

NORTHERN TERRITORY OF AUSTRALIA

MARINE (GENERAL) AMENDMENT REGULATIONS 2015

Subordinate Legislation No. 5 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 5 of 2015*

Marine (General) Amendment Regulations 2015

I, John Laurence Hardy, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Marine Act*.

Dated 23 April 2015

J. L. HARDY
Administrator

By His Honour's Command

J. W. ELFERINK
Attorney-General and Minister for Justice
acting for
Minister for Transport

* Notified in the *Northern Territory Government Gazette* on 1 May 2015.

Part 1 Preliminary matters

1 Citation

These Regulations may be cited as the *Marine (General) Amendment Regulations 2015*.

Part 2 Amendment of Marine (General) Regulations

2 Regulations amended

This Part amends the *Marine (General) Regulations*.

3 Regulation 3 amended

- (1) Regulation 3, definitions ***pleasure craft***, ***tender*** and ***water skier***
omit

- (2) Regulation 3
insert (in alphabetical order)

acting in an official capacity, in relation to a boating inspector, means the inspector is exercising powers or performing functions under, or otherwise related to the administration of, these Regulations.

infringement notice, see regulation 29.

infringement notice offence, see regulation 28(1).

prescribed amount, see regulation 28(2).

registered EPIRB, for Schedule 1, means an emergency position indicating radio beacon that:

- (a) operates on the 406MHz frequency; and
- (b) is registered with the Australian Maritime Safety Authority.

serviceable:

- (a) in relation to a pleasure craft – means the hull and all fittings of the pleasure craft are:
 - (i) in sound condition; and
 - (ii) ready for use at any time; and

- (b) in relation to an item of safety equipment – means:
- (i) in sound condition; and
 - (ii) ready and suitable for use at any time; and
 - (iii) if the item, or a component of the item (for example, a battery), has an expiry date – that date has not passed.

tender, to a pleasure craft (the **principal pleasure craft**), means a vessel that is smaller than the principal pleasure craft and which is used as an auxiliary to the principal pleasure craft for the following:

- (a) a means of transportation between the principal pleasure craft and the shore;
- (b) a means of transportation between vessels;
- (c) other functions of an auxiliary nature.

towed behind, in relation to a person and a pleasure craft:

- (a) means being towed behind the pleasure craft in any of the following, or similar, manners:
 - (i) on the surface of the water, such as waterskiing, wakeboarding or in or on an inflatable tube or toy;
 - (ii) near the surface of the water, such as foilboarding;
 - (iii) above the surface of the water, such as parasailing; but
- (b) except for regulation 7 – does not include being towed behind the pleasure craft on or beneath the surface of the water using a paravane device known variously as a manta board, planer board or sea sled.

- (3) Regulation 3, definitions **anchor cable** and **V distress sheet**

omit

the Schedule

insert

Schedule 1

4 Regulation 3A inserted

After regulation 3, in Part 1

insert

3A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against Part 2 of these Regulations.

Note for regulation 3A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

5 Regulation 4 amended

- (1) Regulation 4, definition **water skier**

omit

- (2) Regulation 4

insert (in alphabetical order)

inland waters means non-tidal rivers, lakes, dams and billabongs.

intermediate waters means tidal rivers, sheltered waters areas (as defined in regulation 2 of the *Marine (Sheltered Waters) Regulations*) and other coastal waters up to 2 nautical miles from the coastline at low water mark of the lowest astronomical tide.

open waters means waters seaward of intermediate waters.

- (3) Regulation 4, definition **personal flotation device**, paragraph (a)

omit

and

insert

or

- (4) Regulation 4, definition **personal flotation device**, paragraph (b)

omit, insert

(b) is approved by the Director.

6 Regulation 5 and Part 2, Division 2 replaced

Regulation 5 and Part 2, Division 2

repeal, insert

5 Minimum safety equipment requirements for pleasure craft

(1) A person commits an offence if:

- (a) the person is operating a pleasure craft in inland waters; and
- (b) an item of safety equipment specified in Schedule 1, Part A:
 - (i) is not carried aboard the pleasure craft; or
 - (ii) although carried aboard the pleasure craft – is not serviceable.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if:

- (a) the person is operating a pleasure craft in intermediate waters; and
- (b) an item of safety equipment specified in Schedule 1, Part B:
 - (i) is not carried aboard the pleasure craft; or
 - (ii) although carried aboard the pleasure craft – is not serviceable.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if:

- (a) the person is operating a pleasure craft in open waters; and
- (b) an item of safety equipment specified in Schedule 1, Part C:
 - (i) is not carried aboard the pleasure craft; or
 - (ii) although carried aboard the pleasure craft – is not serviceable.

Maximum penalty: 50 penalty units.

(4) An offence against any of subregulations (1) to (3) is an offence of strict liability.

- (5) The Minister may, by *Gazette* notice, exempt a person from compliance with this regulation in relation to:

- (a) a specified class or type of pleasure craft; or
- (b) a specified area of Northern Territory waters.

Note for subregulation (5)

Section 194(1)(b) of the Act sets out the circumstances in which Regulations may be made authorising exemptions from the provisions of the Regulations or the Uniform Shipping Laws Code.

5A Seaworthiness requirements

- (1) A pleasure craft operating in Northern Territory waters must:
- (a) be serviceable; and
 - (b) be seaworthy:
 - (i) for the purpose for which it is operated; and
 - (ii) for the waters in which it is operating; and
 - (c) not be overloaded; and
 - (d) be provided with a means, or carry equipment, that will enable a person who has fallen overboard from the pleasure craft to reboard it.
- (2) A person commits an offence if:
- (a) the person is operating a pleasure craft in Northern Territory waters; and
 - (b) the pleasure craft does not comply with subregulation (1).

Maximum penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

5B Exception for Beer Can Regatta and other approved events

Regulation 5A does not apply in relation to a pleasure craft:

- (a) that is entered into the event known as the Beer Can Regatta, or another approved event; and
- (b) while the craft is being prepared for, taking part in, or being removed from the sea as part of, the Regatta or event.

5C Exception for tenders and other vessels

- (1) The following types of vessels are not required to carry safety equipment as specified in Schedule 1:
- (a) a tender;
 - (b) a surf ski;
 - (c) a racing shell;
 - (d) a canoe;
 - (e) a kayak;
 - (f) a sailboard;
 - (g) a personal water craft;
 - (h) a sailing boat under 5 metres in length or with permanently closed hulls.

Note for subregulation (1)(a)

A vessel which is normally used as in an auxiliary role to a principal pleasure craft is taken not to be a tender during any time when it is not being used in an auxiliary role, and must carry, at those times, the appropriate safety equipment specified in Schedule 1 for the waters in which it is operating.

- (2) Also, a vessel of a type mentioned in subregulation (1) is not required to comply with regulation 5A(1)(d).
- (3) However, a tender must carry:
- (a) 2 oars fitted with rowlocks or 2 paddles; and
 - (b) one bailer fitted with a lanyard.
- (4) A person commits an offence if:
- (a) the person is operating a tender in Northern Territory waters; and
 - (b) the tender does not comply with subregulation (3).

Maximum penalty: 20 penalty units.

- (5) An offence against subregulation (4) is an offence of strict liability.

Division 2 Towed water sports and personal water craft**6 Towed water sports**

- (1) A person commits an offence if:
- (a) the person is being towed behind a pleasure craft; and
 - (b) the person is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person is operating a pleasure craft; and
 - (b) another person is being towed behind the pleasure craft; and
 - (c) the person being towed is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

7 Towed water sports – observer requirement

- (1) A person commits an offence if:
- (a) the person is being towed behind a pleasure craft; and
 - (b) there is not an observer in the pleasure craft with the operator.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person is operating a pleasure craft; and
 - (b) another person is being towed behind the pleasure craft; and
 - (c) there is not an observer in the pleasure craft with the operator.

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of absolute liability.

- (4) The owner of a pleasure craft commits an offence if:
- (a) another person is being towed behind the pleasure craft; and
 - (b) there is not an observer in the pleasure craft with the operator.

Maximum penalty: 20 penalty units.

- (5) An offence against subregulation (4) is an offence of strict liability.

- (6) In this regulation:

observer, in relation to a pleasure craft when a person is being towed behind the pleasure craft, means a person who is responsible for watching the towed person at all times and relaying the towed person's signals to the operator of the pleasure craft.

8 Personal water craft

- (1) A person commits an offence if:
- (a) the person operates a personal water craft; and
 - (b) the water craft is not fitted with an automatic engine cut-out that is connected to a safety lanyard.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a personal water craft; and
 - (b) the safety lanyard for the automatic engine cut-out is not securely attached to the person or the person's clothing.

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of absolute liability.

- (4) The owner of a personal water craft commits an offence if:
- (a) the owner knows the water craft is not fitted with an automatic engine cut-out that is connected to a safety lanyard; and
 - (b) the owner permits another person to operate the water craft.

Maximum penalty: 20 penalty units.

(5) A person commits an offence if:

- (a) the person operates a personal water craft; and
- (b) the person is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

(6) A person commits an offence if:

- (a) the person is a passenger on a personal water craft; and
- (b) the person is at least 16 years of age; and
- (c) the person is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

(7) A person commits an offence if:

- (a) the person operates a personal water craft; and
- (b) the person is at least 16 years of age; and
- (c) the personal water craft is carrying a passenger under the age of 16 years; and
- (d) the passenger is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

(8) An offence against any of subregulations (5) to (7) is an offence of strict liability.

(9) In this regulation:

automatic engine cut-out, in relation to a personal water craft, means a device designed to stop the motor of the personal water craft in the event that the person who is operating it falls off.

Division 2A Requirements for small sailing vessels**8A Personal flotation device requirements for small sailing vessels**

- (1) A person commits an offence if:
- (a) the person operates a sailing boat under 5 m in length or with permanently closed hulls; and
 - (b) the person is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person is a passenger or crew member on a sailing boat under 5 m in length or with permanently closed hulls; and
 - (b) the person is at least 16 years of age; and
 - (c) the person is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of absolute liability.

- (4) A person commits an offence if:
- (a) the person operates a sailing boat under 5 m in length or with permanently closed hulls; and
 - (b) the person is at least 16 years of age; and
 - (c) the sailing boat is carrying a passenger or crew member under the age of 16 years; and
 - (d) the passenger or crew member is not wearing a personal flotation device that is appropriate for the activity.

Maximum penalty: 20 penalty units.

- (5) An offence against subregulation (4) is an offence of strict liability.

- (6) In this regulation:

crew member means a person who assists the operator in sailing the boat.

7 Regulation 10 amended**(1) Regulation 10(1)***omit*

regulation 5

insert

Part 2, Division 1

(2) Regulation 10(2)*omit, insert*

- (2) For subregulation (1), a boating inspector may give a reasonable direction to the operator of a pleasure craft.

(2A) The operator of a pleasure craft commits an offence if:

- (a) a direction is given to the operator under subregulation (2);
and

- (b) the operator contravenes the direction.

Maximum penalty: 50 penalty units.

(2B) An offence against subregulation (2A) is an offence of strict liability.**(2C) It is a defence to a prosecution for an offence against subregulation (2A) if the defendant has a reasonable excuse.****8 Regulation 11 replaced**

Regulation 11

*repeal, insert***11 Obstruction of boating inspector****(1) A person commits an offence if:**

- (a) the person obstructs another person; and
- (b) the other person is a boating inspector; and
- (c) the person knows the boating inspector is acting in an official capacity.

Maximum penalty: 50 penalty units.

(2) Strict liability applies to subregulation (1)(b).

(3) In this regulation:

obstruct, includes hinder and resist.

9 Parts 5 and 6 inserted

After regulation 27

insert

Part 5 Infringement notice offences

28 Infringement notice offence and prescribed amount payable

- (1) An **infringement notice offence** is an offence against a provision specified in Schedule 2.
- (2) The **prescribed amount** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in Schedule 2.

29 When infringement notice may be given

If a boating inspector reasonably believes a person has committed an infringement notice offence, the boating inspector may give a notice (an **infringement notice**) to the person.

30 Contents of infringement notice

- (1) The infringement notice must specify the following:
 - (a) the name and address of the person, if known;
 - (b) the date the infringement notice is given to the person;
 - (c) the date, time and place of the infringement notice offence;
 - (d) a description of the offence;
 - (e) the prescribed amount payable for the offence;
 - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to which the prescribed amount is payable.

- (2) The infringement notice must include a statement to the effect of the following:
- (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
 - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;
 - (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:
 - (i) suspending the person's licence to drive;
 - (ii) seizing personal property of the person;
 - (iii) deducting an amount from the person's wages or salary;
 - (iv) registering a statutory charge on land owned by the person;
 - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

31 Payment by cheque

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

32 Withdrawal of infringement notice

- (1) The Director may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and

- (b) before payment of the prescribed amount.

33 Application of Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) Also, this Part does not:
 - (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Part 6 Transitional matters for *Marine (General) Amendment Regulations 2015*

34 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the *Marine (General) Amendment Regulations 2015*, apply only in relation to offences committed after the commencement of those Regulations (the **commencement**).
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed on or before the commencement.
- (3) For this regulation, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.
- (4) In this regulation:

offence provisions means the provisions of Part 2 of these Regulations that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

10 Schedule replaced

Schedule

*repeal, insert***Schedule 1 Minimum safety equipment requirements for pleasure craft**

regulation 5

Part A Inland waters

- 1 One personal flotation device, appropriate for the activity being undertaken, for each person on board.
- 2 One anchor and anchor cable of at least 50 m in length.
- 3 If the pleasure craft is less than 5 m in length – 2 oars fitted with rowlocks or 2 paddles, unless the vessel has 2 or more independent means of propulsion that are appropriate for the size of the vessel, the waters in which the vessel is operating, and the intended role of each means of propulsion.
- 4 One bailer fitted with a lanyard, or one bilge pump. If the pleasure craft has covered bilges, it must have a bilge pump. If the pleasure craft is 10 m or more in length, it must have a bilge pump of minimum capacity of 100 L per minute.
- 5 2 L of drinking water, in a leak-proof container, for each person on board.
- 6 One waterproof torch.

Part B Intermediate waters

- 1 One personal flotation device, appropriate for the activity being undertaken, for each person on board.
- 2 If the pleasure craft is less than 10 m in length – one anchor and anchor cable of at least 50 m in length. If the pleasure craft is 10 m or more in length – 2 anchors and anchor cables of at least 50 m in length.
- 3 If the pleasure craft is less than 5 m in length – 2 oars fitted with rowlocks or 2 paddles, unless the vessel has 2 or more independent means of propulsion that are appropriate for the size of the vessel, the waters in which the vessel is operating, and the intended role of each means of propulsion.

- 4 One bailer fitted with a lanyard, or one bilge pump. If the pleasure craft has covered bilges, it must have a bilge pump. If the pleasure craft is 10 m or more in length, it must have a bilge pump of minimum capacity of 100 L per minute.
- 5 2 L of drinking water, in a leak-proof container, for each person on board.
- 6 One waterproof torch.
- 7 2 red flares and 2 orange smoke flares.
- 8 One V distress sheet.
- 9 If the pleasure craft is 5 m or more in length – one portable fire extinguisher. If the pleasure craft is 10 m or more in length – 2 portable fire extinguishers.
- 10 If the pleasure craft is 10 m or more in length – 2 fire buckets of minimum capacity of 9 L and fitted with lanyards.

Part C Open waters

- 1 One personal flotation device, appropriate for the activity being undertaken, for each person on board.
- 2 One anchor and anchor cable of at least 50 m in length for vessels less than 10 m in length. 2 anchors and anchor cables of at least 50 m in length for vessels 10 m or more in length.
- 3 If the pleasure craft is less than 5 m in length – 2 oars fitted with rowlocks or 2 paddles, unless the vessel has 2 or more independent means of propulsion that are appropriate for the size of the vessel, the waters in which the vessel is operating, and the intended role of each means of propulsion.
- 4 One bailer fitted with a lanyard, or one bilge pump. If the pleasure craft has covered bilges, it must have a bilge pump. If the pleasure craft is 10 m or more in length, it must have a bilge pump of minimum capacity of 100 L per minute.
- 5 2 L of drinking water, in a leak-proof container, for each person on board.
- 6 One waterproof torch.
- 7 2 red flares and 2 orange smoke flares.
- 8 One V distress sheet.

-
- 9 One registered EPIRB.
 - 10 If the pleasure craft is 5 m or more in length – one portable fire extinguisher. If the pleasure craft is 10 m or more in length – 2 portable fire extinguishers.
 - 11 If the pleasure craft is 10 m or more in length – 2 fire buckets of minimum capacity of 9 L and fitted with lanyards.
 - 12 One liquid damped compass or operational GPS receiver.
 - 13 One paper chart or electronic chart system displaying the area of operation.
 - 14 If the pleasure craft is 10 m or more in length – one lifebuoy.

Schedule 2 Infringement notice offences and prescribed amounts

regulation 28

Provision	Prescribed amount in penalty units	
	for individual	for body corporate
<i>Marine (General) Regulations</i>		
regulations 5(1) to (3), 5A(2), 5C(4), 6(1) and (2), 7(1) and (2), 8(1) and (2) and (5) to (7), 8A(1), (2) and (4), 13, 14(1) to (4), 16(1) and (2) and 18	2	
regulations 7(4) and 8(4)	2	10

Part 3 Consequential amendment of Fines and Penalties (Recovery) Regulations

11 Regulations amended

This Part amends the *Fines and Penalties (Recovery) Regulations*.

12 Schedule 1 amended

Schedule 1, list of Regulations

insert (in alphabetical order)

Marine (General) Regulations

Part 4 Miscellaneous matters

13 Expiry of Regulations

These Regulations expire on the day after they commence.