008

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