

TRANSPORT OPERATIONS (MARINE SAFETY) AMENDMENT BILL 1996

EXPLANATORY NOTES

The Transport Operations (Marine Safety) Amendment Bill 1996 has been drafted consistent with current legislative practice and in plain english.

As a consequence particular sections, clauses and subclauses require little or no specific further explanation and in these Explanatory Notes those sections, clauses and subclauses may be repeated or summarised in general terms only.

Statement of Policy Objective

The policy objective of the Bill is to make adjustments to the current legislative framework for marine safety in Queensland to provide clear direction for the marine industry and boating public, provide flexibility in the administration of marine safety, reinforce Government's role in this administration and preserve the legal status of current operators in the industry.

Achievement of Policy Objectives

The policy objective is to be achieved by amending the *Transport Operations (Marine Safety) Act 1994* as follows:

- the abolition of the current Maritime Industry Consultative Council and the creation of a Marine Board of Queensland made up of 5 persons appointed by the Minister;

The Board will be more effective than the current Maritime Industry Consultative Council in that its reduced membership of 5 (compared with 12 on the current Council) will ensure greater focus on the major issues and enable decisions on the form of the advice or recommendations to be made more easily.

The areas where the Board should provide advice and where the Minister or the Chief Executive are likely to seek advice are also more clearly defined providing the Board with a clear mandate to provide that advice.

- the creation of a head of power for the Government to approve the design of a ship and issue a design approval certificate or issue a design approval certificate for the design of a ship when a certificate of compliance for design has been issued by an accredited person, and to make statements on a certificate of survey for a ship;

This amendment is required to address difficulties encountered by some Queensland ship designers, builders and ship owners in having certificates of survey issued under the current system recognised in other States. Under the current system, the Queensland Government is seen by other States as having no direct involvement in the inspection process. This issue has the potential to undermine the competitiveness of Queensland's boat builders in both domestic and export markets.

- the creation of a power for the Chief Executive to exempt a person or ship from the Regulation. The power will be constrained by guidelines as to where the Chief Executive should use the power and a caveat will apply that marine safety and the efficiency of the maritime industry will be preserved;

The current legislation requires all exemptions to be the subject of a regulation made by the Governor in Council. This has proved to be impractical given the lead time required for the Governor in Council to make a regulation and has involved Cabinet in considering relatively minor marine safety matters.

- the preservation of instructions and authorisations of the former Marine Board of Queensland affecting the design, construction and equipping of ships and the extension of the validity of speed boat drivers' licences;

This provision preserves the legal status of ships designed, built and equipped under the previous system indefinitely, provided they are maintained to a safe standard and also preserves the validity of the current speed boat drivers licence to 30 June 2002 to allow time for the re-issue of these licences to be co-ordinated

with the renewal of vehicle drivers licences over a five year period.

- the provision of a mechanism for the Chief Executive to set speed limits and for a shipping inspector to direct that a ship operates subject to stated safety conditions.

The current Act and Regulation require that speed limits must be set by regulation made by Governor in Council and the Chief Executive may only vary such limits by speed sign. This has proved administratively impractical.

Estimated costs for Government Implementation

The costs of implementing the policy are minimal. The Marine Board of Queensland will be smaller than the current Maritime Industry Consultative Council and funding allocated for administrative support to the Council and the expenses of the Council will be transferred to the Board.

The costs of providing the Government design and approval service will be offset with fees for services provided to the maximum extent.

The administrative costs for Government will be significantly reduced if discretionary powers for minor safety matters are given to the Chief Executive, Queensland Transport.

NOTES ON PROVISIONS

Section 1 states the short title of the Act.

Section 2 provides for the commencement of the Act. It provides for *sections 12 and 13* to commence on a date to be fixed by proclamation. This is to allow for supporting regulation and resources to be put in place. It also provides for *sections 19 and 20* to have commenced on 3 June 1994 which was the date of commencement of the *Transport Operations (Marine Safety) Act 1994*.

Section 3 states that this Act amends the *Transport Operations (Marine Safety) Act 1994*.

Sections 4,6, 8, 9, 10, 11 and 17 substitute the new Marine Board for the Maritime Industry Consultative Council in a number of administrative provisions.

Section 5 provides for the Chief Executive to exempt a person or ship from the a regulatory provision.

The chief executive when granting the exemption, may consider there is substantial compliance or in the particular circumstances compliance is unnecessary. The chief executive may also take into account that the proposed action under the exemption application is more effective from a safety or efficiency perspective than required under the Regulation e.g. a new safety product not catered for in the Regulation.

An important caveat on the chief executive in granting the exemption is that the exemption can only be given if it will not adversely effect a safety outcome or the effectiveness and efficiency of the Marine Industry. Conditions can be applied to an exemption. Accountability is ensured in that the Chief Executive, in granting an exemption, must give notice of the full details of the exemption in the Gazette.

Operations in the marine environment are often very complex and unique to a particular situation, voyage or location. In recognition of this, other marine safety jurisdictions at both the State and Federal level have available a means of granting exemptions from the legislation. The Current legislation requires all exemptions to be the subject of a regulation made by the Governor in Council. This has proved impractical given the lead time required for Governor in Council to make a regulation and has involved Executive Government in considering relatively minor marine safety matters. This amendment will enable the Chief Executive to grant exemptions from technical regulatory provisions while preserving the present requirement that exemptions from the Act may only be granted by regulation. Such an exemption power was available to the former Marine Board under previous legislation. Examples of where exemption powers have been used in the past and are still required include:

- *Safety equipment relaxation for specific cases where assistance is nearby e.g. an organised raft race or trick skiing event.*
- *Speed limit exemptions for contestants in power boat races and major and minor water ski events throughout the state (conditions are imposed by the Department to ensure the events are conducted safely)*

- *Relaxation on crewing requirements in special circumstances e.g a specific cross river car ferry may be able to be operated quite safely without the crew requirements of a ship that goes to sea.*

Section 7 amends *section 42* of the Act to provide for an approval by the chief executive as to the design of a ship to satisfy the general safety obligation of a person as to the design of a ship. The current provision only allows for a person to build a ship if a certificate of compliance has been issued for the ship by an accredited person.

Section 12 amends *section 67* of the Act to enable a person to build a ship if the chief executive has approved the design of the ship.

Section 13 inserts a new division to provide for the chief executive to approve the design of a ship without a certificate of compliance being issued if the ship design meets the requirements of marine safety standards developed under the Act about the design of a ship and issue a design approval certificate. The division also allows the chief executive to issue a design approval certificate for a design which has a certificate of compliance issued by an accredited designer. In addition it provides that the chief executive may make a statement about the design or survey of a ship in a certificate of survey.

- *This provision is intended to satisfy the requirements of other State and Commonwealth marine safety jurisdictions that the design and survey complies with the national Uniform Shipping Laws Code, particularly when a ship is exported to another State.*

The division also provides for a protection from liability for an officer of the Department who approves the design of a ship under a delegation from the chief executive. This protection is necessary because the approval of the design of a ship granted under this provision will form the basis for the construction of a ship as an alternative to a certificate of compliance of an accredited person.

Section 14 replaces *part 10* of the Act with a new *part 10*. The effect of the section is to abolish the Maritime Industry Consultative Council and establish a Marine Board in its place. The provisions of the new *part 10* are set out below:

PART 10—MARINE BOARD OF QUEENSLAND

Division 1—The Board

Section 108 establishes the Marine Board of Queensland.

Section 109 sets out the functions of the Board which include:

- a general advisory role to both the Minister and the Chief Executive on marine safety issues;
- advice to the Minister on whether a board of inquiry into a marine incident should be established;
- advice to the Chief Executive on the making of marine safety standards that establish how a person should satisfy their general safety obligation under the Act; and
- advice on applications for exemptions under the Act.

The Board may provide advice on its own initiative or on request and advise either the Minister or the Chief Executive on the above matters.

Section 110 provides for the Minister to appoint a Board of not more than 5 persons including a chairperson.

Division 2—Meetings of Board

Section 111 provides for the times and places of meetings and the calling of meetings

Section 112 and 113 sets out who is to preside at meetings in the absence of the chairperson and what constitutes a quorum.

Section 114 sets out how meetings may be held including by telephone or closed circuit television.

Section 115 makes it a requirement if a member of the Board has a direct or indirect financial interest in a matter to be considered by the Board and the interest could conflict with the proper performance of the members

duties, to disclose the interest. The disclosure is to be recorded in the Boards minutes and in any advice to the Minister or the CEO.

Division 3—Provisions about appointed members

Section 116 provides for a member to be appointed to the Board for a term not longer than 2 years. A person who has completed a 2 year term of appointment may be further appointed.

Section 117 provides for the entitlement of Board Members to be paid allowances that may be decided by the Minister and for the Minister to decide on the terms of a members appointment.

Section 118 and *section 119* provide for how a member may resign from the Board or have his appointment terminated by the Minister.

Division 4—Miscellaneous

Section 120 requires the chief executive to provide administrative support to the Board.

Section 121 requires the annual report of the Department to include a report on the operations of the Board.

Section 15 amends *section 127* to lengthen the period over which marine incident reports are compiled from 6 months to 12 Months and also provides for a longer time after the end of the reporting period in which to aggregate the data and prepare the final report.

Section 16 amends *section 172* to provide for a shipping inspector to be able to order a master to operate a ship in a certain way to preserve safety. This provides for an interim measure to ensure safety without stopping the ship operating altogether.

Section 18 inserts a new *Section 206A* to provide for the chief executive to set speed limits for areas of water by gazette notice and to erect speed signs. The previous provision required that general speed limits had to be

set by regulation made by the Governor in Council. Such general speed limits could not be easily varied even if there was a genuine safety case.

Section 19 amends *section 224* to preserve certain instructions of the former Marine Board. The relevant instructions are defined so as to include only those that affect the design, construction or equipping of a ship. This provision preserves the continued operation of ships designed, built and equipped under the previous system. The section also preserves the validity of the current speed boat licence to 30 June 2002 to allow time for conversion to a new licensing system.

Section 20 inserts a new *section 224A* to provide for the chief executive to amend or revoke an instruction or authorisation of the former Board about the design construction or equipping of a ship. The power to amend the instruction or authorisation expired on 1 January 1996.

- *The purpose of this section is to legitimise certain amendments made by the Department to instructions and authorisations of the former Board after the Board ceased to exist. The matters deal only with technical issues and were made in the interests of marine safety or to preserve industry efficiency.*

Section 21 makes a transitional provision to preserve speed limits previously fixed by regulation until a gazette notice about the speed limit is published. The provision expires two years after it commences.