

Queensland



**TRANSPORT OPERATIONS  
(MARINE SAFETY)  
AMENDMENT ACT 1996**

**Act No. 63 of 1996**



# Queensland



## TRANSPORT OPERATIONS (MARINE SAFETY) AMENDMENT ACT 1996

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**Transport Operations (Marine Safety)  
Amendment Act 1996**

**Act No. 63 of 1996**

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**An Act to amend the *Transport Operations (Marine Safety) Act 1994***

*[Assented to 9 December 1996]*

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**The Parliament of Queensland enacts—**

**Short title**

1. This Act may be cited as the *Transport Operations (Marine Safety) Amendment Act 1996*.

**Commencement**

2.(1) Sections 12 and 13 commence on a day to be fixed by proclamation.

(2) Sections 19 and 20 are taken to have commenced on 3 June 1994.

**Act amended**

3. This Act amends the *Transport Operations (Marine Safety) Act 1994*.

**Amendment of s 3 (Objectives of this Act)**

4. Section 3(5), ‘Maritime Industry Consultative Council’—

*omit, insert—*

‘Marine Board’.

**Insertion of new s 18A**

5. Part 1, after section 18—

*insert—*

**‘Exempting of person or ship from regulatory provision**

‘18A.(1) The chief executive may exempt a person or ship from a provision of a regulation or a speed limit fixed under section 206A (a “regulatory provision”).

‘(2) The chief executive must consider all relevant matters in deciding whether or not to give an exemption, including, for example, the

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following—

- (a) whether the regulatory provision has been substantially complied with;
- (b) whether compliance with the regulatory provision is unnecessary in the particular circumstances;
- (c) whether the action taken or proposed to be taken for the matter that is the subject of the exemption is as effective as, or more effective than, compliance with the regulatory provision.

‘(3) However, the chief executive may give an exemption only if the chief executive is satisfied giving it will not adversely affect marine safety or the effectiveness and efficiency of the Queensland maritime industry.

‘(4) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

‘(5) The chief executive must, as soon as is practicable after giving an exemption, give notice of it in the gazette.

‘(6) The notice must state the following —

- (a) the person or ship the exemption is given for;
- (b) the regulatory provision from which the exemption is given;
- (c) any conditions on which the exemption is given;
- (d) any other details the chief executive considers relevant.

‘(7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to an exemption as if it were a regulation.

‘(8) A regulation may regulate the giving of an exemption.’.

### **Amendment of s 31 (What is a standard)**

**6.** Section 31(5), ‘Maritime Industry Consultative Council’—  
*omit, insert—*

‘Marine Board.’.

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**Amendment of s 42 (Relationship between regulatory provisions and general safety obligations about the condition of ships)**

7. Section 42(3), from ‘unless’—

*omit, insert—*

‘unless the court is satisfied that—

- (a) it was reasonable for the person to rely on either of the following to satisfy compliance with the general safety provision—
  - (i) a certificate of survey or a certificate of compliance issued by someone other than the person that was in force for the ship and covered the safety issue (completely or partly);
  - (ii) an approval of the design of the ship or part given by the chief executive under part 5, division 5; or
- (b) the general safety provision was complied with, despite noncompliance with the regulatory provision.’.

**Amendment of s 47 (Notice of proposal to prepare draft standard)**

8. Section 47(5), ‘Maritime Industry Consultative Council’—

*omit, insert—*

‘Marine Board’.

**Amendment of s 48 (Preparation of draft standard)**

9. Section 48(1), ‘Maritime Industry Consultative Council’—

*omit, insert—*

‘Marine Board’.

**Amendment of s 49 (Notice of draft standard)**

10. Section 49(4), ‘Maritime Industry Consultative Council’—

*omit, insert—*

‘Marine Board’.



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**Amendment of s 50 (Making of standard)**

**11.(1)** Section 50(1)(a), ‘Maritime Industry Consultative Council’—  
*omit, insert—*

‘Marine Board’.

**(2)** Section 50(2), ‘Maritime Industry Consultative Council’—  
*omit, insert—*

‘Marine Board’.

**Amendment of s 67 (Restriction on building of ships)**

**12.(1)** Section 67(1)(a)—  
*omit, insert—*

‘(a) either—

- (i) a certificate of compliance for the design of the ship or part has been issued by a ship designer who is accredited to issue the certificate; or
- (ii) the chief executive has approved the design of the ship or part; and’.

**(2)** Section 67(2)(a)—  
*omit, insert—*

‘(a) either—

- (i) a certificate of compliance for the design of the ship or part has been issued by a ship designer who is accredited to issue the certificate; or
- (ii) the chief executive has approved the design of the ship or part; and’.

**Insertion of new pt 5, div 5**

**13.** After part 5, division 4—  
*insert—*

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***Division 5—Other provisions about ship design and survey***

**‘Chief executive may approve ship design**

**‘70A.(1)** The chief executive may approve the design of a ship or a part of a ship.

**‘(2)** However, the chief executive must not approve a design for a ship or part unless the chief executive is satisfied—

- (a) the design meets the requirements of any standard about ship design made under part 4, division 2 and applying to the ship; and
- (b) the ship or part is designed to be seaworthy under the conditions under which it is to be used.

**‘Statements in certificate of survey**

**‘70B.(1)** The chief executive may, in a certificate of survey for a ship, make a statement about the design or survey of the ship the chief executive considers appropriate.

*Example—*

The chief executive may make a statement in the certificate about how the design or survey of the ship conforms to a standard about designing or surveying ships.

**‘(2)** Subsection (1) applies despite any statement in a certificate of compliance for the design or survey of the ship.

**‘Protection from liability**

**‘70C.(1)** An officer of the department is not civilly liable for an act or omission done honestly and without negligence under this division.

**‘(2)** If subsection (1) prevents a civil liability attaching to a person, the liability instead attaches to the State.’.

## **Replacement of pt 10 (Maritime Industry Consultative Council)**

**14.** Part 10—

*omit, insert—*

### **‘PART 10—MARINE BOARD**

#### *‘Division 1—The board*

##### **‘Establishment of board**

**‘108.** The Marine Board is established.

##### **‘Functions of board**

**‘109.(1)** The function of the board is to give information and advice to the Minister about—

- (a) marine safety issues; and
- (b) the referral of marine incidents to a board of inquiry.

**‘(2)** Also, the board may consider and give the chief executive advice on—

- (a) proposals to prepare draft standards; and
- (b) draft standards; and
- (c) marine safety issues including, for example, exemptions under section 18A.

**‘(3)** The board may give advice on its own initiative or if asked by the Minister or chief executive.

##### **‘Composition**

**‘110.(1)** The board consists of not more than 5 persons the Minister appoints as board members.

**‘(2)** The Minister must appoint a board member as its chairperson.

## *Division 2—Meetings of board*

### **‘Time and place of meetings**

‘111.(1) Board meetings are to be held at the times and places the board decides.

‘(2) However, the chairperson may call a meeting at any time.

‘(3) The Minister may also call a board meeting.

### **‘Presiding at meetings**

‘112.(1) The chairperson is to preside at all board meetings at which the chairperson is present.

‘(2) If the chairperson is absent, the member chosen by the members present is to preside.

### **‘Quorum**

‘113. The number that is a majority of the number of persons appointed as board members form a quorum at a meeting.

### **‘Conduct of meetings**

‘114.(1) The board may conduct its meetings as it considers appropriate.

‘(2) The board may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication.

‘(3) A member who takes part in a board meeting under a permission under subsection (2) is taken to be present at the meeting.

### **‘Disclosure of interests**

‘115.(1) This section applies if—

- (a) a member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and

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(b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

'(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.

'(3) The disclosure must be recorded in the board's minutes.

'(4) In giving information or advice to the Minister about the issue, the board must inform the Minister of the disclosure.

### *'Division 3—Provisions about members*

#### **'Duration of appointment**

'116. A member is to be appointed for a term of not longer than 2 years.

#### **'Terms of appointment**

'117.(1) A member is entitled to be paid the allowances that may be decided by the Minister.

'(2) A member holds office on the terms not provided by this Act that may be decided by the Minister.

#### **'Resignation**

'118. A member may resign by giving a signed notice of resignation to the Minister.

#### **'Termination of appointment**

'119. The Minister may end a member's appointment by giving a signed notice of termination to the member.

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***Division 4—Miscellaneous***

**‘Administrative support**

‘**120.** The chief executive must give the board the administrative support necessary to allow it to perform its functions.

**‘Annual report on operations of board**

‘**121.** The department’s annual report for a financial year must include a report on the board’s operations during the year.’.

**Amendment of s 127 (Regular reports of marine incidents to Minister)**

**15.(1)** Section 127(1), from ‘period of’ to ‘31 December’—

*omit, insert—*

‘calendar year’.

**(2)** Section 127(1), ‘within the period’—

*omit, insert—*

‘within the year’.

**(3)** Section 127(3), ‘2 months after the period’—

*omit, insert—*

‘4 months after the year’.

**Amendment of s 172 (Shipping inspector may direct ship is surveyed and order repairs)**

**16.** Section 172(3), from ‘written direction,’—

*omit, insert—*

‘written direction, order the master—

- (a) not to operate the ship until specified works are carried out to the ship or the ship is provided with specified equipment; or

- 
- (b) to operate the ship only under specified conditions that the shipping inspector considers appropriate for its safe operation.’.

### **Amendment of s 203 (Appeals)**

- 17.** Section 203(3)(b), ‘Maritime Industry Consultative Council’—  
*omit, insert—*  
‘Marine Board’.

### **Insertion of new s 206A**

- 18.** Part 17, after section 206—  
*insert—*

#### **‘Chief executive’s power to fix speed limits for ships**

‘**206A.(1)** The chief executive may fix speed limits for ships by gazette notice.

‘(2) The gazette notice is subordinate legislation.

‘(3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty—200 penalty units.

‘(4) The chief executive may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a “**speed sign**”) stating the speed limit for the waters.

‘(5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.

‘(6) This section does not prevent a regulation making provision about speed limits.

‘(7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.’.

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**Amendment of s 224 (Existing approvals, consents, licences and permits)**

**19.(1)** Section 224, heading, ‘**and permits**’—

*omit, insert—*

‘**, permits etc.**’.

**(2)** Section 224(1), from ‘authorised’—

*omit, insert—*

‘authorised—

(a) under the former Act because of an approval, consent, licence or permission; or

(b) under an instruction of the former board’.

**(3)** Section 224(2), after ‘permission’—

*insert—*

‘or person complying with an instruction’.

**(4)** Section 224(5), from ‘and this section’—

*omit, insert—*

‘expires 1 year after the changeover day, unless it is a licence to drive a speedboat or a matter to which subsection (1)(b) applies.’.

**(5)** Section 224—

*insert—*

‘**(6)** This section expires—

(a) for a matter other than an approval that is a licence to drive a speedboat or a matter to which subsection (1)(b) applies—1 year after the changeover day; or

(b) for a licence to drive a speedboat—on 30 June 2002; or

(c) for an instruction of the former board—when the matter of the instruction ceases to apply under the instruction.

‘**(7)** In this section—

‘**“instruction”** means an authorisation or standard practice instruction



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about ship design, construction or equipment purporting to have been given by the former board under the repealed Act as in force from time to time before its repeal.’.

### **Insertion of new s 224A**

**20.** After section 224—

*insert—*

#### **‘Power of chief executive to amend authorisations and standard practice instructions**

**‘224A.(1)** The chief executive may, by written instrument, amend an authorisation or standard practice instruction about ship design, construction or equipment purporting to have been given by the former board under the repealed Act.

**‘(2)** However, the chief executive may only amend the authorisation or instruction before the changeover day.

**‘(3)** The amended authorisation or instruction has effect for section 224.

**‘(4)** This section expires on the changeover day.’.

### **Insertion of new s 230**

**21.** After section 229—

*insert—*

#### **‘Transitional provision about speed limits**

**‘230.(1)** On the commencement of this section, a speed limit fixed under a regulation and in force immediately before the commencement is taken to be a speed limit fixed by the chief executive.

**‘(2)** However, a speed limit taken under subsection (1) to have been fixed by the chief executive is repealed on the commencement of a gazette

notice under section 206A replacing the speed limit.

‘(3) This section expires 2 years after it commences.’.