

South Australia

Harbors and Navigation (Lifejackets) Variation Regulations 2017

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 (Lifejackets) Variation Regulations 2017*.

2—Commencement

These regulations will come into operation on 1 December 2017.

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 2009*

4—Variation of regulation 3—Interpretation

(1) Regulation 3(1)—after the definition of *kiteboard* insert:

lifejacket level 50 means a lifejacket that complies with any of the following requirements:

- (a) AS 4758.1:2015: *Lifejackets—General requirements*, as that standard relates to a lifejacket classified as providing level 50 buoyancy;
- (b) *Lifejacket Type—2* AS1499—1996, as in force on 1 January 2008;
- (c) European Standard EN393-1993 *Lifejackets-50N*, as in force from time to time;
- (d) ISO 12402-5, as in force from time to time;
- (e) any other standard or specification approved by the CE by notice in the Gazette for the purposes of this paragraph;

lifejacket level 50S means a lifejacket that complies with any of the following requirements:

- (a) AS 4758.1:2015: *Lifejackets—General requirements* in relation to a lifejacket classified as providing level 50 special purpose (50S) buoyancy;
- (b) *Lifejacket Type—3* AS2260—1996, as in force on 1 January 2008;
- (c) any other standard or specification approved by the CE by notice in the Gazette for the purposes of this paragraph;

lifejacket level 100 or above means—

- (a) a lifejacket that complies with any of the following requirements:
 - (i) AS 4758.1:2015 *Lifejackets—General requirements* in relation to a lifejacket classified as providing level 100 or level 150 buoyancy (or more);
 - (ii) *Lifejackets—Type 1* AS 1512—1996, as in force on 1 January 2008;
 - (iii) appendix R of section 10 of the Code;
 - (iv) European Standard EN399-1993 *Lifejackets-275N*, as in force from time to time;
 - (v) European Standard EN396-1993 *Lifejackets-150N*, as in force from time to time;
 - (vi) European Standard EN395-1993 *Lifejackets-100N*, as in force from time to time;
 - (vii) ISO 12402-2, as in force from time to time;
 - (viii) ISO 12402-3, as in force from time to time;
 - (ix) ISO 12402-4, as in force from time to time;

- (x) in the case of a lifejacket intended for use—
 - (A) by adults—Canadian General Standards Board CAN/CGSB-65.11-M88, as in force from time to time;
 - (B) by children—Canadian General Standards Board CAN/CGSB-65.15-M88, as in force from time to time;
 - (xi) Underwriters Laboratories Standards UL1180 *Fully inflatable lifejackets*, as in force from time to time;
 - (xii) New Zealand Standard NZ5823:2001 Type 401, as in force from time to time;
 - (xiii) any other standard or specification approved by the CE by notice in the Gazette for the purposes of this paragraph; or
 - (b) a lifejacket that complies with the requirements of *Australian Maritime Safety Authority Marine Orders Part 25* related to the type of lifejackets required to be carried on Australian registered ships;
- (2) Regulation 3(1)—after the definition of *moor* insert:
- motorised canoe or kayak*** means a canoe or kayak fitted with an electric motor—
- (i) manufactured with a capacity of no more than 150 newtons; and
 - (ii) fitted and maintained to the manufacturer's specifications; and
 - (iii) containing a power source with a marine grade closed cell 12 volt battery;
- (3) Regulation 3(1)—after the definition of *owner* insert:
- paddle board*** includes a stand up paddle board;
- (4) Regulation 3(1), definitions of *PFD Type 1*, *PFD Type 2* and *PFD Type 3*—delete the definitions
- (5) Regulation 3(9)—delete subregulation (9) and substitute:
- (9) For the purposes of these regulations, a requirement to wear a lifejacket will be taken to include a requirement that the device be of an appropriate size and properly adjusted for the person who is wearing, or will be wearing the lifejacket.
- (6) Regulation 3(10)—delete "PFD Type 1, PFD Type 2 or PFD Type 3" first and second occurring and substitute:
- lifejacket
- (7) Regulation 3(10)—delete "personal flotation device" and substitute:
- lifejacket
- (8) Regulation 3(10)—delete "automatically on immersion"

- (9) Regulation 3(11)—delete "PFD Type 1, PFD Type 2 or PFD Type 3 or any other life-jacket or personal flotation device will, in the case of a device that is designed to inflate automatically on immersion, or to be inflated by the use of a gas cylinder that forms part of the device" and substitute:

lifejacket will, in the case of a lifejacket that is designed to inflate automatically on immersion, or to be inflated by the use of a gas cylinder that forms part of the lifejacket

- (10) Regulation 3(11)(a)—delete "device has been recharged" and substitute:

lifejacket has been serviced

- (11) Regulation 3(11)(b)—delete "recharged" and substitute:

serviced

- (12) Regulation 3—after subregulation (11) insert:

(11a) For the purposes of these regulations, a requirement that a vessel be equipped, for each person on the vessel, with a lifejacket will be taken to include a requirement that the device be of an appropriate size for the wearer and properly adjusted.

5—Variation of regulation 80—Exemptions from section 47 of Act

Regulation 80—after paragraph (c) insert:

- (d) a person who is of or above 16 years of age and who is operating a motorised canoe or kayak in protected or semi-protected waters.

6—Variation of regulation 113—Use of hire and drive vessels

Regulation 113(1)(f)(i)—delete "PFD Type 2 or PFD Type 3" and substitute:

lifejacket level 50 or lifejacket level 50S

7—Variation of regulation 128—Exemptions from requirement to be registered and marked

Regulation 128(1)—after paragraph (b) insert:

or

- (c) the vessel is a motorised canoe or kayak being operated in protected or semi-protected waters.

8—Variation of heading to Part 12 Division 4

Heading to Part 12 Division 4—delete "Personal flotation devices" and substitute:

Lifejackets

9—Substitution of regulation 169

Regulation 169—delete the regulation and substitute:

169—Lifejackets to be worn on certain recreational vessels

- (1) Each occupant of—
- (a) a vessel (other than a vessel with an engine, a surfboard, surf ski or rowing shell) that can only carry the operator and no other person; or
 - (b) a vessel that is not more than 4.8 m in length fitted with an engine; or
 - (c) a paddle board or surf ski that is being operated 400 m or more from the shore; or
 - (d) a surfboard, surf ski or similar vessel that is being operated in inland waters; or
 - (e) a sailboard or kiteboard; or
 - (f) a canoe or kayak (including a motorised canoe or kayak), rowboat or other similar small human-powered vessel; or
 - (g) a mono-hulled sailing dinghy or a similar small multi-hulled sailing vessel (being a dinghy or vessel that is not more than 6 m in length); or
 - (h) a personal watercraft; or
 - (i) a dragon boat,

must, at all times while the vessel is underway or at anchor, wear—

- (j) in the case of a vessel being operated in unprotected waters—
 - (i) if the vessel is a canoe or kayak (including a motorised canoe or kayak), rowboat or other similar small human-powered vessel—a lifejacket level 100 or above or lifejacket level 50; or
 - (ii) in any other case—a lifejacket level 100 or above; or
- (k) in the case of a vessel (other than a personal watercraft or rowboat) that is being operated in semi-protected waters—a lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S; or
- (l) in the case of a sailboard or kiteboard—
 - (i) being operated more than 400 m from the shore—a lifejacket level 100 or above; or
 - (ii) being operated not more than 400 m from the shore—a lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S; or

- (m) in the case of a personal watercraft—a lifejacket level 50 or lifejacket level 50S; or
- (n) in the case of a paddle board or surf ski being operated more than 400 m from the shore—a lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S; or
- (o) in the case of a dragon boat—
 - (i) that is being operated in unprotected waters—a lifejacket level 100 or above or lifejacket level 50; or
 - (ii) in any other case—a lifejacket level 50 or lifejacket level 50S; or
- (p) in any other case (other than a rowboat)—a lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S.

Maximum penalty: \$1 250.

Expiation fee: \$160.

Note—

A lifejacket must be of an appropriate size and properly adjusted for the person who is wearing or will be wearing the jacket—see regulation 3(9) and (10).

A lifejacket that is designed to inflate and that has been so inflated must be serviced in accordance with the manufacturer's instructions before being used again—see regulation 3(11).

- (2) In circumstances of heightened risk, each occupant in the open area of a vessel of not less than 4.8 m but not more than 12 m in length must, at all times while the vessel is underway or at anchor, wear—
 - (a) in the case of a vessel that is being operated in unprotected waters—a lifejacket level 100 or above; or
 - (b) in any other case—a lifejacket level 50 or lifejacket level 50S.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (3) If subregulation (1) or (2) is contravened by an occupant of a vessel other than the operator, the operator of the vessel is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (4) If each occupant of or under the age of 12 years—
 - (a) of a vessel that is not more than 4.8 m in length fitted with an engine; or
 - (b) in the open area of a vessel of not less than 4.8 m but not more than 12 m in length,

is not, at all times while the vessel is underway or at anchor, wearing—

- (c) in the case of a vessel that is being operated in protected waters—a lifejacket level 50; or
- (d) in any other case—a lifejacket level 100 or above,

the operator of the vessel is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (5) Subregulations (1) and (4) do not apply if the occupant of the vessel is being towed (in which case the requirements under regulation 177 apply).

- (6) The operator of a vessel of not less than 4.8 m but not more than 12 m in length, may, if it is reasonable to do so in the circumstances, direct an occupant who is in an open area of a vessel while the vessel is underway or at anchor to wear a lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S, and if an occupant fails to comply with the direction, the occupant is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (7) For the purposes of subregulation (2), a vessel will be taken to be in circumstances of heightened risk if—
 - (a) the vessel carries the operator and no other person; or
 - (b) the vessel is being operated between the hours of sunset and sunrise; or
 - (c) the vessel is crossing a bar; or
 - (d) the vessel is disabled so as to be incapable of making its way through water; or
 - (e) the vessel is operating in conditions of restricted visibility; or
 - (f) the vessel is operating in an area in relation to which a weather warning of any of the following kinds has been issued by the Bureau of Meteorology:
 - (i) gale warning;
 - (ii) storm force warning;
 - (iii) hurricane force wind warning;
 - (iv) severe thunderstorm warning;
 - (v) severe weather warning.

10—Variation of regulation 177—Obligations of person towed by vessel

Regulation 177(3)—delete "PFD Type 2 or PFD Type 3" and substitute:

lifejacket level 50 or lifejacket level 50S

11—Variation of Schedule 9—Structural equipment and marking requirements for vessels

- (1) Schedule 9, clause 6(1)—delete "PFD Type 1" wherever occurring and substitute in each case:
 - lifejacket level 100 or above
- (2) Schedule 9, clause 6(1)(a)(i)—delete "PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 50 or lifejacket level 50S
- (3) Schedule 9, clause 6(3)—delete "PFD Type 1" wherever occurring and substitute in each case:
 - lifejacket level 100 or above
- (4) Schedule 9, clause 6(3)(a)(i)—delete "PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 50 or lifejacket level 50S
- (5) Schedule 9, clause 7(1)—delete "rowing" and substitute:
 - rowing
- (6) Schedule 9, clause 7(2)—delete "canoe, kayak" and substitute:
 - canoe or kayak (including a motorised canoe or kayak)
- (7) Schedule 9, clause 7(2)(a)(i)—delete "PFD Type 1, PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S
- (8) Schedule 9, clause 7(2)(b)(i)—delete "PFD Type 1 or PFD Type 2" and substitute:
 - lifejacket level 100 or above or lifejacket level 50
- (9) Schedule 9, clause 7(2a)—delete "canoe, kayak" and substitute:
 - canoe or kayak (including a motorised canoe or kayak)
- (10) Schedule 9, clause 7(3)(a)—delete "PFD Type 1, PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S
- (11) Schedule 9, clause 7(4)—delete "PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 50 or lifejacket level 50S
- (12) Schedule 9, clause 7(5)(c)—delete "PFD Type 1" and substitute:
 - lifejacket level 100 or above
- (13) Schedule 9, clause 7(8)—after "subregulation" insert:
 - or a vessel fitted with an engine
- (14) Schedule 9, clause 7(8)—delete "PFD Type 1, PFD Type 2 or PFD Type 3" and substitute:
 - lifejacket level 100 or above, lifejacket level 50 or lifejacket level 50S

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 21 November 2017

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