



Queensland

# Transport Operations (Marine Safety) Amendment Regulation (No. 3) 2006

## Subordinate Legislation 2006 No. 238

made under the

*Transport Operations (Marine Safety) Act 1994*

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## **1 Short title**

This regulation may be cited as the *Transport Operations (Marine Safety) Amendment Regulation (No. 3) 2006*.

## **2 Regulation amended**

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

## **3 Insertion of new s 62A**

After section 62—

*insert—*

### **‘62A Ship may not be registered without builders plate**

- ‘(1) This section applies to a ship to which a builders plate is required to be fixed under part 3, division 7A.<sup>1</sup>
- ‘(2) If a person applies for the ship to be registered as a recreational ship, it is the first time the ship is to be registered as a recreational ship under the Act and either of the following applies, the chief executive may refuse to register the ship as a recreational ship—
- (a) a builders plate is not fixed to the ship in accordance with the ABP Standard;
  - (b) the chief executive reasonably believes information on a builders plate on the ship is incorrect or has not been approved by a person mentioned in section 79J.
- ‘(3) If a person applies for the ship to be registered as a commercial ship or fishing ship, it is the first time the ship is to be registered as a commercial ship or fishing ship under the Act and either of the following applies, the general manager may refuse to register the ship as a commercial ship or fishing ship—
- (a) a builders plate is not fixed to the ship in accordance with the ABP Standard;

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1 Part 3 (Accreditation, ship building and registration of ships), division 7A (Builders plates)

- (b) the general manager reasonably believes information on a builders plate on the ship is incorrect or has not been approved by a person mentioned in section 79J.’

#### **4 Insertion of new pt 3, div 7A**

Part 3—

*insert—*

### **‘Division 7A Builders plates**

#### **‘Subdivision 1 Preliminary**

##### **‘79A Main purpose of div 7A**

- ‘(1) The main purpose of this division is to give effect to the National Standard for the Australian Builders Plate for Recreational Boats, published under the authority of the Ministers comprising the Australian Transport Council.<sup>2</sup>
- ‘(2) The main purpose is achieved by—
- (a) ensuring builders plates are fixed to particular ships when they are sold in Queensland; and
  - (b) for the particular ships—requiring information on builders plates to promote the safe use of the ships.

##### **‘79B Definitions for div 7A**

‘In this division—

***ABP Standard*** means the standard entitled National Standard for the Australian Builders Plate for Recreational Boats, that is published under the authority of the Ministers comprising the Australian Transport Council.

***builders plate*** means a plate fixed to a ship displaying information about the ship, that is relevant to marine safety.

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<sup>2</sup> A copy of the standard is available from the National Marine Safety Committee, PO Box 1773, Rozelle NSW 2039, or from its website at <[www.nmsc.gov.au](http://www.nmsc.gov.au)>.

**competent person** means a person who, because of 1 or more of the following, has the knowledge and skills to enable the person to competently decide and approve the information on a builders plate—

- (a) training;
- (b) qualifications;
- (c) experience.

**sell** includes the following—

- (a) supply for sale;
- (b) supply in furtherance of a trade or business;
- (c) offer or display for sale.

#### **‘79C Application of division**

- ‘(1) This division applies to a ship unless this section provides otherwise.
- ‘(2) This division does not apply to any of the following—
  - (a) a second hand ship;
  - (b) an amphibious vehicle;
  - (c) a canoe, kayak, surf ski or similar ship designed to be powered by paddle;
  - (d) a pedal powered boat;
  - (e) a rowing shell used for racing or rowing training;
  - (f) a sailboard, sail kite or other similar ship;
  - (g) a surf row boat;
  - (h) a hydrofoil or hovercraft;
  - (i) a sailing ship;
  - (j) a submersible;
  - (k) an aquatic toy.
- ‘(3) This division does not apply to a ship that, before the commencement of this section, had reached a stage of

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construction of having the keel laid or a stage of construction at which—

- (a) the ship was identifiable as a ship of a particular type; and
- (b) a part of the ship had been fabricated and assembled and that part had a mass of at least 50 tonnes or 1% of the mass of all structural material of the proposed completed ship, whichever is the lesser.

‘(4) Also, this division does not apply to a ship that is a personal watercraft if each of the following information is written on or attached to the ship in a clearly visible place—

- (a) the total weight, expressed in kilograms, of persons and equipment that the ship may carry, as recommended by the builder of the ship;
- (b) the maximum number of persons the ship may carry, as recommended by the builder of the ship.

‘(5) Further, this division does not apply to a ship that is an inflatable boat to which ISO 6185<sup>3</sup> applies if the ship—

- (a) has a plate attached to it in accordance with European Directive 94/25/EC<sup>4</sup> (Recreational Craft Directive) that certifies the ship complies with the requirements of the directive; or
- (b) has a plate attached to it in accordance with the requirements of the US National Marine Manufacturers Association, set out in the association’s handbook entitled the NMMA Certification Handbook,<sup>5</sup> that certifies the ship complies with the requirements of the handbook.

‘(6) In this section—

***aquatic toy*** means an object designed primarily for play in or on water, including, for example, the following—

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3 The standard is available through <[www.saiglobal.com](http://www.saiglobal.com)>.

4 The directive is available at <[www.europa.eu.int/comm/enterprise/maritime/maritime\\_regulatory/directive\\_94\\_25.htm](http://www.europa.eu.int/comm/enterprise/maritime/maritime_regulatory/directive_94_25.htm)>.

5 The handbook is available through <[www.nmma.org/certification/publications/](http://www.nmma.org/certification/publications/)>.

- (a) an object designed solely to be towed behind a recreational ship;
- (b) an inflatable boat, other than an inflatable boat to which ISO 6185 applies.

**owner builder**, of a ship, means an individual who builds the ship for the individual's own use.

**sailing ship** means a ship designed to have sail as the primary way of propulsion, with or without an auxiliary way of mechanical propulsion.

**second hand ship** means a ship that has been used previously, other than used only as follows—

- (a) in the course of being built or tested;
- (b) by the owner builder of the ship;
- (c) by the builder of the ship;
- (d) for transporting the ship for sale;
- (e) for demonstrating the ship to a purchaser.

#### **'79D Variation of ABP Standard**

'For this division—

- (a) a requirement of the ABP Standard to the effect that information on a builders plate for a ship must include the name of the builder of the ship is to be read as a requirement that the information must include—
  - (i) the name of the person mentioned in section 79J who approves the information; and
  - (ii) the capacity in which the person approves the information; and
- (b) a reference in the ABP Standard, clause 8.1(b), (e), (f), (g) or (h), 8.2(b), (e), (f) or (g) or 9.1 to the boat's builder is taken to be a reference to a person who may approve information on a builders plate under section 79J.

## **‘Subdivision 2      Offence of selling ships to which division applies and defences**

### **‘79E    Ship for sale required to have builders plate**

‘A person must not sell a ship to which this division applies unless—

- (a) a builders plate is fixed to the ship in accordance with the ABP Standard; and
- (b) the builders plate contains the information required by the ABP Standard; and
- (c) the information has been approved by a person mentioned in section 79J; and
- (d) the information is correct at the time of the sale.

Maximum penalty—50 penalty units.

### **‘79F    Defence relating to commercial ships or fishing ships**

‘It is a defence to a prosecution for an offence against section 79E if the defendant establishes that, at the time of sale, the following documents had been obtained or were to be obtained—

- (a) if section 65<sup>6</sup> applies—documents required under that section for an application for registration;
- (b) if section 66<sup>7</sup> applies—documents required under that section for an application for registration;
- (c) if section 68<sup>8</sup> applies—documents required under that section for an application for registration.

### **‘79G    Defence that plate already fixed**

‘It is a defence to a prosecution for an offence against section 79E if the defendant establishes that—

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6    Section 65 (Requirements for first registration of commercial ship)

7    Section 66 (Exception for particular ships)

8    Section 68 (Requirements for first registration of fishing ship)



- (a) the defendant was not the builder of the ship; and
- (b) there was a plate fixed to the ship when it was sold by the defendant and the defendant reasonably believed the plate was a builders plate for the ship; and
- (c) the defendant had no reason to believe the information on the plate was incorrect or had not been approved by a person mentioned in section 79J; and
- (d) the defendant was not aware of any modification of the ship that would affect the accuracy of the information on the plate.

**‘79H Defence if ship to be exported**

‘It is a defence to a prosecution for an offence against section 79E if the defendant establishes that, at the time of the sale, the ship was to be exported overseas.

**‘79I Defence if ship for racing purposes**

‘It is a defence to a prosecution for an offence against section 79E if the defendant establishes that, at the time of the sale, the ship was to be used only for racing in organised events.

**‘Subdivision 3 Approval of information on builders plates, and other offences**

**‘79J Persons who may approve information on builders plates**

‘For this division, the information on a builders plate fixed to, or to be fixed to, a ship may only be approved by 1 of the following persons—

- (a) the builder of the ship;
- (b) a competent person;
- (c) a person who imported the ship into Australia from overseas.

**‘79K Offence relating to fixing of builders plates on ships**

- ‘(1) This section applies to a ship required under section 79E to have a builders plate fixed to it when sold in Queensland.
- ‘(2) A person must not fix a builders plate to the ship if—
- (a) the person has reason to believe information on the builders plate is incorrect or does not comply with the ABP Standard; or
  - (b) the information on the plate has not been approved by a person mentioned in section 79J.

Maximum penalty—20 penalty units.

- ‘(3) A person must not alter information on a builders plate fixed to the ship if—
- (a) the person has reason to believe the information, as altered, will be incorrect or will not comply with the ABP Standard; or
  - (b) the information, as altered, has not been approved by a person mentioned in section 79J.

Maximum penalty for subsection (3)—20 penalty units.

**‘79L Offence relating to approval of information on builders plate**

- ‘(1) This section applies to a ship required under section 79E to have a builders plate fixed to it when sold in Queensland.
- ‘(2) A person must not approve any information on a builders plate fixed to, or to be fixed to, the ship unless—
- (a) the person is a person mentioned in section 79J; and
  - (b) the information is correct and complies with the ABP Standard; and
  - (c) the person is a person residing in Australia or a corporation registered in Australia.

Maximum penalty for subsection (2)—20 penalty units.

**‘79M Builders plate not to be changed unless authorised**

- ‘(1) This section applies to a ship required under section 79E to have a builders plate fixed to it when sold in Queensland.
- ‘(2) A person must not change a builders plate fixed to the ship unless—
  - (a) the person is a person mentioned in section 79J; or
  - (b) the change is approved by a person mentioned in section 79J.

Maximum penalty—20 penalty units.

- ‘(3) In this section—  
*change*, in relation to a builders plate, means alter, conceal, deface, remove or obliterate the builders plate.’.

**5 Amendment of sch 1 (Standards)**

Schedule 1, item 13, ‘ISO 6185:1982’—  
*omit, insert—*  
‘ISO 6185’.

**6 Amendment of sch 15 (Dictionary)**

- (1) Schedule 15, definition *capacity label*—  
*omit.*
- (2) Schedule 15—  
*insert—*  
‘**ABP Standard** see section 79B.

*builders plate* see section 79B.

*capacity label* means a label issued by the general manager, or a plate attached to the ship by the builder of the ship or that contains information approved by a person mentioned in section 79J, showing any of the following as the maximum number of persons the ship may carry in smooth waters—

- (a) a number representing the maximum persons capacity for the ship worked out under AS 1799.1—1992;

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- (b) a number representing the maximum persons capacity for the ship worked out under any of the standards mentioned in the ABP Standard, clause 9.3;
- (c) the manufacturer's maximum persons capacity rating for the ship;
- (d) if the ship is more than 15m, a number worked out in a way approved by the general manager.

*competent person*, for part 3, division 7A, see section 79B.

*sell*, for part 3, division 7A, see section 79B.'.

- (3) Schedule 15, definition *inflatable ship*, 'ISO 6185:1982'—  
*omit, insert—*  
'ISO 6185'.
- (4) Schedule 15, definition *personal watercraft*, paragraph (b), after 'astride it'—  
*insert—*  
' , rather than within the confines of it'.

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ENDNOTES

- 1 Made by the Governor in Council on 28 September 2006.
- 2 Notified in the gazette on 29 September 2006.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Transport.