

## MARINE SAFETY REGULATION 2016

### EXEMPTION ORDER

#### Clause 140(1)

I, Alex Barrell, Acting Executive Director, Maritime, a delegate of Transport for NSW (TfNSW), pursuant to clause 140(1) of the Marine Safety Regulation 2016 (the Regulation), hereby **EXEMPT** the Organiser of a Sailing Event from the requirement to hold an aquatic licence under clause 97 of the Regulation. In addition, by this Order, the operator of any vessel participating in a Sailing Event is **EXEMPT** (subject to the limitation in General Condition 8 of this Order) from compliance with rule 12 of the International Regulations for Preventing Collisions at Sea ('COLREGS'—as adopted under clause 5(1) of the Regulation).

This Exemption Order is subject to the General Conditions set out in *Schedule 1*.

In addition, where a Sailing Event is to take place in a specified waterway, Area Specific Conditions are set out in *Schedule 2* of this Order

#### **Object**

The object of this Order is to reduce administrative burden of event organisers by enabling low risk aquatic activities to take place without an aquatic licence. Safety concerns are addressed by the requirement to comply with the General Conditions of the Order.

#### **Breach**

A breach of the General Conditions in Schedule 1 or the Area Specific Conditions in Schedule 2 renders this Exemption Order inoperative and the Organiser is required to comply with the marine legislation in full (including requirements relating to the holding of an aquatic licence).

#### **Definitions:**

In this Order:

***Adequate Safety Briefing*** means a verbal or written briefing given to participants prior to commencement of the Sailing Event. The Adequate Safety Briefing must include but is not limited to:

- details of the Operational Plan and Risk Assessment;
- planned shipping movements and the requirement to keep clear of Seagoing Ships and Ferries;
- any area specific requirements and applicable navigational safety warnings;

***Authorised Officer*** means an authorised officer under the *Marine Safety Act 1998*.

***Designated Liaison Officer*** means a person appointed by the Organiser to represent the Organiser in dealings with TfNSW and other authorities.

***Exclusive Use*** means the creation of exclusive use rights or an "exclusion zone" under the marine legislation.

***Ferry*** means a Ferry (as defined under the *Passenger Transport Act 2014*) operating in accordance with an approved timetable as published on [www.transportnsw.info](http://www.transportnsw.info).

***Injury*** means a fatality or any injury that requires first aid, and is apparently caused by the operation of a vessel and/or the actions of crew.

**Operational Plan** means a document detailing the planning, management and emergency response functions for the duration of the Sailing Event. An Operational Plan template is available on the TfNSW website.

**Organiser** means a natural person or legal entity responsible for the planning & management of the Sailing Event and the overall conduct of participants in the Sailing Event.

**PANSW** means the Port Authority of NSW

**Relevant Authorities** means any authority with responsibilities or functions in the area in which the Sailing Event is taking place and includes but is not limited to Australian Defence Forces, Police, Marine Estate Management Authorities, Port Authorities and Local Government Authorities.

**Risk Assessment** means a document detailing potential risks to any person, property or the environment arising from the Sailing Event. The Risk Assessment must provide appropriate mitigations and controls to address the risks identified. An example of a format used to capture identified risks, mitigations and controls-is available on the TfNSW website.

**Sailing Event** means an organised aquatic activity the subject of this Order, involving sailing vessels (primarily propelled by wind) **including** sailboards or kiteboards, **and** where a notification has been sent to TfNSW under General Condition 9 of this Order **and** for which TfNSW has not subsequently advised that the Order should not apply. The Sailing Event includes the event itself but also includes any associated preparation, training and finalisation activities that take place immediately before and after the event.

**Seagoing Ship** means a vessel of more than 45.72 metres in length that is used or intended to be used to carry cargo or passengers for hire or reward and that normally operates on voyages between ports.

**Significant Damage** means any damage to a vessel from an incident requiring repairs costing the lesser of \$5000 or 10% of the purchase cost of the vessel.

**Written Warning** means a warning in writing which is given to the participants of the Sailing Event and describes the safety risks identified by the Risk Assessment. The written warning must clearly advise all participants whether or not their participation in the Sailing Event is covered by a policy of insurance taken out by the Organiser with respect to any injury or loss, and should advise participants to consider obtaining any further insurance cover. (note: the Written Warning may be incorporated on an application form, entry form or notice of race completed by the participant).

## **Effect**

This Order revokes and replaces the Exemption Order (for Organisers of Sailing Events) published on 28 July 2017 in the New South Wales Government Gazette No. 83 at pages 4233-4238.

**Publication**

Pursuant to clause 140(3)(b) of the Regulation, this Order is published in the NSW Government Gazette.

This Order takes effect on publication and will continue in force until revoked.

This Order may be revoked at any time by TfNSW.

Date: March 2020

ALEX BARRELL

Delegate

## SCHEDULE 1

### GENERAL CONDITIONS

1. The Organiser must at all times ensure compliance with all applicable provisions of the marine and environmental legislation (other than provisions from which this Order grants an exemption).
2. The Sailing Event must not be of a nature which requires the Exclusive Use of a waterway (or part thereof). Should Exclusive Use of the waterway be required (as determined by TfNSW), this Order ceases to apply and the Organiser must obtain an aquatic licence.
3. The Sailing Event must not cause an unreasonable impact on the normal use of navigable waters.
4. The Organiser must prepare an Operational Plan and Risk Assessment. The Organiser must review and update the Operational Plan and Risk Assessment at least once every 12 months. Evidence of such documentation must be produced to an Authorised Officer on request.
5. The Organiser must ensure that a Written Warning is provided to all participants prior to allowing participants to take part in the Sailing Event.
6. The Organiser must ensure that an Adequate Safety Briefing is provided to all participants prior to allowing participants to take part in the Sailing Event.
7. The Sailing Event must be conducted under World Sailing Racing Rules or Australian Sailing Annexes to World Sailing Racing Rules. If the Sailing Event is conducted under any other set of sailing racing rules, the rules must be approved in writing by TfNSW prior to the commencement of the Sailing Event.
8. Participant vessel operators are exempt from rule 12 of the COLREGS relating to the “give way” rules applicable to sailing vessels, but only insofar as between vessels taking part in the Sailing Event. The exemption from rule 12 **does not apply** if there is a risk of collision between a participant in the Sailing Event and a passing non-participant vessel.
9. The Organiser must notify TfNSW a minimum of 6 weeks prior to the commencement of the proposed Sailing Event by completion of the notification form available on the TfNSW website, unless an alternate notification period has been approved by TfNSW.
10. The Organiser must ensure that the Sailing Event is conducted in accordance with the notification form as originally provided to TfNSW.
11. The Organiser must make enquiries to identify all Relevant Authorities affected by the Sailing Event and must provide a copy of the notification form to the Relevant Authorities a minimum of 6 weeks prior to the event unless an alternate notification period has been approved by TfNSW. Evidence of such notification must be produced to an Authorised Officer on request. The Organiser must comply with any additional conditions required by the Relevant Authorities.
12. The Organiser must make enquiries to identify all stakeholders impacted by the Sailing Event and must provide impacted stakeholders a copy of the notification form a minimum of 6 weeks prior to the event unless an alternate notification period has been approved by TfNSW. Organisers must ensure that any concerns raised by impacted stakeholders are resolved prior

to the commencement of a Sailing Event. Evidence of any such notification must be produced to an Authorised Officer on request.

13. The Organiser must ensure that the written permission of the owner/occupier of any land (including Local Government Authorities) which is intended to be used as a departure or arrival point has been obtained. Evidence of any such permission must be produced to an Authorised Officer on request.
14. The Organiser or the Designated Liaison Officer must comply with any direction given by an Authorised Officer involving the navigation of any vessel, the temporary or complete cessation of any event activity or the provision of safety control measures.
15. The Organiser must ensure that no navigation piles or buoys are used as rounding marks during the Sailing Event.
16. The Organiser must ensure that no temporary buoys or marks are laid in channels or fairways except with written approval of TfNSW.
17. The Organiser must ensure that any temporary buoys or marks are not laid before sunrise on the day of the Sailing Event and are removed from navigable waters before sunset on the day of the event, except with written approval of TfNSW.
18. The Organiser must ensure that all temporary buoys or marks display club identification marks, club pennant or other identifying club insignia.
19. The Organiser must ensure that Sailing Event participants do not navigate between moorings during the Sailing Event except when transiting to and from the location of the event.
20. The Organiser must ensure that Sailing Event participants maintain a minimum distance of 1 cable (185.2 metres) from all islands, headlands and charted hazards when operating in open waters during the Sailing Event.
21. The Organiser must ensure that Sailing Event participants maintain a minimum distance of 500 metres from the bow and 30 metres from the side or stern of any Seagoing Ship underway.
22. The Organiser must report any incident involving an Injury or Significant Damage to TfNSW within 24 hours of occurrence using the sailing event incident report form available on the Transport for NSW (roads and maritime) website. The Organiser must then report, in writing, the findings of an inquiry into the incident within 28 days of the incident. The Organiser must retain a copy of the written report for a minimum of six months and must produce the report to an Authorised Officer on request.
23. The Organiser expressly and unreservedly indemnifies TfNSW from all liability associated with the Sailing Event and releases TfNSW from any actions or proceedings of any nature that may be instituted in relation to the Sailing Event. Availing of the exemptions and conducting an activity under this Order constitutes irrevocable acceptance of this condition.

## SCHEDULE 2

### AREA SPECIFIC CONDITIONS

#### 1. EDEN

- a. The Organiser must ensure that the Sailing Event is not conducted within a 600 metres radius of the Navy Wharf.
- b. The Organiser must ensure that Sailing Event is not conducted within a 100 metre radius of the woodchip berth.

#### 2. COFFS HARBOUR

- a. The Organiser must ensure that the Sailing Event is not conducted within a 60 metre radius of the Coffs Harbour boat ramp entrance.
- b. The Organiser must ensure that the Sailing Event is not conducted within a 60 metre radius of the Coffs Harbour marina entrance.
- c. The Organiser must ensure that the Sailing Event is not conducted within 100 metres of the northern and southern perimeters of the harbour if conducted east of the Coffs Harbour jetty structure.
- d. The Organiser must ensure that the Sailing Event does not close the Coffs Harbour outer harbour or obstruct vessels entering or leaving the outer harbour.

#### 3. NEWCASTLE

- a. The Organiser must ensure that no turning marks for the Sailing Event are placed within the restricted area east of Nobbys Head without prior written approval from the Harbour Master for the Port of Newcastle.
- b. The Organiser must ensure that Sailing Event participants do not anchor in the restricted area east of Nobbys Head.

Note: The restricted area east of Nobbys Head is the area contained within a three nautical mile radius of Nobbys Head as depicted on Hydrographic Charts AUS 207 and AUS 208.

#### 4. PORT KEMBLA

- a. The Organiser must ensure that Sailing Event participants maintain a minimum distance of 500 metres from the bow and 50 metres from the side or stern of any Seagoing Ship underway.
- b. The Organiser of any Sailing Event taking place within the port limits of Port Kembla must contact PANSW Port Kembla Vessel Traffic Information Centre (VTIC) and advise:
  - i. When the first vessel in the fleet reaches abeam of the Bellambi Reef on course south to Flinders Islet and the estimated time of rounding of Flinders Islet.
  - ii. While the fleet remains within the Bellambi Reef to Flinders Islet precinct, the location of the fleet at intervals not less than one hour.
  - iii. As the last vessel heads north and reaches abeam of Bellambi Reef.
- c. The Organiser must ensure that Sailing Event participants rounding Flinders Islet do so with the Islet to the vessel's port side.
- d. The Organiser must ensure that Sailing Event participants do not make any passage between Martin Island and Big Island.

Note: The PANSW Port Kembla VTIC can be contacted 24 hours on: (02) 4274 4571 or on VHF Channel 11.

5. SYDNEY HARBOUR AND BOTANY BAY

- a. The Organiser must ensure that Sailing Event participants do not pass between the bow of any Seagoing Ship and a dedicated PANSW escort vessel whilst on escort duty and within the distance prescribed under general condition 21.
- b. The Organiser must ensure that Sailing Event participants maintain a minimum distance of 200m from the bow, and 30m from the sides or stern of any Ferry underway.
- c. The Organiser must ensure that Sailing Event participants navigating in the vicinity of the safe water mark, 350 metres southeast of Bradleys Head, pass to the north of the buoy when proceeding westward, and must pass to the south of the buoy when proceeding eastward, or if that is not practicable participants must maintain a safe distance from other vessels.

Note: Organisers can find the planned shipping movements on the [Daily Vessel Movements](#) page of the PANSW — Sydney Harbour website or listen to PANSW Vessel Traffic Service (VTS) on VHF channel 13 in Sydney Harbour at five minutes past each odd hour and VHF Channel 12 in Botany Bay each even hour for shipping and navigational safety broadcast information.

6. YAMBA

- a. The Organiser of any Sailing Event taking place within the limits of the Port of Yamba must comply with the [Harbour Masters Directions](#) available on the PANSW — Port of Yamba website.