



Victoria Government Gazette

No. S 237 Monday 28 November 2005

By Authority, Victorian Government Printer

Subordinate Legislation Act 1994

NOTICE OF DECISION

Proposed Marine (Personal Flotation Devices and Other Safety Equipment) Regulations 2005

I, Peter Batchelor, Minister for Transport, give notice under section 12 of the **Subordinate Legislation Act 1994**, as follows:

A regulatory impact statement (RIS) was prepared in respect of the proposed Marine (Personal Flotation Devices and Other Safety Equipment) Regulations 2005 and advertised for public comment in accordance with Part 2 of the **Subordinate Legislation Act 1994**.

A total of 354 submissions were received in response to the RIS, including 44 which were received after the closing date. Following consideration of all of these submissions, I have decided to recommend to the Governor in Council that the proposed Regulations be made, with the following amendments:

- The definition of “enclosed waters” has been amended to include the waters of Tamboon Inlet, Wingan Inlet and Sydenham Inlet following a submission from local police which correctly pointed out that these waters are clearly intended to fit into the enclosed waters category so that the appropriate safety equipment requirements apply in those waters. Previously, these waters fell within the definition of coastal waters meaning that additional restrictions would apply in respect of vessels in those waters.
- Following submissions and queries about how length is to be measured for the purposes of these Regulations, it was agreed that a definition of “length” should be included, based on the International Standard.
- The definition of “yacht” has been amended to address concerns raised in submissions regarding the clarity of the definition.
- A number of other minor amendments have been made to the definitions of “open area”, “underway”, “marine radio”, and “recreational tender” for the purposes of clarification or to address issues raised in submissions.
- Some submissions raised concerns about the impact of the Regulations whilst undertaking supervised training and racing events and the inability to provide for exemptions from the safety equipment requirements in these special circumstances. At present, under regulation 231 of the Marine Regulations 1999, the Director of Marine Safety is able to exempt certain persons or vessels from the requirements to carry safety equipment in certain circumstances. It was agreed that this regulation should be extended to enable such an exemption to apply to all the provisions regarding the carriage or wearing of safety equipment, but also to enable the Director to impose additional conditions relating to the safety of participants, such as the provision of rescue services.
- A number of submissions from divers raised concerns about how the new requirements to wear personal flotation devices (PFDs) would apply when a person is engaged in diving, preparing to dive or returning from diving. It was agreed that provision was needed to cover people in these circumstances. New provisions have therefore been included (regulations 232(3) and 232A(3)) to exempt from the requirement to wear a PFD, a person who is engaged in diving from a vessel if a dive flag is displayed on the vessel, or if a person on a vessel is donning or removing diving equipment and the vessel is displaying a dive flag and the vessel is not moving at a speed greater than 5 knots.
- The definition of “heightened risk” in regulation 232A(2) has been amended to address concerns raised about the meaning of certain weather warnings and to remove reference to when a yacht is operating under reefed sail.
- An unintended effect of the proposed inclusion of the definition of “recreational tender” and the proposed amendments to regulation 406 of the Marine Regulations 1999 was that vessels which are classed as commercial tenders and fall within the description in regulation 406(a) would no

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longer be exempt from registration fees. This regulation has been amended to address this issue.

- Several changes have been made to Schedule 4 in relation to the equipment, or number of items of equipment, that must be carried on certain vessels in certain waters. In particular, changes have been made to the number of orange smoke signals and red distress flares that are required to be carried by off the beach sailing yachts so that 2 will be required if the vessel is more than 2 nautical miles from coast. The requirements for bailers have also been amended to address concerns. Minor changes have been made to Table D in relation to the requirements for fire extinguishers, to clarify that they refer to the capacity of fuel that is able to be carried on the vessels, rather than what is carried.
- In Schedule 5, Table A, the PFD requirements for personal watercraft, kayaks, canoes, rowing boats, rafts, pedal boats and fun boats in coastal waters have been amended to include a PFD Type 3 as a suitable PFD for people on these vessels in coastal waters. The requirements for people on board off the beach sailing yachts have also been amended to include a PFD Type 2 in coastal waters if the vessel is no more than 2 nautical miles from the coast. Schedule 4 has also been amended to reflect these changes.

Dated 23 November 2005

PETER BATCHELOR MP
Minister for Transport

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