



Queensland

Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005

Subordinate Legislation 2005 No. 121

made under the

State Penalties Enforcement Act 1999

Transport Operations (Marine Safety) Act 1994

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005*.

2 Commencement

- (1) Parts 2 and 3 commence immediately after the commencement of the *Transport Legislation Amendment Regulation (No. 1) 2005*, section 18, on 1 July 2005.
- (2) Part 4 commences on 1 January 2006.

Part 2 Amendment of State Penalties Enforcement Regulation 2000

3 Regulation amended in pt 2

This part amends the *State Penalties Enforcement Regulation 2000*.

4 Amendment of sch 3 (Transport legislation)

- (1) Schedule 3, entry for *Transport Operations (Marine Safety) Regulation 2004*, columns 1 and 2 for section 127(1) and 170—
omit.
- (2) Schedule 3, entry for *Transport Operations (Marine Safety) Regulation 2004*, columns 1 and 2—
insert—

's 127A(1)	3
s 127B(1)	3

s 170(2)	2
s 170A	2
s 222A(2).....	3
s 226A(2).....	2’.

Part 3 **Amendments of Transport Operations (Marine Safety) Regulation 2004 commencing 1 July 2005**

5 **Regulation amended in pt 3**

This part amends the *Transport Operations (Marine Safety) Regulation 2004*.

6 **Amendment of s 42 (Application of Act, pt 5, div 4)**

Section 42(3)—

omit, insert—

- ‘(3) However, section 67¹ of the Act does not apply to a commercial ship if after the ship is built—
- (a) the ship will be less than 6m; and
 - (b) the ship will operate only in smooth or partially smooth waters or within 15n miles from land; and
 - (c) a statement in the approved form that the ship has positive flotation will be issued.’.

7 **Amendment of s 60 (Application of Act, pt 5, div 2)**

Section 60(2)—

insert—

¹ Section 67 (Restriction on building of ships) of the Act

‘(m) to the extent the ship may be required to be registered as a commercial ship under this division, a ship registered as a recreational ship that—

- (i) is a personal watercraft; and
- (ii) is provided and operated by a person participating in a training program in the operation of personal watercraft.’.

8 Amendment of s 66 (Exception for particular ships)

(1) Section 66(2)(a) and (b)—

omit, insert—

‘(a) both of the following documents—

- (i) a statement in the approved form that the ship has positive flotation;
 - (ii) a signed statement, that the ship is suitable for its intended use and area of operation, by the ship’s builder, the builder’s agent, an accredited ship designer, an accredited ship builder or an accredited marine surveyor; or
- (b) a certificate of compliance for the building or surveying of the whole ship from an accredited ship builder or an accredited marine surveyor; or
- (c) a design approval certificate stating the information about the suitability of the ship and its positive flotation that would be included in the statements mentioned in paragraph (a)(i) and (ii); or
- (d) if the ship is a standard production vessel—a design approval certificate issued for a ship of the same make and model.’.

(2) Section 66—

insert—

‘(3) If a design approval certificate mentioned in subsection (2)(c) or (d) does not include information that would be included in the statements mentioned in subsection (2)(a)(i) and (ii), the application for registration must include the information.’.

9 Amendment of s 74 (Registration number of commercial ship or recreational ship to be displayed)

Section 74(3)(b), ‘75’—

omit, insert—

‘100’.

10 Amendment of s 84 (Application of Act, pt 5, div 3)

(1) Section 84(2)(c), before ‘operated by’—

insert—

‘, including a ship that is a personal watercraft.’.

(2) Section 84(2)—

insert—

‘(ca) a personal watercraft that—

(i) is registered as a recreational ship; and

(ii) is provided and operated by a person being assessed in relation to an application for a personal watercraft licence;’.

(3) Section 84(2)(d), before ‘operating within’—

insert—

‘, other than a tender that is a personal watercraft.’.

(4) Section 84(2)(e), after ‘ship’—

insert—

‘, other than a tender that is a personal watercraft.’.

(5) Section 84(2)(g), after ‘a ship’—

insert—

‘, other than a personal watercraft.’.

(6) Section 84(2)—

insert—

‘(ga) a ship that is a personal watercraft, operated—

- (i) in a way that complies with the *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2000*; and
 - (ii) if the ship is operated from a place other than the point of hire—by the holder of—
 - (A) a recreational marine driver licence or a current equivalent licence issued under the law of another State; and
 - (B) a personal watercraft licence or a current equivalent licence issued under the law of another State.’.
- (7) Section 84(2)(i)—
omit, insert—
- ‘(i) a ship, other than a personal watercraft, that is—
- (i) a fishing ship less than 10m or a recreational ship; and
 - (ii) operated by a person holding a current certificate, issued by the Queensland Fishing Industry Training Council, to operate a fishing ship less than 10m.’.
- (8) Section 84(4)—
omit, insert—
- ‘(4) In this section—
- ‘commercial training ship*** means—
- (a) a commercial ship, including a ship that is a personal watercraft, being used by a training provider for persons participating in a training program in the operation of ships, if the ship is—
 - (i) less than 6m; and
 - (ii) not carrying anyone on board other than the person participating in the program; or
 - (b) a ship that is a personal watercraft, if the ship is—
 - (i) registered as a recreational ship; and

- (ii) provided by a person participating in a training program in the operation of personal watercraft; and
- (iii) not carrying anyone on board other than the person participating in the program.

hire and drive ship see the *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2000*, section 5.

point of hire means a place where a hire and drive ship is hired or made available to a user.’.

11 **Amendment of s 86 (Owner or master to ensure master and crew members appropriately licensed)**

Section 86(2)—

omit, insert—

- ‘(2) A person who is the owner or master of a commercial ship or fishing ship must ensure that—
 - (a) all crew members of the ship hold an appropriate current licence to act as a crew member of the ship for the ship’s operational area; and
 - (b) other than in relation to a ship that is a personal watercraft—the ship has a person acting as engineer of the ship who holds an appropriate current licence to act as engineer of the ship.

Maximum penalty—200 penalty units.’.

12 **Amendment of s 87 (Operation of ship by unlicensed person)**

- (1) Section 87(1), ‘as its master’—

omit.

- (2) Section 87(2)—

omit, insert—

- ‘(2) The master of a commercial ship or fishing ship must not allow an unlicensed person to operate the ship unless—

- (a) the master—
 - (i) believes, on reasonable grounds, the unlicensed person is competent to operate the ship; and
 - (ii) believes, on reasonable grounds, the unlicensed person holds at least a recreational marine driver licence or a current certificate to operate a fishing ship less than 10m issued by the Queensland Fishing Industry Training Council; and
 - (iii) gives the unlicensed person clear instructions on the way the person is to operate the ship; and
 - (iv) is on board and able to resume operating the ship; or
- (b) the master—
 - (i) believes, on reasonable grounds, the unlicensed person is competent to operate the ship under supervision; and
 - (ii) gives the unlicensed person clear instructions on the way the person is to operate the ship; and
 - (iii) directly supervises the person; and
 - (iv) is able to immediately resume operating the ship.

Maximum penalty—200 penalty units.’.

- (3) Section 87(3), ‘as its master’—
omit.
- (4) Section 87(3), ‘or riding on a toboggan or tube’—
omit.

13 Replacement of s 97 (Chief executive and general manager may issue licences)

Section 97—

omit, insert—

‘97 Chief executive or general manager may issue licences

- ‘(1) The general manager may issue a class of licence mentioned in schedule 3² to a person—
 - (a) to operate a ship as its master; or
 - (b) to act as a crew member of a ship; or
 - (c) to have the conduct of a ship as its pilot.
- ‘(2) The chief executive may also issue a class of licence mentioned in schedule 3, column 1, item 4 or 7 to a person.
- ‘(3) The procedure for obtaining a licence is in part 6.³.

14 Amendment of s 99 (Qualifications for recreational marine driver licence)

- (1) Section 99, after ‘The chief executive’—
insert—
‘or general manager’.
- (2) Section 99(b) and (c), ‘chief executive’s satisfaction’—
omit, insert—
‘satisfaction of the chief executive or general manager’.
- (3) Section 99(c), ‘seafaring skills and’—
omit.

15 Insertion of new s 99A

After section 99—
insert—

2 Schedule 3 (Classes of licences)

3 Part 6 (Authorities)

‘99A Qualifications for personal watercraft licence

‘The chief executive or general manager may grant an application for a personal watercraft licence only if the applicant—

- (a) has 1 of the following—
 - (i) a recreational marine driver licence or a current equivalent licence issued under the law of another State;
 - (ii) a current commercial ship or fishing ship licence to operate the ship as its master or a current equivalent licence issued under the law of another State;
 - (iii) a current certificate to operate a fishing ship less than 10m issued by the Queensland Fishing Industry Training Council; and
- (b) is 16 years or more; and
- (c) has knowledge, to the satisfaction of the chief executive or general manager, of—
 - (i) the Act and this regulation as they affect personal watercraft; and
 - (ii) the collision regulations; and
- (d) has demonstrated competency in safe operating practices for personal watercraft to the satisfaction of the chief executive or general manager.’.

16 Replacement of s 100 (Chief executive or general manager may recognise other qualifications)

Section 100—

omit, insert—

‘100 Chief executive or general manager may recognise other qualifications

‘(1) This section applies if—

- (a) an applicant for a licence mentioned in section 98, 99 or 99A⁴ does not have the qualifications, training or experience required for the licence under the section; and
 - (b) the chief executive or general manager, whoever may grant the licence, is satisfied the applicant has other qualifications, training or experience equivalent to, or better than, the qualifications, training or experience required under the section.
- ‘(2) Despite section 98, 99 or 99A, the chief executive or general manager may grant the application for the licence as mentioned in the section.’.

17 Amendment of s 102 (Examinations of applicants for licences)

Section 102(2)—

omit, insert—

- ‘(2) The chief executive or general manager may conduct examinations, in the way the chief executive or general manager considers necessary and appropriate in the circumstances, to establish whether an applicant for a personal watercraft or recreational marine driver licence has the qualifications for the licence under this regulation.’.

18 Amendment of s 105 (Application of div 4)

Section 105(a) and (b)—

omit, insert—

- ‘(a) a commercial ship as defined under section 85,⁵ including a ship that is a personal watercraft;
- (b) a fishing ship as defined under section 85, including a ship that is a personal watercraft.’.

4 Section 98 (Qualifications for licences for commercial ships and fishing ships), 99 (Qualifications for recreational marine driver licence) or 99A (Qualifications for personal watercraft licence)

5 Section 85 (Definitions for div 2)

19 Amendment of pt 5, div 9, hdg (Speed limits and wash)

Part 5, division 9, heading, ‘wash’—

omit, insert—

‘other restrictions’.

20 Replacement of s 127 (Speed limit for ship operating in particular places)

Section 127—

omit, insert—

‘127 Speed limit for ship, other than personal watercraft, operating in particular places

‘(1) This section applies to a ship other than a personal watercraft.

‘(2) A person must not operate a ship in waters at a speed of more than 6kn if the ship is within 30m of any of the following—

(a) a person in the waters;

(b) a ship at anchor, moored or made fast to the shore or aground;

(c) a jetty, wharf, boat ramp or pontoon in or on the waters.

Maximum penalty—200 penalty units.

‘(3) Subsection (2) does not apply to a ship if the ship is in waters for which a speed limit of 6kn or less has been fixed under section 206A⁶ of the Act.

‘127A Speed limit for personal watercraft operating in particular places

‘(1) A person must not operate a personal watercraft in waters at a speed of more than 6kn if the personal watercraft is within 60m of any of the following—

(a) a person in the waters;

⁶ Section 206A (General manager’s power to fix speed limits for ships) of the Act

- (b) a ship at anchor, moored or made fast to the shore or aground;
- (c) a jetty, wharf, boat ramp or pontoon in or on the waters;
- (d) the boundary of a bathing reserve;
- (e) the shore.

Maximum penalty—200 penalty units.

- ‘(2) Despite subsection (1)(e), a person may operate a personal watercraft in waters within 60m of the shore at a speed of more than 6kn but no more than the speed limit for the waters if—
- (a) the personal watercraft is being operated for the purpose of water skiing; or
 - (b) each of the following apply—
 - (i) the waters are less than 120m wide;
 - (ii) the person is operating the personal watercraft along or near the centre of the waters, or within a marked channel;
 - (iii) the person uses the personal watercraft to move through the waters in a straight line or in the most appropriate or direct route taking into account the circumstances of the waters; or
 - (c) complying with subsection (1)(e) would endanger the person or another person.
- ‘(3) Subsections (1) and (2) do not apply to a personal watercraft if the personal watercraft is in waters for which a speed limit of 6kn or less has been fixed under section 206A⁷ of the Act.
- ‘(4) In this section—

bathing reserve means a bathing reserve established under the *Local Government Act 1993*, section 935.⁸

⁷ Section 206A (General manager’s power to fix speed limits for ships) of the Act

⁸ *Local Government Act 1993*, section 935 (Management and regulation of bathing reserves)

‘127B Other restrictions for personal watercraft operating in particular places

- ‘(1) A person must not while operating a personal watercraft freestyle, surf or wave jump within 200m of the shore if—
- (a) the personal watercraft is being operated in coastal waters; and
 - (b) 1 or more dwellings are within 100m of the shore and are visible from, and in the vicinity of, where the personal watercraft is being operated.

Maximum penalty—200 penalty units.

- ‘(2) In this section—

coastal waters means the coastal waters of the State, and includes other waters within the limits of the State that are subject to the ebb and flow of the tide.’.

21 Amendment of s 131 (Application of particular provisions to enforcement officers)

- (1) Section 131(2), ‘126, 127, 128, 219 and 220,’ and footnote—
omit, insert—

‘126 to 128, 219, 220, 221 and 222A,⁹’.

- (2) Section 131(2)(d)—

omit, insert—

‘(d) in a place to which section 219, 220, 221 or 222A applies.’.

9 Sections 88 (Required licences for commercial ships), 126 (Person operating ship to comply with collision regulations), 127 (Speed limit for ship, other than personal watercraft, operating in particular places), 127A (Speed limit for personal watercraft operating in particular places), 127B (Other restrictions for personal watercraft operating in particular places), 128 (Speed limit for ship if wash can cause marine incident or shoreline damage), 219 (Prohibition on anchoring in particular places), 220 (Prohibition on ship operations near particular structures), 221 (Unlawful operations if endangering marine safety) and 222A (Marine zones)

(3) Section 131(3), definition *enforcement officer*—
insert—

‘(c) an officer of MSQ who is a shipping inspector.’.

22 Amendment of 147 (Definition for pt 6)

Section 147, definition *administering agency*, paragraph (a)—
omit, insert—

‘(a) for an approval,¹⁰ that relates to recreational ships or personal watercraft—the chief executive or the general manager; or’.

23 Amendment of s 151 (Issuing of authority if application granted)

Section 151(2), ‘licence, the chief executive’—
omit, insert—

‘licence or a personal watercraft licence, the administering agency’.

24 Amendment of s 152 (Term of authority)

Section 152(2)—

insert—

‘• a personal watercraft licence’.

10 Section 4 of the Act provides—

approval means—

- (a) registration of a ship; or
- (b) licensing a person as a master, crew member or pilot; or
- (c) accreditation of an entity to license a person as a master, crew member or a pilot; or
- (d) permitting a person to operate a ship as its master or a pilot; or
- (e) accreditation of a ship designer or builder or a marine surveyor.

25 Amendment of s 153 (Temporary authorities)

Section 153(1)(b), after ‘commercial’—

insert—

‘ship’.

26 Replacement of s 170 (Keeping of authority)

Section 170—

omit, insert—

‘170 Keeping of authority

‘(1) This section applies to an authority other than the following types of authority—

- (a) a certificate of survey;
- (b) a design approval certificate;
- (c) a load line certificate.

‘(2) The holder of a current authority must keep the authority or a document about the granting of the authority.

Maximum penalty—20 penalty units.

‘170A Defacing or changing authority

‘The holder of an issued authority must not deface or otherwise change the authority.

Maximum penalty—20 penalty units.’.

27 Insertion of new s 171A

After section 171—

insert—

‘171A Copy of authority may be given to person with interest in ship

‘(1) If a person obtains an interest in a ship, the person may apply to the administering agency for a copy of an authority

mentioned in section 148(1)(b), (g) or (l)¹¹ that has been issued for the ship.

- ‘(2) The application must be in the approved form.
- ‘(3) The administering agency may give a copy of the authority to the person if the administering agency is satisfied the person has an interest in the ship.
- ‘(4) The administering agency may change the authority before giving a copy of it to the person to ensure that the authority is addressed to the person.’.

28 Amendment of s 216 (Harbour master or general manager may carry out direction)

- (1) Section 216(3), after ‘proposed direction’—

insert—

‘, including by asking a person who is a suitably qualified person to carry out the direction or proposed direction’.

- (2) Section 216—

insert—

- ‘(5) In this section—

suitably qualified person means a person who—

- (a) is a shipping inspector or may be appointed as a shipping inspector under section 157(1)¹² of the Act; and
- (b) the harbour master or general manager reasonably believes has qualifications, skills or experience necessary to safely carry out the direction or proposed direction.’.

29 Amendment of s 222 (Water skiing or riding on toboggan or tube)

- (1) Section 222, heading, from ‘or riding’—

11 Section 148 (What is an authority)

12 Section 157 (Appointment of shipping inspectors) of the Act

omit.

- (2) Section 222(3)(b), ‘(4)’—

omit, insert—

‘(5)’.

- (3) Section 222(6), definition *skier*—

omit, insert—

‘*skier* means a person who is water skiing.’.

30 Insertion of new pt 9A

After section 222—

insert—

‘Part 9A Marine zones

‘222A Marine zones

- ‘(1) An area listed in schedule 14A, column 1 is a marine zone.
- ‘(2) A person who is the owner or master of a ship must not operate the ship in a marine zone in contravention of a requirement listed in schedule 14A, column 2 for the marine zone.

Maximum penalty—200 penalty units.

‘222B Proposal for marine zone

- ‘(1) A government entity or a local government (a *proposing entity*) may give the general manager a proposal for an area (a *proposed area*) to be a marine zone under section 222A.
- ‘(2) The proposal must be in the approved form.
- ‘(3) The approved form may require the proposing entity to include any of the following information in the proposal—
- (a) a description of the proposed area, including details of the boundaries of the proposed area and a map or chart showing its locality;

- (b) the requirements to be placed on the operation of a ship in the proposed area;
- (c) why the proposed marine area should be a marine zone;
- (d) who the proposing entity has consulted, the nature of the consultation and the results of the consultation.

‘222C Consultation for marine zone

- ‘(1) Before a proposing entity gives the general manager a proposal under section 222B in relation to a proposed area, the proposing entity must—
- (a) consult about the proposal with—
 - (i) the harbour master for the proposed area; and
 - (ii) each person carrying on an established business in the proposed area; and
 - (iii) if the proposing entity is a government entity—the local government for the proposed area; and
 - (b) publish, at least once in a newspaper circulating generally in the proposed area, a notice stating—
 - (i) a description of the proposed area, including details of the boundaries of the area and a map or chart showing its locality; and
 - (ii) the requirements to be placed on the operation of a ship in the proposed area; and
 - (iii) why the proposed area should be a marine zone; and
 - (iv) that any person may make written submissions about the proposal; and
 - (v) the period during which submissions may be made; and
 - (vi) the requirements for properly making a submission; and
 - (vii) a contact telephone number for information about the proposal or making a submission.

- ‘(2) The consultation period must be for at least 28 days after notice is first published under subsection (1)(b).’.

31 Insertion of new pt 10, div 3

After section 226—

insert—

‘Division 3 Signs

‘226A Interfering with sign

- ‘(1) This section applies if a government entity or a local government erects a sign in or near—
- (a) waters to which section 221 applies; or
 - (b) a marine zone listed in schedule 14A.
- ‘(2) A person must not interfere with the sign unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units.’.

32 Amendment of s 233 (Crew to complete safety course)

Section 233, ‘2005’—

omit, insert—

‘2006’.

33 Amendment of sch 3 (Classes of licences)

Schedule 3—

insert—

- ‘7 Licence (personal watercraft)
- personal watercraft licence’.

34 Amendment of sch 10 (Fees and charges)

Schedule 10—

insert—

‘13A Personal watercraft licence

‘The fee for a personal watercraft licence is \$34.85.’.

35 Insertion of new sch 14A

After schedule 14—

insert—

‘Schedule 14A Marine zones

section 222A

Marine zone

Requirement

The waters of Tallebudgera Creek

A personal watercraft must not be operated in the marine zone.’.

36 Amendment of sch 15 (Dictionary)

Schedule 15—

insert—

freestyle, in relation to a personal watercraft, means drive the personal watercraft in a way that its course or speed is insufficiently predictable to allow masters of other ships to readily decide what course and speed to take to avoid a collision with the personal watercraft.

proposed area, for part 9A, see section 222B.

proposing entity, for part 9A, see section 222B.

surf, in relation to a personal watercraft, means drive the personal watercraft down a breaking wave, wake or swell.

water ski means tow a person by a line attached to a ship including, for example, a person riding on a toboggan or tube.

wave jump, in relation to a personal watercraft, means drive the personal watercraft over a breaking wave, wake or swell for the purpose of making the personal watercraft airborne, other than in the ordinary course of navigation.’.

Part 4

Amendments of Transport Operations (Marine Safety) Regulation 2004 commencing 1 January 2006

37 Regulation amended in pt 4

This part amends the *Transport Operations (Marine Safety) Regulation 2004*.

38 Amendment of s 85 (Definitions for div 2)

- (1) Section 85, definition *commercial ship*, paragraph (c)—
omit, insert—
 - ‘(c) is operated by—
 - (i) the holder of a recreational marine driver licence or a current equivalent licence issued under the law of another State; and
 - (ii) if the ship is a personal watercraft—the holder of a personal watercraft licence or a current equivalent licence issued under the law of another State.’.
- (2) Section 85, definition *fishing ship*, paragraph (a)(iii)—
omit, insert—
 - ‘(iii) is operated by—
 - (i) the holder of a recreational marine driver licence or a current equivalent licence issued under the law of another State; and

- (ii) if the ship is a personal watercraft—the holder of a personal watercraft licence or a current equivalent licence issued under the law of another State.’.

39 Amendment of s 86 (Owner or master to ensure master and crew members appropriately licensed)

Section 86(1)—

omit, insert—

- ‘(1) The owner of a commercial ship or fishing ship must ensure the ship is operated by a master who—
 - (a) holds an appropriate current licence to operate the ship as its master; and
 - (b) if the ship is a personal watercraft—also holds a personal watercraft licence or a current equivalent licence issued under the law of another State.

Maximum penalty—200 penalty units.’.

40 Amendment of s 88 (Required licences for commercial ships)

Section 88—

insert—

- ‘(4) If the commercial ship is a personal watercraft, the person must also hold a personal watercraft licence or a current equivalent licence issued under the law of another State.’.

41 Amendment of s 92 (Required licences for fishing ships)

Section 92—

insert—

- ‘(4) If the fishing ship is a personal watercraft, the person must also hold a personal watercraft licence or a current equivalent licence issued under the law of another State.’.

42 Amendment of s 95 (Required licences for recreational ships)

Section 95—

insert—

- ‘(3) If the recreational ship is a personal watercraft, the person must also hold a personal watercraft licence or a current equivalent licence issued under the law of another State.’

ENDNOTES

- 1 Made by the Governor in Council on 16 June 2005.
- 2 Notified in the gazette on 17 June 2005.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Transport.