

MARITIME SAFETY QUEENSLAND BILL 2002

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the legislation

The objective of the legislation is to establish a separate maritime agency attached to Queensland Transport in order to:

- reduce duplication of responsibility in the delivery of essential maritime services;
- increase the focus of essential maritime services on delivering safety and environmental outcomes;
- provide a lasting solution for pilotage service delivery and training of marine pilots in Queensland; and
- provide a whole of state marine pollution preparedness and response capability that includes the services currently provided by port authorities.

Reasons for the Bill

Queensland Transport is responsible for administering legislation and policy governing maritime safety issues in Queensland. The department is also responsible for the direct delivery of a number of essential maritime services including the provision and maintenance of aids to navigation and providing the response to ship sourced marine pollution incidents. Port authorities share the responsibility for delivering certain essential maritime services such as pollution response within port limits and the provision of port pilotage services.

Essential maritime services are those services that are delivered to promote safety or limit environmental risks. They are services that ship owners, port users and the broader community expect should be delivered to a high standard which should not be compromised by commercial pressures.

In July 2001, a situation arose in the port of Cairns that could have impacted on the movement of vessels in the port and the government acted to broker an interim solution.

This situation highlighted the need to ensure that adequate government controls are in place in Queensland ports to ensure that safety and environmental outcomes are primary considerations for essential maritime services, particularly given that twelve trading ports abut the world heritage listed Great Barrier Reef Marine Park.

Consistency with Fundamental Legislative Principles

The provisions of the *Maritime Safety Queensland Bill 2002* are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Estimated cost for government implementation

It is proposed the agency be funded through a mix of user and industry charges and state funding for those safety and pollution prevention services the government does not intend or wish to fully cost recover.

Costs associated with establishing Maritime Safety Queensland will be absorbed within current allocations. On establishment, cost increases are likely to result from enhanced financial and performance reporting. This increase will again be absorbed by the business.

Moving responsibility for pollution response in port limits from port authorities to Maritime Safety Queensland will also have financial implications. Maritime Safety Queensland may have to expend more on pollution prevention, preparedness and response than is currently spent by some port authorities as their current level of commitment could be considered inadequate. There is a need to develop accurate assessments of risk and appropriate preparedness in each port in collaboration with each port authority.

Recognising the importance of achieving a transfer of pollution responsibility that manages the risk to the state, it is proposed the transfer be negotiated over the coming financial year. This will provide time to analyse the possible resulting impacts, assess potential cost savings and to determine options to fund the transfer. At this stage options include increasing conservancy charges with a corresponding reduction in charges to shipping by port authorities or risk managing the responsibilities through efficiency in operations.

Pilotage services north of Brisbane will operate as a statewide service with revenue being derived from pilotage fees. Maritime Safety Queensland will assume this service from 1 July 2002 and will incur the full cost of delivery.

Consultation

Consultation on the Bill was conducted with unions, port authorities, the peak shipping industry body, and the Australian Marine Pilots Association. All stakeholders, including pilotage companies, have been consulted as part of the public benefit test process.

The unions with members in Queensland Transport, pilotage companies and port authorities that were consulted on the draft Bill are:

Australian Maritime Officers Union

Australian Workers Union

Australian Manufacturing Workers Union

Queensland Public Sector Union

Australian Institute of Marine and Power Engineers Union

Electrical Trades Union

Australian Services Union

Consultation on the draft Bill has also been undertaken with government agencies.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides the short title for the Act.

Clause 2 announces the provisions of the Act, other than those provisions relating to consequential amendments to the Transport Operations (Marine Pollution) Act 1995, will commence on 1 July 2002. Consequential amendments to the Transport Operations (Marine Pollution)

Act 1995 will commence on a date to be fixed by proclamation. This is in recognition of the considerable transitional arrangements that need to be negotiated with port authorities before MSQ assumes responsibility for marine pollution activities in ports.

Clause 3 states that the dictionary in schedule 2 defines certain words used in the Act.

Clause 4 outlines the purpose of the Act as being the creation of a maritime safety agency responsible for the provision of professional, specialist advice to the chief executive and to undertake certain functions in relation to marine safety and ship sourced pollution.

Clause 5 provides for the application of the Act.

Clause 6 provides that this Act will bind all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

PART 2—MARITIME SAFETY AGENCY OF QUEENSLAND

Clause 7 provides for the establishment of Maritime Safety Queensland (MSQ) and the membership of MSQ as being the general manager, employees employed under the Act and other employees employed under the *Public Service Act 1996*.

Clause 8 lists the functions of MSQ and provides the power for MSQ to do anything necessary or convenient to be done in the performance of its functions. The functions are:

- for the Transport Operations (Marine Safety) Act 1994 –
 - o to develop strategies for marine safety such as education campaigns for the safe use of recreational boats
 - o to make standards for designing, building and operating commercial ships as well as monitoring and auditing the implementation of these standards by industry
 - o to accredit ship designers, ship builders and marine surveyors

- o to accredit entities to conduct training programs in the operation of ships
- o to license masters, other than recreational ship masters, crew members and pilots
- o to set up and maintain aids to navigation
- o to deal with marine incidents
- o to monitor and manage the movement of ships in Queensland waters
- for the Transport Operations (Marine Pollution) Act 1995
 - o to develop strategies to prevent the deliberate, negligent or accidental discharge of ship-sourced pollutants into coastal waters
 - o to deal with the discharge of ship-sourced pollutants into coastal waters
- to provide or arrange for the provision of maritime services, including pilotage services
- any other function conferred on MSQ under this or another Act.

Clause 9 establishes the Chief Executive as being responsible for the way MSQ performs its functions. It also outlines the other responsibilities of the Chief Executive under this Act as being to decide the objectives and strategies and policies to be followed by MSQ and ensuring that the MSQ performs its functions effectively.

Clause 10 provides for the appointment of the general manager of MSQ by the Governor in Council. It also states that the general manager is employed under the *Public Service Act 1996*.

Clause 11 sets out the functions and powers of the general manager. It requires the general manager to manage MSQ's operations in accordance with the objectives, policies and strategies set by the chief executive. It also requires the general manager to:

- advise the chief executive in relation to employment conditions of employees employed under the Act
- direct employees employed under the Act in the performance of their duties; and
- prepare an annual strategic plan that incorporates performance targets that the chief executive has approved.

The clause empowers the general manager to do anything necessary or convenient to be done for the performance of the general manager's functions, however it provides that in the exercise of a power, the general manager is accountable to the Chief Executive under the Public Service Act 1996.

The clause also provides for the delegation of powers by the general manager to:

- employees of MSQ
- shipping inspectors under the Transport Operations (Marine Safety) Act 1994
- authorised officers under the Transport Operations (Marine Pollution) Act 1995

Clause 12 provides for the employment under this Act of marine pilots and other employees the chief executive considers necessary to perform MSQ's functions. It requires that the chief executive must not employ an individual as a marine pilot unless they have the necessary qualifications as prescribed under the Transport Operations (Marine Safety) Regulation 1995. The chief executive can also decide, subject to any industrial agreements, the employment conditions of employees employed under this Act. The *Public Service Act 1996* does not apply to employees employed under this Act.

PART 3—FINANCIAL PROVISIONS

Clause 13 establishes the MSQ fund. It provides that accounts for the fund must be kept as part of the departmental accounts of the Department of Transport and that the *Financial Administration and Audit Act 1977* applies to the fund.

The clause establishes that amounts received for pilotage fees, conservancy dues and amounts from other sources paid to MSQ, are to be paid into the fund.

Within this clause:

- departmental accounts are defined as the accounts of the department under the *Financial Administration and Audit Act 1977*

- departmental financial-institution account is defined as an account of the department kept under section 18 of the *Financial Administration and Audit Act 1977*
- other amounts are defined as amounts received by the department other than amounts received for the fund

PART 4—MISCELLANEOUS PROVISIONS

Clause 14 enables the Governor in Council to make regulations under this Act.

PART 5—TRANSITIONAL PROVISIONS

Clause 15 applies to the following contracts in force before the commencement of the Act:

- a contract for services, or that part of a contract for services, entered into by the department or a port authority for the supply of a pilotage service
- an employment contract whether written or oral, entered into by a port authority for the supply of a pilotage service

The clause provides that on commencement of the Act MSQ takes the place of the port authority or the department as a party to a contract for services and the contract may be enforced by or against MSQ.

For employment contracts, the clause provides that on commencement of the Act the person becomes an employee of MSQ on the same conditions on which they were employed by the port authority. The clause enables a person:

- to keep all rights accrued as an employee of the port authority;
- to receive any leave entitlements accrued as an employee of the port authority; and
- if the person is a member of a superannuation scheme to keep any entitlements and maintain their membership.

The clause provides, subject to the *Industrial Relations Act 1999*, that if an industrial instrument applies to a person before the commencement of the Act, the instrument continues to apply.

The clause states that compensation is not recoverable from anyone for or in relation to the transfer of the rights and obligations under a contract from a port authority to MSQ.

The clause does not apply to a contract, prescribed by regulation, providing for the transfer of a pilot onto or off a ship.

PART 6—CONSEQUENTIAL AMENDMENTS

Clause 16 provides that an Act listed in schedule 1 is amended as per the schedule.

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

PART 1—TRANSPORT INFRASTRUCTURE ACT 1994

Clause 1 amends the definition of “Port Services” contained in Section 161A in the Transport Infrastructure Act 1994 to remove reference to pilotage services.

PART 2—TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

Clause 1 amends Section 7(2)(a) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as this is a function of the general manager.

Clause 2 amends Sections 66(1), 66(2) and 66(4)(b) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as the general manager is responsible for arranging the provision of reception facilities

Clause 3 amends Section 69 (Heading) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ.

Clause 4 amends Section 69(a) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ.

Clause 5 amends Section 70(2) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as the general manager is responsible for appointing authorized officers.

Clause 6 amends Section 71(1)(c)(i) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as the general manager is responsible for appointing authorized officers.

Clause 7 amends Section 72(1) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ.

Clause 8 inserts a new subsection in Section 72(1) of the Transport Operations (Marine Pollution) Act 1995 to include employees of MSQ.

Clause 9 amends Section 74(3) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as this is a function of the general manager.

Clause 10 amends Section 93(4) of the Transport Operations (Marine Pollution) Act 1995 to replace the first reference to the chief executive with the general manager of MSQ.

Clause 11 amends Sections 98(1), 98(2), 98(3) and 98(5) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as this is a function of the general manager.

Clause 12 amends Section 98(3) of the Transport Operations (Marine Pollution) Act 1995 to replace the “chief executive’s” with the “general manager’s”.

Clause 13 amends Section 99(2) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as this is a function of the general manager.

Clause 14 amends Section 100(1) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager of MSQ as this is a function of the general manager.

Clause 15 amends Section 100(2) of the Transport Operations (Marine Pollution) Act 1995 to replace “chief executive’s” with “general manager’s”.

Clause 16 amends Section 111(a)(v) of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager to be consistent with other amendments outlined in this Schedule.

Clause 17 amends Section 115(10) of Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager.

Clause 18 amends Section 118(2)(a), 118(2)(b), and 118(3) of the Transport Operations (Marine Pollution) Act 1995 to include the chief executive as well as the administering executive.

Clause 19 amends Section 118(5) of Transport Operations (Marine Pollution) Act 1995 to include the chief executive as well as the administering executive.

Clause 20 amends Section 130 of the Transport Operations (Marine Pollution) Act 1995 to extend the chief executive’s powers of delegation to include an officer or employee of MSQ.

Clause 21 inserts a new section after Section 131 of the Transport Operations (Marine Pollution) Act 1995 giving the general manager powers of delegation.

Clause 22 inserts a new section after Section 135 of the Transport Operations (Marine Pollution) Act 1995 that establishes the necessary transitional arrangements to ensure that any matter that started under the

authority of the chief executive before the commencement of MSQ, remains a matter to be dealt with by the chief executive.

Clause 23 amends the definition of “administering authority” contained in the Schedule Dictionary of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with MSQ.

Clause 24 amends the definition of “administering executive” contained in the Schedule Dictionary of the Transport Operations (Marine Pollution) Act 1995 to replace the chief executive with the general manager.

Clause 25 amends the definition of “analyst” contained in the Schedule Dictionary of the Transport Operations (Marine Pollution) Act 1995 to be an appropriately qualified person appointed by the general manager.

Clause 26 inserts a definition of “general manager” and “MSQ” in the Schedule Dictionary of the Transport Operations (Marine Pollution) Act 1995.

PART 3—TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

Clause 1 amends Section 4 of the Transport Operations (Marine Safety) Act 1994 to insert a definition of “general manager” and “MSQ”.

Clause 2 amends Sections 18A(1), 18A(2), 18A(3), 18A(5) and 18A(6)(d) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ to make the general manager responsible for exempting a person or ship from a regulatory provision.

Clause 3 amends Sections 31(4) and 31(5) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ to make the general manager responsible for making standards.

Clause 4 amends Section 34(i) of the Transport Operations (Marine Safety) Act 1994 to make reference to either the chief executive or the general manager of MSQ. This supports the amendments outlined in Clauses 14 and 15 of this Schedule.

Clause 5 amends Sections 36(1) and 36(2) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general

manager of MSQ. This will make harbour masters accountable to the general manager when exercising their powers as harbour masters or shipping inspectors.

Clause 6 amends Section 42(3)(a)(ii) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for approving the design of a ship.

Clause 7 amends Section 45(1) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for making standards.

Clause 8 amends Sections 47(1), 47(4)(b) and 47(5) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 9 amends Sections 48(1) and 48(2) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 10 amends Sections 49(1), 49(3)(c) and 49(4) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 11 amends Sections 50(1) and 50(2) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 12 amends Section 51(1) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 13 amends Section 54(1) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for all matters related to the making of standards.

Clause 14 amends Section 59 of the Transport Operations (Marine Safety) Act 1994 to enable either the chief executive or the general manager of MSQ to cancel, suspend or amend the registration of a ship.

Clause 15 amends Sections 62(2)(a), 62(2)(b) and 62(3) of the Transport Operations (Marine Safety) Act 1994 to enable either the chief executive or the general manager of MSQ to grant, amend or renew licenses.

Clause 16 amends Section 63 of the Transport Operations (Marine Safety) Act 1994 to enable either the chief executive or the general manager of MSQ to cancel, suspend or amend licenses.

Clause 17 amends Sections 67(1)(a)(ii) and 67(2)(a)(ii) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for approving the design of ships.

Clause 18 amends Section 70 of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for canceling, suspending and amending accreditations under this division.

Clause 19 amends the heading of Section 70A of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for approving ship design.

Clause 20 amends Sections 70A(1) and (2) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for approving the design of ships.

Clause 21 amends Section 70B(1) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for making statements regarding the design or survey of a ship.

Clause 22 amends Section 74(1) of the Transport Operations (Marine Safety) Act 1994 to replace the reference to the department with MSQ.

Clause 23 amends Section 76 of the Transport Operations (Marine Safety) Act 1994 to establish that in exercising a power, a harbour master is subject to the direction of the general manager of MSQ.

Clause 24 amends Section 78 of Transport Operations (Marine Safety) Act 1994 to replace a reference to the department with MSQ.

Clause 25 amends Section 79(1) of Transport Operations (Marine Safety) Act 1994 to insert a new subsection (ca) following subsection 79(1)(b) to include an employee of MSQ.

Clause 26 amends Section 101(5), definition of “general employer”, of the Transport Operations (Marine Safety) Act 1994 to omit reference to the department and a port authority and replace with MSQ.

Clause 27 amends Sections 102A(1)(a), 102A(1)(b)(i), 102A(2)(a) and 102A(2)(b)(i) of the Transport Operations (Marine Safety) Act 1994 to omit reference to the department and a port authority and replace with MSQ.

Clause 28 amends Section 105 (Heading) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for setting up aids to navigation.

Clause 29 amends Sections 105(1), 105(2) and 105(3) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for setting up aids to navigation.

Clause 30 amends Section 109(2) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for making standards and issuing exemptions under Section 18A.

Clause 31 amends Section 109(3) of the Transport Operations (Marine Safety) Act 1994 to enable the board to give advice at the request of the Minister, the chief executive or the general manager of MSQ.

Clause 32 amends Section 120 of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for providing administrative support to the Marine Board.

Clause 33 amends Sections 126(1), 126(2), 126(3) and 126(4) of the Transport Operations (Marine Safety) Act 1994 to replace the chief executive with the general manager of MSQ as the general manager is responsible for conducting marine incident investigations.

Clause 34 inserts a new requirement in Section 126(3)(a) of the Transport Operations (Marine Safety) Act 1994 to require the general manager to make recommendations to the chief executive following an investigation.

Clause 35 amends Section 134(a) of the Transport Operations (Marine Safety) Act 1994 to include officers and employees of MSQ as well as the department.

Clause 36 amends Section 153(d) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ to be consistent with the proposed change in Clause 33 of this Schedule.

Clause 37 amends Section 154 of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as shipping inspectors will be subject to directions from the general manager.

Clause 38 amends Section 156(c) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager will be responsible for limiting the powers of shipping inspectors.

Clause 39 amends Sections 157(1) and 157(2) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager will be responsible for appointing shipping inspectors.

Clause 40 amends Section 157 of the Transport Operations (Marine Safety) Act 1994 to include a new subsection 157(1)(ba) following 157(1)(a) to include officers and employees of MSQ.

Clause 41 amends Section 157(2)(a) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive's with the general manager's of MSQ as the general manager will be responsible for appointing shipping inspectors.

Clause 42 amends Section 158(2)(b) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as it relates to the conditions of appointment of shipping inspectors.

Clause 43 amends Sections 159(1), 159(2)(b) and 159(3) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as it relates to the issue of identity cards to shipping inspectors.

Clause 44 amends Sections 201(2)(a), 201(2)(b), 201(3), 201(4) and 201(5) of the Transport Operations (Marine Safety) Act 1994 to include the general manager of MSQ.

Clause 45 amends Section 203(3)(c) of the Transport Operations (Marine Safety) Act 1994 to include the chief executive or the general manager of MSQ.

Clause 46 amends Section 203(5) of the Transport Operations (Marine Safety) Act 1994 to include an officer or employee of MSQ.

Clause 47 amends Section 203 of the Transport Operations (Marine Safety) Act 1994 to insert a new section (5A) to ensure appeals can lie against a delegate of the general manager.

Clause 48 amends Section 205(1) of the Transport Operations (Marine Safety) Act 1994 to include the general manager and officers or employees of MSQ as well as the chief executive and officers and employees of the department.

Clause 49 amends Sections 205(2)(a), 205(2)(b) of the Transport Operations (Marine Safety) Act 1994 to include the general manager.

Clause 50 amends Sections 206A (Heading) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for fixing speed limits for ships.

Clause 51 amends 206A(1) and 206A(4) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for fixing speed limits for ships.

Clause 52 amends Sections 216(3)(a), 216(3)(b) and 216(5)(a) of the Transport Operations (Marine Safety) Act 1994 to replace chief executive with the general manager of MSQ as the general manager is responsible for detaining ships.

Clause 53 creates a new Part 20 in the Transport Operations (Marine Safety) Act 1994 establishing transitional arrangements as the result of the creation of MSQ. This will ensure that any matter started under the authority of the chief executive before the commencement of MSQ, remains a matter to be dealt with by the chief executive.

SCHEDULE 2—DICTIONARY

Schedule 2 sets out the dictionary of terms used in the Bill.