

RECREATIONAL SERVICES

(LIMITATION OF LIABILITY) ACT 2002

Safety Code for swimming with dolphins in  
their natural environment

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# RECREATIONAL SERVICES (LIMITATION OF LIABILITY) ACT 2002

Safety Code for swimming with dolphins in their natural environment

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# Agreed terms

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## 1. **Defined terms & interpretation**

### 1.1 **Defined terms**

In this Code:

**Act** means the *Recreational Services (Limitation of Liability) Act 2002 (SA)*.

**Activity** means the dolphin swim activity described in paragraph 2(a) of this Code.

**Code** means this code.

**Consumer** has the same meaning as it does in the Act.

**Crew Member** means a member of the crew of a Dolphin Swim Vessel.

**Distress Frequency** means any of the following:

- (a) the HF frequency bands within the 4 MHz, 6 MHz and 8 MHz range (monitored by the Royal Flying Doctor Service);
- (b) on the HF frequencies 4125 kHz, 6215 kHz and 8291 kHz (HF distress frequencies specified by Transport SA);
- (c) on VHF Channel 16; or
- (d) some other appropriate frequency.

**Dive Flag** means a blue and white flag used by divers that indicates to other vessels that people are currently in the water and that other vessels must keep a distance of at least 30 metres from the vessel displaying the flag.

**Dolphin Swim Provider** means any person who provides, or assists in providing the Activity to the public and includes their respective officers, employees, agents and contractors.

**Dolphin Swim Vessel** means a vessel used by a Dolphin Swim Provider for the purposes of the Activity.

**Flotation Device** means either a:

- (e) full-length wetsuit of minimum 5 millimetre thickness; or
- (f) a personal flotation device that complies with AS1499, 1512 or 2260.

**Harbors Act** means the *Harbors and Navigation Act 1993 (SA)*. Note any changes to the Harbors Act will apply to this Code.

**Harbors Regulations** means the *Harbors and Navigation Regulations 1994 (SA)*. Note any changes to the Harbors Act will apply to this Code.

**Regulations** means the *Recreational Services (Limitation of Liability) Regulations 2003 (SA)*.

## 1.1 Defined terms (cont)

**Swimmer** means a Consumer who takes part in the Activity but does not include a Crew Member.

**USL Code** means the *Uniform Shipping Laws Code* that applies in South Australia and which provides standards for the design, construction and operation of domestic commercial vessels, including vessels used for tourist and charter activities. Note any changes to the USL Code will apply to this Code.

## 1.2 Interpretation

In this Code, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a paragraph is to a paragraph of this Code;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (f) headings are for ease of reference only and do not affect interpretation.

## 2. Description of recreational activity and of recreational services

- (a) This Code relates to the recreational activity of 'swimming with dolphins' which consists of Consumers entering the water to observe and interact with dolphins in their natural environment. In particular, the code relates to the activities actually conducted in the water rather than to the time spent by Swimmers on the Dolphin Swim Vessel in making their way to or from the site at which the dolphin swim activity is conducted.
- (b) Similarly, this Code relates to recreational services that consist of the provision of the recreational activity described in paragraph (a).

## 3. Measures to ensure a reasonable level of protection to consumers

### 3.1 Compliance with relevant codes and legislation

- (a) Dolphin Swim Vessels must comply in all respects with the standards prescribed by the USL Code, the Harbors Act and the Harbors Regulations.
- (b) Dolphin Swim Providers must ensure that Dolphin Swim Vessels are operated in accordance with the USL Code, the Harbors Act and the Harbors Regulations.
- (c) Dolphin Swim Providers must abide by the *National Parks and Wildlife (Whales and Dolphins) Regulations 2000*; and

- (d) Dolphin Swim Providers must have a current licence to provide the Activity as issued by the Department of Environment and Heritage and must abide by the conditions of that licence.

Note: any changes to the above mentioned Code, Act or Regulations applies to this Code.

### **3.2 Occupational health and safety inspection**

Dolphin Swim Providers must use only Dolphin Swim Vessels that have been inspected and certified as complying with all relevant standards by an occupational health and safety officer or by an occupational health and safety consultant within the previous 3 years.

### **3.3 Miscellaneous requirements**

- (a) The pilot of the Dolphin Swim Vessel must hold a current licence to operate the Dolphin Swim Vessel in South Australian Waters.
- (b) The Activity must not be conducted more than 2 nautical miles from shore.
- (c) The Activity must not be conducted in seas more than one metre.
- (d) Crew Members must use their reasonable efforts to ensure that Swimmers are not more than 20 metres from the Dolphin Swim Vessel.
- (e) On each occasion that the Dolphin Swim Vessel is used for the Activity, at least one Crew Member must have Senior First Aid training.
- (f) While Swimmers are in the water, a Dive Flag must be displayed.
- (g) Each Swimmer must be provided with a Flotation Device and must not be allowed to enter the water unless they are wearing a Flotation Device.
- (h) The Dolphin Swim Vessel must carry adequate sunscreen and must make that sunscreen available for use by Swimmers.

### **3.4 Safety Brief**

- (a) A Crew Member must provide the Swimmers with a safety brief for the Activity:
  - (i) in the form of a presentation; and
  - (ii) before any Swimmer is allowed to enter the water

**(Safety Brief).**
- (b) The Safety Brief must include the following instructions to Swimmers:
  - (i) children must be supervised by a responsible adult at all times;
  - (ii) Swimmers must not enter the water unless they are wearing a Flotation Device;
  - (iii) how to put on and to wear the Flotation Device;
  - (iv) Swimmers must not be more than 20 metres from the Dolphin Swim Vessel at any time;
  - (v) how to indicate to Crew Members and to others that the Swimmer is currently in some kind of trouble or distress (for example, to lift up and hold up one arm with a clenched fist);
  - (vi) if the Dolphin Swim Provider offers, as part of the Activity, the opportunity to use snorkelling equipment and one or more Swimmers has indicated an

intention to use that snorkelling equipment then those Swimmer(s) must be shown how to use and fit that snorkelling equipment;

- (vii) Swimmers must not try to touch the dolphins;
  - (viii) Swimmers must not feed or try to feed the dolphins;
  - (ix) Swimmers must slide into the water from the edge of the Dolphin Swim Vessel and must not jump into the water;
  - (x) Swimmers must not go past red and white marks on side of the Dolphin Swim Vessel as determined by the Dolphin Swim Provider in accordance with paragraph 3.6;
  - (xi) if a Swimmer sees a shark then they must try not to panic and must, as soon as possible:
    - (A) instruct others that they must immediately but calmly get back on board the Dolphin Swim Vessel;
    - (B) calmly get back on board the Dolphin Swim Vessel; and
    - (C) bring the presence of the shark to the attention of a Crew Member;
  - (xii) Swimmers must wear sunscreen, whether their own or that carried on the Dolphin Swim Vessel, at all times; and
  - (xiii) must comply with the instructions of Crew Members at all times.
- (c) The Safety Brief must also be displayed on the Vessel in written form at all times that the Activity is being conducted.
- (d) Foreign Language – when dealing with a group of 10 or more non English speaking passengers, an interpreter will be sought, if this is not possible, picture cards will be given to that person or group outlining the safety brief.

### **3.5 Swimmers must keep appropriate distance**

In respect of each Dolphin Swim Vessel in use by the Dolphin Swim Provider, the Dolphin Swim Provider must make an evaluation of:

- (a) those parts or areas of the Dolphin Swim Vessel that Swimmers should be made to keep away from; and
- (b) the appropriate distances that should be kept from those parts or areas should be marked with a red and white striped line.

### **3.6 Swimmers in distress**

A Crew Member must monitor swimmers for any signs of distress. If, during the course of the Activity, a Crew Member is made aware or otherwise becomes aware that a Swimmer is in distress or is experiencing difficulties, the Crew Member must take steps to assist the Swimmer to make their way back to and onto the Dolphin Swim Vessel.

### **3.7 If an injury is sustained**

- (a) If, during the course of the Activity a Swimmer is injured and a Crew Member is made aware or becomes aware of that injury the Crew Member must:
  - (i) if the Crew Member has not had first aid training, bring those injuries to the attention of a Crew Member who has had first aid training; or

- (ii) if the Crew Member has had first aid training, take the steps prescribed by paragraph 4.8(b) below.
- (b) Subject to paragraph 4.8(c), if a Crew Member who has had first aid training becomes aware of an injury in accordance with paragraph 4.8(a) then he or she must evaluate the injury to determine whether or not, in the opinion of the Crew Member, the injury poses a serious and imminent threat to the injured Swimmer's life or health and:
  - (i) where, in the opinion of the Crew Member, there is an immediate threat to the injured Swimmer's life or health, the Crew Member must:
    - (A) take steps that are, in the opinion of the Crew Member necessary to minimise the injury;
    - (B) make a distress call on a Distress Frequency (**Distress Call**) and where a response is obtained to a Distress Call, describe the injuries, seek directions on the appropriate action to take and follow such directions;
    - (C) if there are Swimmers in the water, direct those Swimmers to get out of the water and onto the Dolphin Swim Vessel and provide assistance if necessary; and
    - (D) once all Swimmers are on board the Dolphin Swim Vessel, ensure that the Dolphin Swim Vessel is piloted back to shore unless a Crew Member has received a contrary direction from a person who has responded to a Distress Call; or
  - (ii) where, in the opinion of the Crew Member, the injury does not pose an immediate threat to the injured Swimmer's life or health, the Crew Member must take steps that are, in the opinion of the Crew Member necessary to minimise the injury and any further injury. Those steps may include returning to shore, directing the injured Swimmer not to continue their participation in the Activity, or those steps prescribed by paragraph 4.8(b)(i).
- (c) For the avoidance of doubt, if more than one Crew Member who has had first aid training becomes aware of an injury in accordance with paragraph 3.8(a), then it will be sufficient for only one Crew Member must take the steps prescribed by paragraph 4.8(b).

### **3.8 Presence of sharks**

If any Crew Member:

- (a) sees a shark;
- (b) becomes aware that a shark is, in the opinion of the Crew Member, within a distance that poses a threat to the Swimmers; or
- (c) if a Swimmer brings to the attention of a Crew Member that they can see or have just seen a shark,

then the Crew Member must as soon as is reasonably possible:

- (d) direct Swimmers to immediately make their way towards the Dolphin Swim Vessel, get out of the water and onto the Dolphin Swim Vessel;
- (e) bring to the attention of all other Crew Members the presence of the shark;

- (f) provide Swimmers with assistance in making their way towards the Dolphin Swim Vessel, out of the water and onto the Dolphin Swim Vessel; and
- (g) once all Swimmers are on board the Dolphin Swim Vessel, pilot the Dolphin Swim Vessel back to shore.

## Details

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Applicant

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