



Queensland

Transport Operations (Marine Safety) Regulation 2004

Explanatory Notes for SL 2004 No. 159

made under the

Transport Operations (Marine Safety) Act 1994

GENERAL OUTLINE

Authorising Law

The proposed *Transport Operations (Marine Safety) Regulation 2004* will be made under the provisions of the *Transport Operations (Marine Safety) Act 1994* and consequential amendments are proposed to regulations made under the *State Penalties Enforcement Act 1999*.

Part 18 of the *Transport Operations (Marine Safety) Act* provides for the making of regulations under the act and allows these regulations to cover a wide range of matters "about marine safety and issues affecting marine safety."

Section 207 provides for the Governor-in-Council to make regulations under the Act.

Section 210 allows the maximum penalty prescribed under a regulation to be 200 penalty units.

Section 165 of the *State Penalties Enforcement Act* provides the authority for *State Penalties Enforcement Regulation 2000*. The regulation may prescribe an offence to be an infringement notice offence and may also prescribe an infringement notice fine for an infringement notice offence.

Background

The proposed *Transport Operations (Marine Safety) Regulation 2004* represents a remake of the present *Transport Operations (Marine Safety) Regulation 1995*.

Following repeal of a number of marine related statutes in 1994, the *Transport Operations (Marine Safety) Regulation 1995* was introduced without the preparation of a Regulatory Impact Statement (RIS). As a consequence, the government required that a review of the new regulation be undertaken.

A comprehensive review was subsequently undertaken in 1997 and 1999 which has significantly informed the current proposal to remake the regulation. However, with the passage of time since the proclamation of the *Transport Operations (Marine Safety) Regulation 1995*, a number of additional policy and operational issues and initiatives have been identified, primarily as a result of the transition from a prescriptive to a performance-based legislative framework.

In remaking the regulation, the primary outcome being sought is an improvement in the effectiveness of the regulation and therefore marine safety and marine industry vibrancy.

Policy Objectives of the Proposed Regulation

The proposed regulation represents a comprehensive review of the existing regulation. The changes being proposed have a number of objectives in view:

- To improve marine safety in the light of experience gained from the 1995 regulation. (In some cases a more prescriptive approach is proposed - adopting relevant parts of the USL Code or a relevant Queensland marine standard);
- To increase flexibility for the maritime industry and boat operators by amending those regulations found to be overly burdensome, or unable to be easily met for technical reasons. For example, it is impractical to require commercially operated personal watercraft (jet skis) to carry all of the normally required safety equipment. Any change made on these grounds will have no measurable effect on safety;

- To improve the clarity of the existing regulation which in turn should improve safety and reduce uncertainty, costs and delays for users; and
- To improve efficiency in administering the regulation.

While the existing legislative framework is ‘workable’, it is considered overly complex and difficult for users to interpret by some industry participants. Failure to address this situation will result in continuing criticism and complaints, and may ultimately compromise marine safety in the State.

How Policy Objectives will be Achieved

Feedback from the two formal rounds of consultation indicated that a wide section of the maritime industry viewed numerous sections of the current regulation as either inflexible or burdensome. For example, the need to revalidate fishing ship engineering qualifications every five years was questioned, given that there would be no apparent increased safety risk that would result from non-renewal of these qualifications. The current regulation also contains a number of inconsistencies such as recreational boat licensing requirements not aligning with boat registration requirements.

The changes included in the proposed regulation are numerous and are aimed at increasing flexibility for the maritime industry and establishing a regulatory framework in which users can tailor their responses to requirements according to their own assessment of risk. This performance based regulatory environment will enable users to find an appropriate balance between meeting safety requirements and cost.

Some of the more significant amendments being included in the remake of the regulation include:

- closer alignment of recreational boat licence requirements with existing recreational boat registration requirements;
- renaming of the current recreational ship master’s licence as a recreational marine drivers licence;
- introduction of capacity labelling requirements for most recreational vessels that are required to be registered;
- introduction of new VHF radio communications monitoring requirements for fishing ships;

- clarification of the validity period for marine engine driver certificates for fishing ships;
- introduction of requirements for crew of commercial and fishing vessels to undertake shipboard safety training;
- amendment of liability insurance requirements for accredited persons; and
- streamlining of regulatory procedures identified as burdensome or unreasonable.

Consistency of the Regulation with the Policy Objectives of the Authorising Law

The objectives of the *Transport Operations (Marine Safety) Act 1994* are generally met by imposing a general safety obligation on owners and operators to ensure seaworthiness and safe operation of vessels, as well as other aspects of marine safety. This obligation can be satisfied by compliance with relevant Queensland marine standards or the national Uniform Shipping Laws (USL) Code, or in other ways chosen by the user on whom the obligation is imposed.

Safety obligations under the Act are intended, as far as possible, to be performance-based rather than prescriptive and to allow users to find an appropriate balance between the achievement and maintenance of adequate standards of safety and the cost of such endeavours. Standards are issued to assist industry and other users to make decisions about their general safety obligations. There are nonetheless, some matters that, in the interests of achieving adequate safety levels, the Government considers should not be optional or discretionary. These provisions have been included in the Act or, where appropriate, in the current regulation. The proposed regulation will mandate some of the provisions of existing Queensland marine standards, the USL Code and other specific provisions.

Consistency with Marine Safety Legislation

The proposed amendments are consistent with the overall objectives outlined in the *Transport Operations (Marine Safety) Act 1994*, s.3(1), and contribute to the provision of a system that achieves an appropriate balance between:

- regulating the maritime industry to ensure maritime safety; and

- enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.

Consistency with Other Legislation

The proposed regulation is part of a broader framework of state and federal maritime safety law. Consistency with Commonwealth maritime legislation and the legislative provisions of the other Australian states and territories is being achieved through the coordinated development and adoption of uniform national marine safety standards. All states and territories have agreed to adopt these standards within their regulations within 12 months of their approval by the Australian Transport Council.

Fundamental Legislative Principles

The proposed regulation does not, in general infringe upon Fundamental Legislative Principles. However, it should be noted that the proposed regulation does contain significant maximum penalties (up to 200 penalty units) for a wide range of safety related offences. This maintains the penalty regime existing under the current regulation and is in accord with Section 210 of the Transport Operations (Marine Safety) Act which allows for penalties of up to 200 penalty units to be prescribed under a regulation.

Due to the nature of the subject matter for the proposed regulation (marine safety) any significant reduction in the maximum penalty available to courts may result in significant criticism from both the maritime industry and the wider community. However, penalties applicable to, administrative offences with less safety significance have been reduced when compared with those applying under the current regulation.

The current and proposed regulations address detailed matters that have a significant impact on both administrative and operational aspects of marine safety. While some issues are also dealt with in the Transport Operations (Marine Safety) Act, the complex and evolving nature of many aspects of marine business require a high level of flexibility and responsiveness by government. It is this need to be responsive to the needs of industry that has resulted in this wide range of issues, and related offence provisions, being managed through regulation rather than directly under the Act.

Additionally, standards, whether specifically made under the Act or adopted from other national or international sources, are used as references

within both the current and proposed regulations. The advantage of using such standards is that they tend to be more easily and rapidly amended to meet emerging trends than either a regulation or an Act. Due to the evolutionary nature of these standards, it is often necessary to adopt new or amended standards by a minor regulatory amendment. It is considered that to make similar amendments to the Act on a regular basis would significantly disadvantage the marine industry due to the time required to progress legislative amendments through Parliament.

Some provisions of the regulation rely upon national and international standards or documents to provide technical details or processes pertaining to issues dealt with by the regulation by reference to those documents. This mechanism is appropriate to allow these voluminous external documents to be utilised without the need to replicate the relevant provisions within the regulation.

The use of these external documents is necessary to cater for the diversity of the marine industry and challenges posed by the need to comply with nationally agreed standards such as the Uniform Shipping Laws Code (USL) and the National Standard for Commercial Vessels (NSCV) that is being progressively developed and adopted by all Australian States and Territories to replace the USL code.

From an international perspective, adopting internationally accepted maritime practices and laws such as the International Regulations for Preventing Collisions at Sea (Collision Regs) promulgated by the International Maritime Organisation (IMO) and adopted by most seafaring nations, including Australia, is essential to ensure safe conduct of domestic and international vessels in Queensland waters.

Queensland, along with other States and the Commonwealth, is endeavouring to provide mechanisms for individuals to access these source documents when necessary. One mechanism being increasingly used is to provide access via web sites.

Most offences under the proposed regulation (particularly the most common operational offences) are punishable by on the spot infringement notices issued under the *State Penalties Enforcement Regulation 2000* (SPER).

A consequential amendment to the SPER regulation is also proposed to complement the proposed regulation. Fines for offences against the proposed regulation imposed under SPER provisions are between one and

five penalty units. This range is similar to that for offences against the current regulation.

The proposed regulation may also be criticised for its significant reliance upon external documents which are not subordinate legislation, particularly the calling up of the International Regulations for Preventing Collisions at Sea (the collision regulations).

Australia as a member State to the Convention on the International Regulations for Preventing Collisions at Sea has given an undertaking to give effect to the collision regulations. To fulfil this undertaking, the collision regulations have been enacted separately by the Commonwealth, each of the States and the Northern Territory. *The Navigation Act 1912* (Commonwealth) applies the collision regulations to vessels on overseas and interstate journeys. The proposed regulation will apply the collision regulations to vessels on intrastate journeys within Queensland waters. These arrangements apply to Australian waters an international scheme embracing all navigation upon the high seas and connected waters.

The proposed regulation provides powers for harbour masters to deal with marine incidents outside the boundaries of pilotage areas. These powers allow a harbour master to direct a person in charge of a place (including private property) to permit access through the place to deal with a marine incident. While specific provisions providing protection to affected land owners are not provided in the proposed regulation, Maritime Safety Queensland is satisfied that adequate protection exists through section 82 of the Transport Operations (Marine Safety) Act. This section provides for any civil liability that may attach to a harbour master for things done under the Act attaches to the State ensuring the availability of compensation for any proven civil liability.

Maritime Safety Queensland acknowledges that the existing powers and responsibilities relating to harbour masters and shipping inspectors in the Act may not fully address current expectations with respect to fundamental legislative principles. However, Maritime Safety Queensland is actively reviewing marine legislation as a result of difficulties experienced following the grounding of a ship in central Queensland late last year. This will lead to significant amendment of the Act, and the regulation, to address these shortcomings.

Consistency with National Competition Policy

The move to a performance-based rather than prescriptive legislative scheme is intended to be consistent with the aims of the National Competition Policy. Insofar as it is consistent with the need to provide for a system of fixed minimum safety standards, the proposed regulation provides the flexibility to ensure that this outcome is achieved. The general intent is to ease prescriptive burdens on industry in an effort to improve vibrancy and competitiveness both locally and nationally.

Policy Alternatives

Option 1 Maintain the status quo

Whilst workable, Option 1 does nothing to enhance maritime safety and improve the efficiency and effectiveness of the maritime industry in Queensland. Failure to intervene in areas identified as being deficient or lacking in some way will potentially have real impact on the safety of people using Queensland waterways.

Option 2 Maritime safety management reform

The changes contained in the proposed regulation will continue to reform maritime safety management in Queensland while at the same time balancing the safety agenda with the need to promote the efficiency and effectiveness of the maritime industry. This will enable business to develop without safety obligations creating a de facto form of business regulation through the use of overly restrictive rules.

Benefits and Costs of Implementing Regulation

The impact on marine safety anticipated from the proposed regulation can be expected to have a positive impact on the community through reduced costs associated with marine incidents. Apart from implementation costs, there is expected to be little additional public expenditure resulting from the proposed regulation. Also, the increases in costs impacting some individual stakeholders will be offset by the overall benefits to the wider community.

The commercial maritime industry

The commercial maritime industry will benefit from the implementation of the proposed regulation in view of the potential for improved business efficiency through improved business flexibility and choice. These will take the form of improved business opportunities for the vessel design and vessel building industries as a result of increased flexibility and reductions in costs from some of the proposed licensing and registration changes. By far the greatest benefits however will come from improved operational safety in the commercial shipping and fishing sectors.

These benefits will be partially offset by some increased costs associated with upgrading training and qualification requirements for maritime licensing and some reduction in operating flexibility that will be introduced in the interests of safety.

The commercial fishing industry

The cost impact on the commercial fishing industry will be negligible as there will be little or no material impact on the fishing industry. If anything, improved flexibility will result in a positive cost impact for operators.

The recreational boating industry and boating public

The effect on the recreational boating industry and the boating public is rated as a neutral impact. The move to more closely align recreational vessel licence requirements with registration requirements will require a small investment of time and money to obtain a recreational boat drivers licence by those presently operating those types of recreational vessel for which licences are not currently required. This is balanced by potentially improved safety through increased knowledge and competence by those on the water as evidenced by reduced involvement of these types of vessels in marine incidents.

The government

The proposed regulation is anticipated to have little or no financial impact on Maritime Safety Queensland or its enforcement partners apart from the short term costs of educating stakeholders about implementing the regulation.

CONSULTATION

In accordance with the requirements of the *Statutory Instruments Act 1992* a Regulatory Impact Statement (RIS) was prepared for the then proposed Transport Operations (Marine Safety) Regulation (No.) 2003. The RIS was released for public consultation on 12 July 2003 with a closing date for comments on 25 August 2003.

Advertisements about the availability of the RIS were placed in the press and notified in the Government Gazette following Cabinet's noting of the RIS. The RIS was sent to key stakeholder groups and other persons with a known interest in the proposed legislation. The RIS was also made available on request to other parties and published electronically on the Internet through the Queensland Transport website (www.transport.qld.gov.au).

Copies of the proposed regulation were made available to interested persons on request.

Thirty-five responses were received to the Regulatory Impact Statement and the proposed regulation. Several were requests for clarification and some respondents sent in more than one reply. Substantive comments were received from 29 organisations and individuals.

Before the public release of the RIS, extensive public consultation was an integral part of the review of the current regulation. Consultation processes followed the Queensland Transport Public Consultation Policy and Guidelines and included:

- public notification of consultation processes and feedback opportunities;
- the dissemination of information and presentation kits canvassing issues for examination;
- public meetings in twelve locations; and
- receipt of written submissions.

Two comprehensive rounds of consultation were undertaken in 1997 and 1999 with a range of stakeholders, including the commercial maritime industry, the commercial fishing industry, the recreational boating industry, the recreational boating public, and the Queensland Government. The first round focused specifically on the 1997 review of the regulation. The second round of consultation focused on many of the issues raised by stakeholders during the initial consultation, as well as additional emerging issues and initiatives proposed to be included in the new regulation.

The second round of consultation undertaken between July and September 1999, involved public dissemination of a draft revised regulation as well as a program of eleven community consultation meetings throughout Queensland. Consultation meetings were conducted at the following prominent boating centres:

- Cairns
- Airlie Beach
- Bundaberg
- Mackay
- Manly
- Southport
- Townsville
- Gladstone
- Urangan
- Mooloolaba
- Scarborough

A total of 592 people attended the formal community consultation meetings and a further 57 people, primarily industry representatives, took part in closed consultation meetings with departmental officers. Consultation on the proposed regulatory changes has continued through a range of industry meeting processes including the Marine Board's bi-monthly program of regional industry forums.

RESULTS OF CONSULTATION

The formal community consultation meeting participants were predominantly from the commercial maritime industry, with only a small number of relatively minor concerns being raised. These tended to be isolated to less critical, lower impact issues that have subsequently been addressed.

Written submissions were by and large supportive of the proposed regulatory changes. On the whole, the consultation processes indicated that the stakeholders are supportive of the package of changes proposed in the draft *Transport Operations (Marine Safety) Regulation 2004*.

A series of minor issues were raised through the RIS process including—

- Differences between the proposed regulation and a draft national standard for recreational boat capacity labelling;

- High speed craft endorsements;
- Safety equipment for PWC (jet skis) in offshore areas; and
- The need for more flexible insurance requirements.

Differences between the proposed regulation and a draft national standard for recreational boat capacity labelling.

Queensland has been trialling a "capacity label" for recreational boats for approximately three years. Displaying a label has not been compulsory during this period. The proposed regulation will make displaying a capacity label compulsory from 1 September 2005.

During consultation, it was pointed out that the proposed regulation does not match the requirements of a draft "National Standard for the Australian Builder's Plate for Recreational Boats" (national standard). The issue of concern was with respect to where the label may be placed on the vessel. The proposed regulation is not significantly different to the draft standard. However it is more prescriptive with respect to the placement of the label.

The national standard has not been finalised or fully agreed at this time but there are currently no other substantive differences between the proposed regulation and the draft standard that would impact safety.

The national standard is a further step toward national uniformity with respect to recreational vessel safety. Should the national standard feature different requirements to those in the proposed regulation when finalised, further amendments to the regulation will be considered to accommodate the national consistency desirable in this area.

High speed craft endorsements

The proposal to introduce "high speed craft" endorsements in the consultation draft of the regulation circulated with the Regulatory Impact Statement attracted criticism from a major commercial operator. The proposal is to require a suitable endorsement on the licence of a vessel master if operating a vessel of over 20 metres in length and capable of a speed over 20 knots. The endorsement would allow the person to operate the nominated vessel on a designated route.

The training required to obtain the endorsement would be in accordance with the International Code of Safety for High-Speed Craft (HSC) issued by the International Maritime Organisation (IMO). However, the required

training is currently only available outside Queensland. At the time of preparing the Regulatory Impact Statement, it was anticipated that additional training providers would be offering this course within the State. This has not eventuated.

The concerns centred on the ability of vessel owners to obtain the services of suitably qualified personnel at short notice and the proposed length criteria which is lower than that envisaged under the HSC.

The difference in length criteria is recognition of the potential safety risk associated with a growing number of high speed commercial passenger vessels in Queensland. A 12 month phased introduction was expected to allow existing masters sufficient time to obtain appropriate endorsements and also allow operators to plan for future staff training. However, the non-availability of training within Queensland has jeopardised that approach.

Additionally, potential changes due to the adoption of sections of the NSCV in the foreseeable future may adversely impact the original proposal.

Given that the proposal would impact a small, but significant section of the industry, and the perceived difficulties in complying with the requirements, it is not intended to include this matter in the proposed regulation.

Safety equipment for Personal Water Craft (jet skis) in offshore areas

In their response to the RIS, the Queensland Police Service (Water Police) raised concerns about the existing safety equipment requirements for recreational jet skis operating in open waters. Unlike a conventional vessel, a jet ski is exempt from carrying most items of safety equipment in these areas due to design constraints.

The main concern of the Water Police is the increasing number of Search and Rescue operations being conducted for jet ski operators as increasing numbers of these craft venture further offshore.

The issue is one directly impacting marine safety and is being closely monitored. As the issue was not addressed in the RIS and has not been the subject of other detailed consultation with affected users or industry representatives, it is not proposed to amend the safety equipment requirements for recreational jet skis at this time. Should the current trends

continue, more stringent requirements may be introduced at a later date following adequate consultation.

More flexible insurance requirements

The draft regulation released for comment in August 2003 which proposed all accredited persons, including ship builders and repairers, must hold professional indemnity insurance was criticised by several stakeholders.

The proposed regulation will therefore give accredited persons greater flexibility in meeting the insurance requirements of the regulation. Instead of prescribing that accredited persons hold a specific form of insurance, the proposed regulation will require accredited persons to maintain insurance protection to cover their legal liability arising out of, or in respect of, a ship designed, built or surveyed by the accredited person. Prescribing the risk to be covered rather than the specific form of insurance will provide the opportunity to consider alternative arrangements for insurance.

The proposed regulation will also require accredited persons who do not hold complying insurance to provide a written statement to consumers advising that they do not have the required insurance when contracting with consumers.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Section 1 specifies the short title of the regulation as the *Transport Operations (Marine Safety) Regulation 2004*.

Commencement

Section 2 provides that the regulation commences on 16 August 2004.

Role of this regulation compared to the standards

Section 3 provides that the role of the regulation is to prescribe various matters for the Act.

Some provisions of the regulation state matters with which particular people must comply. The requirement to comply with a provision of the regulation is in addition to any requirement under the Act to comply with a provision of the Act, including, for example, the provisions about the general safety obligations.

The role of the standards is to help people understand the general safety obligations.

Definitions

Section 4 provides that the dictionary in schedule 15 defines particular words used in the regulation.

References to latitude or longitude

Section 5 provides that a reference in the regulation to latitude or longitude is a reference to latitude or longitude using the coordinate framework known as Geocentric Datum of Australia (GDA94).

References to length of ship

Section 6 provides that a reference in the regulation to the length of a ship is a reference to the measured length of the ship within the meaning of section 1, part 2 of the USL code.

References to standards in sch 1

Section 7 provides that schedule 1 lists the standards mentioned in the regulation. However, schedule 1 is included for information purposes only.

PART 2—SAFETY EQUIPMENT

Division 1—Introduction

Purpose of pt 2

Section 8 provides that the purpose of the part is to require certain ships to be equipped with safety equipment and declare equipment that is safety equipment to which section 44 of the Act applies. Compliance with this provision is achieved in part, by giving effect to sections 10 and 11 of the USL code, with changes.

Division 2—EPIRB for all ships

All ships in Queensland waters to be equipped with EPIRB

Section 9 provides that a ship in Queensland waters must be equipped with an emergency position indicating radio beacon (EPIRB) that complies with AS/NZS 4330—1995 or is classified as category 1 under AS/NZS 4280—1995, section 2.1.2(a) and complies with the standard. This requirement does not apply to a ship in smooth waters, in partially smooth waters, or within 2 n miles from land. The standard to which the EPIRB must comply has changed from a Ministerial Standard to the Australian Standard.

Subsection 3 declares that an EPIRB that complies with AS/NZS 4330—1995 or 4280—1995 is safety equipment to which section 44 of the Act applies.

Division 3—Other safety equipment for commercial ships

Application of div 3

Section 10 provides that division 3 applies to the various ships in Queensland waters registered under the regulation or that should be registered under the regulation.

Declaration applying Act, s 44 to equipment under this division

Section 11 provides that the equipment with which a ship is required to be equipped under division 3 is safety equipment to which section 44 of the Act applies.

Fire appliances—commercial ships to comply with USL code with changes

Section 12 provides that a commercial ship, other than a personal water craft mentioned in section 11 of the USL code, must be equipped with the fire appliances required for the class of ship under the code.

However, a reference in section 11 of the USL code to a portable fire extinguisher is taken to be a reference to a fire extinguisher that complies with AS/NZS 1850—1997 and has been serviced annually and otherwise maintained in accordance with AS 1851.1—1995.

If the fire extinguisher is a dry powder fire extinguisher it must be fitted with a discharge hose in accordance with AS2444—1995 and have a rating under AS/NZS 1850—1997 of at least 2A30B(E).

If the fire extinguisher is a foam fire extinguisher, it must have a rating under AS/NZS 1850—1997 of at least 3A20B.

If the fire extinguisher is a CO₂ fire extinguisher, it must have a rating under AS/NZS 1850—1997 of at least 5B(E).

These exceptions to the adoption of the USL code provisions are a short term measure to address issues that will be overcome by the adoption of a new national standard for safety equipment.

Lifesaving appliances—commercial ships to comply with USL code with changes

Section 13 applies to a commercial ship, other than a personal watercraft, if it is a ship mentioned in section 10, part 3 of the USL code.

The ship must be equipped with the lifesaving appliances required for the class of ship under section 10, part 3 of the USL code.

However, section 10, part 3 of the USL code has effect with the following changes—

- if the ship is registered as a class 1D or 2D ship operating only in daylight hours, the requirement under the USL code to be equipped with 3 distress rockets is taken to be complied with if the ship is equipped with 4 hand held orange smoke signals;
- if the ship is registered as a class 1E or 2E ship, the requirement under the USL code to be equipped with distress signals is taken to be complied with if the ship is equipped with a V sheet, 2 hand held red flares and 2 hand held orange smoke signals;
- if the ship is less than 7 m, the ship may be operated without lifebuoys;
- if the ship is operating in smooth waters, the requirement under the USL code to be equipped with life jackets is taken to be complied with if there is a PFD type 1 for each person on board;
- if the ship is involved in diving operations, the requirement under the USL code to be equipped with life jackets is taken to be complied with for any particular person if the person is wearing a wet suit and is also wearing an inflatable divers jacket complying with BS EN 12628 (1999);
- if the ship is registered in more than 1 class, the ship need only be equipped with the lifesaving equipment required for the class in which it is then operating.

If a ship is registered as a class 1D, 1E, 2D or 2E ship, it must be equipped with emergency portable lighting devices, capable of giving off reasonable light in an emergency, for all crew of the ship.

If the ship is registered as a class 1E or 2E ship and is a high speed ship it must be equipped with a flashing yellow light visible from all directions and the light must be used while the ship is under way. This provision addresses safety issues that have arisen as a result of visibility concerns with the operation of fast craft such as the Brisbane River City Cat ferries.

If the ship is registered as other than a class 1F ship, it must be equipped with the daylight signalling lamp or signalling light stated for the class of ship in the USL code.

If a provision of the USL code requires the ship to be equipped with life jackets, lifeboats, life rafts or buoyant appliances having regard to the number of persons the ship is registered to carry, however expressed, the reference to the number is taken to be a reference to the number of persons on board.

However, if the ship is required to be equipped with lifeboats, life rafts or buoyant appliances, the requirement does not apply if the ship

- has internal buoyancy as required under the USL code; or
- is less than 6 m and there is a statement in the approved form for the ship that the ship has positive flotation; or
- if the ship is an inflatable ship, there is a statement in the approved form for the ship that the ship has positive flotation when its largest air chamber is deflated; or
- is registered as a class 1E ship and carries the buoyant appliances or the life jackets as required under the USL code.

The ship may be equipped with a PFD type 1 life jackets for each person under 32 kg on board, if life jackets required under the USL code are not available for persons under 32 kg.

Lifesaving appliances for class 1F commercial ship

Section 14 provides that a class 1F ship must be equipped as follows—

- as if it were a class 2E ship when it is operating in smooth waters, but the ship need not be fitted with coastal life jackets if the ship is equipped with a PFD type 1 for each person on board;
- as if it were a class 2D ship when it is operating in partially smooth waters;
- as if it were a class 2C ship when it is operating beyond partially smooth waters.

However, a ship operating beyond partially smooth waters need not be fitted with the life rafts required for a class 2C ship if—

- the ship has with it a tender that is capable of carrying everyone on board; and
- the tender is marked or coloured in a way that helps to make it visible in the water; and
- there is a statement in the approved form for the tender that the tender has positive flotation.

If the ship operates only in daylight hours, a coastal life jacket required under section 10 of the USL code need not be fitted with a light. The ship must also be equipped with—

- emergency portable lighting devices, capable of giving off reasonable light in an emergency, for all crew of the ship;
- a lighting device for signalling mentioned in section 29 for a recreational ship.

However, a class 1F ship of less than 7m may be operated without lifebuoys. Also, if a class 1F ship is less than 6 m it need only be equipped with the safety equipment that would be required for it under section 30(1), 31 or 33 of the regulation as if it were a recreational ship.

Safety equipment requirements for class 1F ships are not addressed in the USL code. These requirements are therefore based on the application of the USL code safety equipment standards, relaxed where appropriate to suit hire boat operations.

Lifesaving appliances for class 2E commercial ship owned and operated by particular entity and operating in river etc

Section 15 specifies new requirements for the lifesaving equipment for a class 2E commercial ship which is owned and operated by a Volunteer Marine Rescue, Surf Life Saving Association or by the Emergency Services Department and is operating in a river, creek, stream or waters contained within breakwaters or revetments.

However, the requirement under the USL code to be equipped with life jackets is taken to be complied with if the ship is equipped with grab lines, grab rails or other permanent means of giving each person on board a way of keeping a secure hold to the ship and there is a statement in the approved form that the ship has positive flotation.

Commercial ship used as training ship

Section 16 specifies the new safety equipment requirements for a commercial ship registered as a class 2E ship used as a training ship by a training provider and the person conducting the training accompanies the training ship in another ship equipped with the safety equipment required under the division for a ship of the class of the other ship, the training ship need not be equipped with the safety equipment required under the division for a class 2E ship if each person on board the training ship wears a PFD type 1 or 2 at all times.

Commercial ship that is a personal watercraft

Section 17 provides that a commercial ship that is a personal watercraft, other than a ship registered as a class 1F ship, must be equipped with

- when operating in smooth waters—a PFD type 2 or 3 for the operator and each passenger on the watercraft; and
- when operating in partially smooth waters or beyond a PFD type 2 for the operator and each passenger on the watercraft.

When a personal watercraft is operating in partially smooth waters or beyond it must also be equipped with 2 hand held red flares and 2 hand held orange smoke signals.

A personal watercraft is taken not to be equipped with a PFD if a PFD is not being worn by the operator and each passenger on the watercraft.

Safety equipment not otherwise stated

Section 18 provides that if the division does not otherwise state the safety equipment the ship must be equipped with, it must be equipped with the safety equipment for a recreational ship required under division 5.

Safety equipment to comply with particular provisions of USL code

Section 19 provides that the safety equipment with which a commercial ship must be equipped under the division must be stowed, marked, and be of a type, as stated in the USL code.

Division 4—Other safety equipment for fishing ships**Application of div 4**

Section 20 provides that division 4 applies to the following ships—

- a ship registered under the regulation as a fishing ship—class 3A, 3B, 3C, 3D or 3E;
- a ship that is registrable under the regulation as a fishing ship in a class mentioned in paragraph (a), but is not registered;
- a fishing ship less than 10 m.

However, the division does not apply to the following—

- a fishing ship used for fishing in an ocean beach fishery under the *Fisheries Regulation 1995*;
- a tender of the type described in section 60(2)(h) if the tender is not powered or is powered by an engine of less than 3 kW.

Declaration applying Act, s 44 to equipment under this division

Section 21 provides that the equipment with which a ship is required to be equipped under the division is safety equipment to which section 44 of the Act applies.

Fire appliances—fishing ships to comply with USL code with changes

Section 22 provides that if a ship is mentioned in section 11 of the USL code, it must be equipped with the fire appliances required for the class of ship under the code.

A reference in section 11 of the USL code to a portable fire extinguisher is taken to be a reference to a fire extinguisher that complies with AS 1850—1997 and has been serviced annually and otherwise maintained in accordance with AS 1851.1—1995. If the fire extinguisher is a dry powder fire extinguisher it must be fitted with a discharge hose in accordance with AS 2444—1995 and have a rating under AS/NZS 1850—1997 of at least 2A30B(E).

If the fire extinguisher is a foam fire extinguisher, it must have a rating under AS/NZS 1850—1997 of at least 3A20. If the fire extinguisher is a CO₂ fire extinguisher, it must have a rating under AS/NZS 1850—1997 of at least 5B(E).

These exceptions to the adoption of the USL code provisions are a short term measure to address issues that will be overcome by the adoption of a new national standard for fire safety.

Lifesaving appliances—fishing ships to comply with USL code with changes

Section 23 applies to a fishing ship if it is a ship mentioned in section 10, part 321 of the USL code.

The ship must be equipped with the lifesaving appliances required for the class of ship under section 10, part 3 of the USL code. However, the requirements of the code applies with the following changes—

- if the ship is registered as a class 3D ship operating only in daylight hours, the requirement under section 10, part 3 of the USL code to be equipped with 3 distress rockets is taken to be complied with if the ship is equipped with 3 hand held orange smoke signals;
- if the ship is registered as a class 3E ship, the requirement under section 10, part 3 of the USL code to be equipped with distress signals is taken to be complied with if the ship is equipped with a V sheet, 2 hand held red flares and 2 hand held orange smoke signals;
- if the ship is less than 7 m, the ship may be operated without lifebuoys.

The ship must be equipped with the daylight signalling lamp or signalling light stated for the class of ship in section 13, part 3 of the USL code.

If the ship is registered as a class 3D or 3E ship, it must be equipped with emergency portable lighting devices, capable of giving off reasonable light in an emergency, for all crew of the ship.

If a provision of section 10, part 3 of the USL code requires the ship to be equipped with life jackets, lifeboats, life rafts or buoyant appliances having regard to the number of persons the ship is certified to carry, however expressed, the reference to the number is taken to be a reference to the number of persons on board.

Fishing ship less than 10 m or licensed as tender commercial fishing boat

Section 24 provides that the provisions of the USL code about distress signals, life jackets, lifeboats, life rafts or buoyant appliances do not apply to a fishing ship less than 10 m or a fishing ship licensed as a tender to a commercial fishing boat under the Fisheries Regulation 1995, if the ship is equipped with the safety equipment required for a recreational ship operating beyond smooth waters.

Safety equipment not otherwise stated

Section 25 provides that if division 4 does not otherwise state the safety equipment the ship must be equipped with, it must be equipped with the safety equipment required for a recreational ship under division 5.

Safety equipment to comply with particular provisions of USL code

Section 26 provides that the safety equipment with which a fishing ship must be equipped under the division must be stowed, marked and be of a type, as stated in the USL code, section 10, parts 1, 2 and 4.

Division 5—Other safety equipment for recreational ships**Application of div 5**

Section 27 provides that division 5 applies to the following ships—

- a ship registered under the regulation as a recreational ship;
- a ship that is registrable under the regulation as a recreational ship but is not registered;
- a recreational ship mentioned in section 60(2), other than paragraphs (f) and (i).

The division also applies to a commercial ship or fishing ship to the extent necessary to give effect to sections 18 and 25.

Declaration applying Act, s 44 to equipment under this division

Section 28 provides that the equipment with which a ship is required to be equipped under the division is safety equipment to which section 44 of the Act applies.

Lighting devices for signalling for recreational ship on water at night

Section 29 provides that a recreational ship on the water at any time between sunset and sunrise must be equipped with a lighting device for signalling to attract attention. However, this does not limit the obligation of the person operating the ship to equip the ship with navigation lights required under section 126.

If the ship is a ship propelled by oars, the ship must also display a flashing white light visible through an uninterrupted range of 360°.

The section also applies to a recreational ship if it is a recreational ship mentioned in section 60(2)(f) or (i).

Safety equipment for recreational ship operating in smooth waters

Section 30 provides that a recreational ship, other than a personal watercraft, operating in smooth waters must be equipped with—

- a PFD type 1, 2 or 3 for each person on board; and
- if the ship is more than 5 m, fire fighting equipment capable of extinguishing fire on the ship quickly and effectively.

However, the requirement a PFD type 1, 2 or 3 for each person on board does not apply if—

- the ship operates in a river, creek, stream or the waters contained within breakwaters or revetments; and
- the ship is equipped with grab lines, grab rails or other permanent means of giving each person on board a way of keeping a secure hold to the ship; and
- there is a statement in the approved form for the ship that the ship has positive flotation.

Safety equipment for recreational ship operating in partially smooth waters and beyond

Section 31 provides that a recreational ship, other than a personal watercraft, operating beyond smooth waters must be equipped with—

- a PFD type 1 or 2 for each person on board if the ship is operating in partially smooth waters; and
- a PFD type 1 for each person on board if the ship is operating beyond partially smooth waters; and
- a V sheet; and
- 2 hand held red flares; and

- 2 hand held orange smoke signals; and
- fire fighting equipment capable of extinguishing fire on the ship quickly and effectively if the ship is more than 5 m in length.

The flares and signals mentioned must conform to the USL code, SOLAS, or AS 2092—1988.

Exception for anyone on recreational ship wearing wet suit and diver's jacket

Section 32 provides that a recreational ship need not be equipped with a personal flotation device for a person on board, if the person is wearing a wet suit and an inflatable diver's jacket complying with BS EN 12628 (1999).

Safety equipment for recreational ship that is a personal watercraft

Section 33 provides that a recreational ship that is a personal watercraft must be equipped with a PFD for the operator and each passenger on the watercraft. The watercraft is taken not to be equipped with the PFD if a PFD is not being worn by the operator and each passenger on the watercraft.

In the section "PFD" means—

- if the watercraft is operating in smooth waters—a PFD type 2 or 3; or
- if the watercraft is operating in partially smooth waters or beyond—a PFD type 2.

Division 6—Other safety equipment for tenders

Application of div 6

Section 34 provides that division 6 specifies safety equipment requirements for tenders that are required to be registered.

Declaration applying Act, s 44 to equipment under this division

Section 35 provides that the equipment with which a tender is required to be equipped under the division is safety equipment to which section 44 of the Act applies.

Lighting device for signalling for tender on water at night

Section 36 provides that a tender on the water at any time between sunset and sunrise must be equipped with a lighting device for signalling to attract attention.

However, this does not limit the obligation of the person operating the tender to equip the tender with navigation lights required under section 126.

Safety equipment for tender operating in smooth waters

Section 37 provides that a tender operating in smooth waters must be equipped with a PFD type 1, 2 or 3 for each person on board.

However, this requirement does not apply if—

- the tender is used within 1 km of the ship for which it is a tender; and
- there is a statement in the approved form for the tender that the tender has positive flotation.

Alternatively this requirement does not apply if

- the tender operates in a river, creek, stream or the waters contained within breakwaters or revetments; and
- the tender is equipped with grab lines, grab rails or other permanent means of giving each person on board a way of keeping a secure hold to the tender; and
- there is a statement in the approved form for the tender that the tender has positive flotation.

A tender of more than 5 m operating in smooth waters must also have fire fighting equipment capable of extinguishing fire on the tender quickly and effectively.

Safety equipment for tender operating in partially smooth waters and beyond

Section 38 provides that a tender operating in or beyond partially smooth waters must be equipped with—

- if the tender is operating in partially smooth waters—a PFD type 1 or 2 for each person on board; and
- if the tender is operating beyond partially smooth waters—a PFD type 1 for each person on board; and
- a V sheet; and
- 2 hand held red flares; and
- 2 hand held orange smoke signals; and
- if the tender is more than 5 m—fire fighting equipment capable of extinguishing fire on the tender quickly and effectively.

The flares must conform to the USL code, SOLAS, or AS 2092—1988.

However, a tender operating in partially smooth waters is not required to be equipped with a PFD type 1 or 2 for each person on board if—

- the tender is used within 1 km of its primary ship; and
- there is a statement in the approved form for the tender that the tender has positive flotation.

A tender operating beyond partially smooth waters is not required to be equipped with a PFD type 1 or 2 for each person on board if—

- the tender is used within 500 m of the ship for which it is a tender; and
- there is a statement in the approved form for the tender that the tender has positive flotation.

Exception for person on tender wearing wet suit and diver's jacket

Section 39 provides that a tender need not be equipped with a personal flotation device for a person on board if the person is wearing a wet suit and an inflatable diver's jacket complying with BS EN 12628—1999.

Division 7—Life jackets and personal flotation devices**Life jackets and personal flotation devices**

Section 40 provides that if the requirements under the regulation for a ship's safety equipment include a requirement for life jackets and personal flotation devices for each person on board, the ship is taken not to be equipped with the required safety equipment unless there is an appropriate size life jacket or personal flotation device for each individual, 1 year or older, on board.

Division 8—Expiry date for safety equipment**Expiry date for particular safety equipment**

Section 41 applies if a ship is equipped with any of the following safety equipment for this part—

- an EPIRB;
- a fire extinguisher;
- flares;
- a life raft that is inflatable;
- a PFD type 1, 2 or 3 that is inflatable;
- smoke signals.

The safety equipment must show a legible expiry date (however described) for the equipment. The equipment must also be serviced by the manufacturer or the manufacturer's authorised service agent, or be replaced, before the expiry date.

PART 3—ACCREDITATION, SHIP BUILDING AND REGISTRATION OF SHIPS

Division 1—Accreditation of ship designers, ship builders and marine surveyors

Application of Act, pt 5, div 4

Section 42 provides that Part 5, division 4 of the Act applies to commercial or fishing ships that—

- the general manager would not be able to register under division 4 of the regulation unless an application to register the ship were accompanied by a certificate of compliance for the ship; or
- are built in Queensland but are to be operated in another State, or a foreign country and for which an accredited person has been requested to issue a certificate of compliance or the general manager has been requested to issue a certificate of survey under division 8.

A ship built in Queensland but to be operated in another State, or a foreign country is a ship connected with Queensland only for the purposes of division 1 and section 70.

However, section 67 of the Act does not apply to a commercial ship if—

- the ship is less than 6 m; and
- the ship operates only in smooth or partially smooth waters or within 15 n miles from land; and
- there is a statement in the approved form for the ship that the ship has positive flotation.

Declaration of alterations or replacements that may affect marine safety—Act, s 4, definition “building”

Section 43 declares, for section 4 of the Act, alterations or replacements that may affect marine safety are defined as “building” under the Act.

Accreditation as a ship designer, ship builder or marine surveyor

Section 44 provides that the general manager may accredit a person as a ship designer, ship builder or marine surveyor only if the person satisfies the general manager the person qualifies for accreditation under the *Transport Operations (Marine Safety—Qualifications for Accreditation for Ship Designers, Ship Builders and Marine Surveyors) Standard 1998*. The procedure for accreditation is in part 6.

Categories of accreditation for ship designer

Section 45 provides the categories of accreditation for a ship designer. The categories of accreditation as a ship designer include any part of a category decided by the general manager.

Categories of accreditation for ship builder

Section 46 provides the categories of accreditation as a ship builder. The categories of accreditation as a ship builder include any part of a category decided by the general manager.

Categories of accreditation for marine surveyor

Section 47 provides the categories of accreditation as a marine surveyor. The categories of accreditation as a marine surveyor include any part of a category decided by the general manager.

Hull and superstructure taken to be built of particular material

Section 48 provides that for sections 45(1)(a) or (b), 46(1)(a) or (b) and 47(1)(a) or (b), a hull or superstructure is taken to be built of a material if it is primarily built of the material.

Authority given by accreditation

Section 49 provides that an accredited person may issue a certificate of compliance in the approved form for a ship in the category for which the accredited person is accredited.

The certificate of compliance has effect subject to the conditions stated in the Act, including in the regulation, and the accredited person's accreditation.

However, an accredited person that is a corporation must not issue a certificate of compliance for a ship unless the individual having the supervision and management of the designing, building or surveying of the ship has the same accreditation as the corporation. A maximum penalty of 200 penalty units is provided for the offence.

An accredited person that is a corporation must inform the general manager when an individual having the supervision and management of the designing, building or surveying of a ship stops being employed by the corporation. A maximum penalty of 20 penalty units is provided for the offence.

Accredited person to keep documents

Section 50 applies to an accredited person who carries on a business of ship designing, ship building or marine surveying.

The accredited person must bring into existence and keep an operational plan and a production record for the business. The operational plan will show

- the management structure,
- individual responsibilities and the professional or trade qualifications of employees of the business, and
- a system for monitoring, at each critical stage, the quality and integrity of design, building or surveying process.

The production record will show details of

- the ships, or parts of ships, designed, built or surveyed by the accredited person;
- the carrying out of the monitoring stated in paragraph (a)(iii);
- all significant rectifications and alterations found necessary in the designing, building or surveying process.

A maximum penalty of 100 penalty units is provided for the offence.

The operational plan must be brought into existence within 30 days after the business is started.

The production record must be brought into existence within 1 week after the business is started, and must be brought up-to-date every week after the business is started. The operational plan is taken to be of a suitable standard if it is a current operational quality management and assurance system certified by a certification entity.

The accredited person must ensure that entries in the documents are complete and accurate and the documents are amended to show any change in the operation of the business within 14 days after the change. The documents must be kept at the accredited person's place of business for at least 7 years (instead of 5 years) after they are made. A maximum penalty of 100 penalty units is provided for the offence.

Accredited person not to issue certificate of compliance unless insured

Section 51 requires that an accredited person must not issue a certificate of compliance for a ship, or part of a ship, that is designed, built or surveyed by the person while the person is accredited unless the person is covered by an insurance policy providing for the person's legal liability arising out of or in respect of the issue of the certificate. A maximum penalty of 100 penalty units is provided for this offence.

Prescribing the risk to be covered rather than the specific form of insurance will provide the opportunity to consider alternative arrangements for insurance.

This could include allowing:

- ship builders to hold ship repairers liability insurance or other similar product liability insurance;
- ship designers and marine surveyors to hold professional indemnity insurance; and
- insurance policies for companies to cover accredited individuals who are employees of the company and named as an insured party under the policy.

The current regulation requires accredited persons to carry, as a condition of their accreditation, product liability insurance. The cost of obtaining complying insurance has increased dramatically, with increases of up to 300% in premium cost compared to the previous year for some accredited persons. Moreover, many accredited persons have had difficulty in renewing their insurance coverage, with some having to change providers to obtain cover. While insurers have evaluated applications for

renewal on a case-by-case basis, it is clear that they have adopted a strict approach.

A key issue is whether the requirement for accredited persons to maintain insurance should be retained as protection for consumers or whether to remove this requirement. In broad terms, the main advantage of retaining the requirement is that it provides some protection to consumers and the general public. The main disadvantage is that it is imposing an increasing cost on accredited persons, and that some practitioners are finding it increasingly difficult to obtain cover at all. Hence maintaining the requirement without qualification may not be sustainable over the longer term.

While it would be desirable to maintain the requirement on accredited persons to be insured with an adequate level of consumer protection, it would be helpful to provide more flexibility than at present.

Accredited person to maintain policy

Section 52 applies if an accredited person has issued a certificate of compliance for a ship, or part of a ship, whether before or after the commencement of this regulation. While the accredited person continues to be accredited, the person must obtain and keep an insurance policy in force providing for the liability arising out of or in respect of the issue of a certificate of compliance. A maximum penalty of 100 penalty units is provided for this offence.

The accredited person must also give the general manager a copy of the certificate of insurance or renewal of the policy within 5 business days after taking out or renewing the policy. A maximum penalty of 50 penalty units is provided for this offence.

Accredited person who can not obtain insurance for s 53

Section 53 applies if the general manager is satisfied that an accredited person can not reasonably obtain or keep in force the insurance providing for the liability arising out of or in respect of the issue of a certificate of compliance.

The general manager may, by written notice given to the accredited person, allow the person to issue a certificate of compliance for a ship, or part of a ship, if the general manager is satisfied that—

- it is necessary to allow the accredited person to issue certificates of compliance to maintain the efficiency and effectiveness of the Queensland Maritime industry, and
- marine safety will not be significantly affected.

The notice may contain any conditions about issuing certificates of compliance that the general manager considers necessary. The accredited person must comply with any conditions imposed by the general manager about issuing certificates of compliance. A maximum penalty of 100 penalty units is provided for this offence.

Before the accredited person enters into a contract with another person in relation to an activity for which the accredited person is accredited, the accredited person must give the other person a written notice stating that the accredited person does not have the insurance providing for the liability arising out of or in respect of the issue of a certificate of compliance. A maximum penalty of 100 penalty units is provided for this offence.

If a significant number of accredited persons cannot obtain complying insurance, Maritime Safety Queensland will be unable to strictly enforce the insurance requirements of the regulation. This would cause substantial detriment to the productivity of the Queensland ship building industry and potentially impact the safety and seaworthiness of existing ships following repairs and maintenance.

If it is not possible to ensure a satisfactory level of insurance coverage is held by accredited persons, it may be necessary to consider some requirements for accredited persons to disclose the nature of their insurance coverage. Given that there are benefits for the consumer if a contractor holds adequate insurance cover, it would seem reasonable that a consumer is entitled to know whether the contractor is insured prior to entering into a contract for relevant work. The regulation will therefore require that accredited persons who do not hold complying insurance must, when contracting with consumers, provide a written statement to consumers advising that they do not have the required insurance.

Division 2—Other provisions about ship design and survey**Application of Act, pt 5, div 5**

Section 54 provides that Part 5, division 5 of the Act applies to the ships to which, under section 44(1), part 5, division 4 of the Act applies.

Division 3—Building of ships**Application of div 3**

Section 55 provides that division 3 applies to a ship that—

- is mentioned in section 42(1); or
- if built, would be a ship mentioned in section 42(1); or
- is registered under the regulation, if the documents produced to the general manager when the ship was registered included a current certificate of survey for the ship issued under section 70, or an equivalent certificate issued under a law of the Commonwealth or another State, or by a classification society; and the ship is the subject of further building.

Certificate for design and other documents to be given to general manager before building starts

Section 56 requires that a person, including an accredited ship builder, must not start building a ship, or part of a ship, unless the person has given the general manager written notice of the person's intention to build the ship or part together with—

- particulars of the certificate of compliance for the design of the ship or part and the plans and other documents mentioned in the certificate; or
- the design approval certificate for the ship or part.

A maximum penalty of 100 penalty units is provided for the offence.

Responsibility for ensuring issue of certificate of compliance for survey

Section 57 provides if the builder of a ship or part of a ship is not an appropriately accredited ship builder to build the ship or part the person must ensure the ship or part is surveyed by a marine surveyor who is accredited to survey the ship or part and obtain a certificate of compliance for the survey of the ship or part from the surveyor. A maximum penalty of 100 penalty units is provided for the offence.

If the builder is building the ship or part for another person, the builder must give the certificate to the other person when delivering the ship or part. A maximum penalty of 10 penalty units is provided for the offence.

However, if the person for whom the ship is being built gives the builder a signed notice stating that they do not require the builder to have the ship surveyed by a marine surveyor the builder is not required to have the survey done or obtain a certificate of compliance for the survey of the ship.

If the builder is not required to have the ship surveyed by a marine surveyor the person for whom the ship is being built must, at the appropriate stages during the building of the ship or part ensure the ship or part is surveyed by a marine surveyor who is accredited to survey the ship or part and obtain a certificate of compliance for the survey of the ship or part from the surveyor. A maximum penalty of 100 penalty units is provided for the offence.

Effect on certificates if further building

Section 58 provides that a certificate of compliance or design approval certificate for a ship stops having effect so far as it relates to the ship, or part, that is the subject of the further building or requires further building as a result of something happening to the ship that requires further building of the ship before it may be operated safely.

Copy of certificate to general manager

Section 59 requires an accredited ship designer to give the general manager a copy of a certificate of compliance for a ship or part of a ship within 5 business days. A maximum penalty of 10 penalty units is provided for the offence. The period for providing documentation to the general manager has been reduced from the current 28 days to 5 days to enable more effective monitoring of accredited persons and ship building activity.

An accredited ship builder or marine surveyor must give the general manager a copy of a certificate within 5 business days after issuing the certificate if further building of a registered ship, or part of a ship, has been completed and an accredited ship builder or marine surveyor issues a certificate of compliance for the ship or part. A maximum penalty of 20 penalty units is provided for the offence.

Division 4—Registration of ships

Application of Act, pt 5, div 2

Section 60 prescribes the ships to which the registration requirements of part 5, division 2 of the Act applies. However, Part 5, division 2 of the Act does not apply to a ship that is not on or in water. For example, if the registration of a ship expires when the owner has the ship out of water, the owner need only register the ship when the owner intends to put the ship back in the water.

Owner to register ship

Section 61 provides that the owner of a ship to which part 5, division 2 of the Act applies must register the ship unless the owner has a reasonable excuse. A maximum penalty of 200 penalty units is provided for the offence.

The procedure for registration is in part 6.

Chief executive and general manager to register ships

Section 62 provides that the chief executive may register a ship as a recreational ship if the chief executive considers the ship will be a recreational ship. However, the general manager of Maritime Safety Queensland may register a registrable ship as a commercial or fishing ship according to its class under the USL code.

Classes of registration of commercial ships and fishing ships

Section 63 provides that the registration classes under the USL code for a commercial ship are set out in schedule 2, part 1 of the regulation for

information purposes. The registration classes under the USL code for a fishing ship are set out in schedule 2, part 2 of the regulation for information purposes.

Use of commercial or fishing ship for private recreational purposes

Section 64 applies if the owner of a registered commercial or fishing ship intends the ship to be used for genuine private recreational purposes by the owner or a person nominated by the owner.

Before the ship is used, the owner must state in the ship's records—

- the date and time when the recreational use of the ship is to start; and
- if a nominated person is to use the ship—the name of the nominated person.

The following provisions apply for the period of the recreational use—

- the ship is taken to be registered as a recreational ship;
- the provisions of the regulation about a condition of registration applying to the ship, do not apply to the ship;
- the provisions of the regulation about recreational ships and their operation apply to the ship;
- the provisions of the regulation about the operation of the ship as a commercial or fishing ship, do not apply to the ship.

After the recreational use of the ship ends, the owner must state in the log the date and time when the use ended. A maximum penalty of 20 penalty units is provided for the offence.

These provisions are a relaxation of the current requirements that limit the private recreational use to the owner of a ship.

Requirements for first registration of commercial ship

Section 65 prescribes the requirements for the first registration of a commercial ship.

If the ship has not been previously registered as a commercial ship, the general manager may register it as a commercial ship only if the application for registration of the ship is accompanied by certificates of

compliance for the whole ship from an accredited ship designer and an accredited ship builder or an accredited marine surveyor.

Alternatively, the application for registration of the ship may be accompanied by the following documents for the whole ship—

- for the ship design a design approval certificate for the ship and any other certificates of compliance for the design of the ship not covered by the design approval certificate;
- other than for the ship design, certificates of compliance from an accredited ship builder or an accredited marine surveyor.

A current certificate of survey for the ship issued under section 70, or an equivalent certificate issued under a law of the Commonwealth or another State or by a classification society may also support an application for registration of a ship.

A person is taken to have given the general manager the necessary certificates of compliance if the person gives the general manager a certificate of compliance for the survey of the whole ship from an accredited marine surveyor issued not more than 1 month before the application for the registration of the ship is made.

Alternatively a person is taken to have given the general manager the necessary certificates of compliance if the ship is a ship for which—

- a replacement certificate was issued, or could have been issued, under the 1995 regulation, section 191(3) as in force immediately before the expiry of the section; or
- design plans, subdivision and stability documents were approved as part of an application for the survey and registration of the ship under the 1987 regulation; or
- a certificate equivalent to a certificate of survey has been issued under a law of the Commonwealth or another State.

The general manager may also require the person to give the general manager details of the issue of the certificate for the ship under the law of the Commonwealth or the other State, and copies of the design plans and any other documents approved for the ship under the law of the Commonwealth or the other State.

If the ship has been previously registered as a commercial ship, the general manager may register it as a commercial ship if the application for registration of the ship is accompanied by a certificate of compliance for

the survey of the whole ship from an accredited marine surveyor issued not more than 1 month before the application for registration of the ship is made.

If a person seeks to use a certificate equivalent to a certificate of survey issued for a ship under a law of the Commonwealth or another State, the general manager may also require a certificate of compliance for the survey of the whole ship or part of the ship from an accredited marine surveyor issued not more than 1 month before the application for registration of the ship is made.

If a person seeks to use a certificate equivalent to a certificate of survey issued for a ship by a classification society and the certificate does not relate to the whole ship, the general manager may register the ship only if the application for registration of the ship is accompanied by the certificates of compliance from an accredited person for those parts of the ship not covered by the certificate of survey.

Exception for particular ships

Section 66 provides that the general manager may register a ship if the application for registration of the ship is accompanied by

- a signed statement by the ship's builder or the builder's agent that the ship is suitable for its intended purpose and its area of operation, and a statement in the approved form for the ship that the ship has positive flotation; or
- a certificate of compliance for the building or surveying of the whole ship from an accredited ship builder or marine surveyor.

However, this only applies to a commercial ship of less than 6 m that is registered as a class 1F, 2C, 2D or 2E ship and operates in smooth or partially smooth waters, or within 15 n miles from land.

This provision restricts the current exception provision by defining the classes of ship to which the provision applies to exclude seagoing passenger class ships. This makes this exception provision compatible with the USL code which does not permit the registration of seagoing passenger ships under 10 metres in length.

Exception for sail training ships

Section 67 provides that the general manager may register a commercial ship used as a sail training ship if the application for registration of the ship is accompanied by a safety compliance form for the ship issued by the Yachting Queensland.

The safety compliance form must have been issued not more than 1 month before the application for registration is made and must be to the effect that the ship complies with the relevant Yachting Australia standards.

Requirements for first registration of fishing ship

Section 68 provides requirements for the first registration of fishing ships.

If the ship has not been previously registered as a fishing ship, the general manager may register it as a fishing ship only if the application for registration of the ship is accompanied by certificates of compliance for the whole ship from an accredited ship designer and an accredited ship builder or an accredited marine surveyor.

Alternatively, the application for registration of the ship may be accompanied by the following documents for the whole ship—

- for the ship design a design approval certificate for the ship and any other certificates of compliance for the design of the ship not covered by the design approval certificate;
- other than for the ship design, certificates of compliance from an accredited ship builder or an accredited marine surveyor.

A current certificate of survey for the ship issued under section 70, or an equivalent certificate issued under a law of the Commonwealth or another State or by a classification society may also support an application for registration of a ship.

A person is taken to have given the general manager the necessary certificates of compliance if the person gives the general manager a certificate of compliance for the survey of the whole ship from an accredited marine surveyor issued not more than 1 month before the application for the registration of the ship is made.

Alternatively a person is taken to have given the general manager the necessary certificates of compliance if the ship is a ship for which—

- a replacement certificate was issued, or could have been issued, under the 1995 regulation, section 191(3) as in force immediately before the expiry of the section; or
- design plans, subdivision and stability documents were approved as part of an application for the survey and registration of the ship under the 1987 regulation; or
- a certificate equivalent to a certificate of survey has been issued under a law of the Commonwealth or another State.

The general manager may also require the person to give the general manager details of the issue of the certificate for the ship under the law of the Commonwealth or the other State, and copies of the design plans and any other documents approved for the ship under the law of the Commonwealth or the other State.

If the ship has been previously registered as a commercial ship, the general manager may register it as a commercial ship if the application for registration of the ship is accompanied by a certificate of compliance for the survey of the whole ship from an accredited marine surveyor issued not more than 1 month before the application for registration of the ship is made.

If a person seeks to use a certificate equivalent to a certificate of survey issued for a ship under a law of the Commonwealth or another State, the general manager may also require a certificate of compliance for the survey of the whole ship or part of the ship from an accredited marine surveyor issued not more than 1 month before the application for registration of the ship is made.

If a person seeks to use a certificate equivalent to a certificate of survey issued for a ship by a classification society and the certificate does not relate to the whole ship, the general manager may register the ship only if the application for registration of the ship is accompanied by the certificates of compliance from accredited persons for those parts of the ship not covered by the certificate of survey.

Declaration about ship's seaworthiness in certificate of compliance

Section 69 provides that a certificate of compliance for a ship, or part of a ship, must include a declaration in the approved form about whichever of the following aspects of seaworthiness the certificate relates to—

- ship design
- ship construction
- ship's survey
- ship's safety equipment
- ship stability
- ship's load line.

The certificate may also include other issues about the condition of the ship or part affecting marine safety.

Division 5—Certificates of survey

General manager may issue certificate of survey for ship

Section 70 provides that the general manager may issue a certificate of survey for a ship.

The general manager may issue the certificate if the application for the certificate is accompanied by certificates of compliance for the whole ship from an accredited ship designer and an accredited marine surveyor.

Alternatively, the general manager may issue the certificate if the application for the certificate is accompanied by the following documents for the whole ship—

- for the ship design a design approval certificate for the ship and any other certificates of compliance for the design of the ship not covered by the design approval certificate;
- other than for the ship design, a certificate of compliance for the survey of the whole ship issued by an accredited marine surveyor.

The general manager may issue the certificate of survey only if—

- the general manager has inspected the ship, if the general manager considers an inspection is necessary; and
- the general manager is satisfied the design or survey of the ship conforms with the requirements of standards about ship design or survey made under part 4, division 2 of the Act and applying to the ship.

A person is taken to have given the general manager the necessary certificates of compliance if—

- a replacement certificate was issued, or could have been issued, under the 1995 regulation, section 191(3), as in force immediately before the expiry of the section; or
- design plans, subdivision and stability documents were approved as part of an application for the survey and registration of the ship under the 1987 regulation; or
- a certificate equivalent to a certificate of survey has been issued under a law of the Commonwealth or another State, or by a classification society.

If the certificate of compliance is issued by a classification society and does not relate to the whole ship, the general manager may issue the certificate of survey only if the application is accompanied by the certificates of compliance from an accredited ship designer or accredited marine surveyor for those parts of the ship not covered by the certificate of survey.

The general manager may also require the person to give the general manager—

- details of the issue of the certificate for the ship under the law of the Commonwealth or the other State; and
- copies of the design plans and any other documents approved for the ship under the law of the Commonwealth or the other State.

A certificate of compliance for survey from an accredited marine surveyor must have been issued not more than 1 month before the application for the certificate of survey is made.

The procedure for obtaining a certificate of survey for a ship is in part 6.

Division 6—Ship register

Definition for division 6

Section 71 provides definitions for division 6.

Register of registered recreational ships

Section 72 provides that the chief executive must keep a register of registered recreational ships.

The chief executive must record in the register the following particulars for a registered recreational ship—

- the registered owner's name and address;
- the registration number;
- the type of registration;
- a description of the ship including length and beam, engine details and construction materials.

The register may also include other particulars for a recreational ship decided by the chief executive.

Other than a change in the ship's ownership, the registered owner of a ship must give the chief executive written notice in the approved form of any changes to a particular of a ship's registration within 14 days. A maximum penalty of 10 penalty units is provided for the offence.

A person may, on payment of the appropriate fee for the inspection and on reasonable conditions imposed by the chief executive inspect the register at the chief executive's office when the office is open to the public and take extracts from, or obtain a copy of particulars in, the register.

Register of registered commercial and fishing ships

Section 73 provides that the general manager must keep a register of registered commercial and fishing ships.

The general manager must record in the register the following particulars for a commercial or fishing ship—

- the registered owner's name and address;
- the registration number;
- the type of registration and class;
- a description of the ship including length and beam, engine details and construction materials.

The register may also include other particulars for a commercial ship or fishing ship decided by the general manager.

Other than a change in the ship's ownership, the registered owner of a ship must give the general manager written notice in the approved form of any changes to a particular of a ship's registration within 14 days. A maximum penalty of 10 penalty units is provided for the offence.

A person may, on payment of the appropriate fee for the inspection and on reasonable conditions imposed by the general manager inspect the register at the general manager's office when the office is open to the public and take extracts from, or obtain a copy of particulars in, the register.

Division 7—Display of registration and other documents and markings on ships

Registration number of commercial ship or recreational ship to be displayed

Section 74 provides that a person who is the owner or master of a registered commercial or recreational ship must ensure the ship's registration number is displayed on the ship in the way required under the section. A maximum penalty of 50 penalty units is provided for the offence.

The registration number must be—

- above the water line when the ship is afloat; and
- permanently displayed in dark colours on a light background or in light colours on a dark background; and
- legible from 30 m away.

Also, the registration number must be displayed for a ship capable of achieving a planing attitude, other than a personal watercraft, on both sides of the ship in characters at least 200 mm high.

For a personal watercraft the registration number must be displayed on both sides of the watercraft in characters at least 75 mm high.

For all other ships the registration number must be displayed either on both sides of the ship or on its stern, in characters at least 75 mm high.

Registration certificate of commercial ship or fishing ship to be displayed

Section 75 provides that the owner or master of a registered commercial or fishing ship must ensure the ship's registration certificate is displayed in a conspicuous place on the ship and in a way allowing it to be read by anyone on board. A maximum penalty of 100 penalty units is provided for the offence.

However, if it is not reasonably practicable to comply with this requirement the owner or master must ensure that the ship's registration certificate is kept on the ship. A maximum penalty of 100 penalty units is provided for the offence.

Registration label of recreational ship to be attached

Section 76 provides that the owner or master of a registered recreational ship must ensure that the ship's current registration label is attached to the ship. The label must be attached to the exterior of the ship in a conspicuous place, near the registration number, on its port side or on its stern and must be above the waterline when the ship is afloat. In addition, if the registration number for a ship is on the stern of the ship, the registration label must also be on the stern. Similarly, if the registration number is on the side, the label must be on the side near the registration number. A maximum penalty of 10 penalty units is provided for the offence.

Capacity label of registrable recreational ship to be attached

Section 77 provides that the owner or master of a registrable recreational ship must ensure that a capacity label is permanently attached to the ship. The capacity label must be permanently attached to the ship adjacent to each steering position in a place allowing it to be seen clearly from the steering position. A maximum penalty of 10 penalty units is provided for the offence. However, for the section "recreational ship" does not include a recreational ship that is a sailing ship whether or not the ship has an auxiliary means of mechanical propulsion.

A person must not remove, deface, obliterate or conceal a capacity label attached to a recreational ship. A maximum penalty of 20 penalty units is provided for the offence.

Vessel overloading, particularly for recreational vessels, represents a safety challenge for maritime safety educators and regulators. Following a successful voluntary three year trial of a recreational vessel capacity labelling initiative, the proposed regulation will make this vessel capacity label requirement compulsory for all recreational vessels requiring registration in Queensland. As the capacity label and instructions for determining boat capacity are provided free to boat owners by Maritime Safety Queensland, there will be no cost to boat owners in meeting this new requirement.

Ride smart sticker to be displayed on personal watercraft

Section 78 provides that the owner or master of a personal watercraft must ensure a ride smart sticker is displayed on the watercraft so that it can be seen clearly from the operator's position. A maximum penalty of 10 penalty units is provided for the offence.

In the section "ride smart sticker" means a sticker with the title 'RIDE SMART' issued by the general manager or chief executive.

Markings for particular tenders

Section 79 applies to—

- a fishing ship tender not required to be registered other than a tender commercial fishing boat under the *Fisheries Regulation 1995*); or
- a tender to a registered commercial or recreational ship, if the tender is not required to be registered.

A person who is the owner or master of the tender must ensure the tender is marked in the way required under the section. A maximum penalty of 50 penalty units is provided for the offence.

The tender must be clearly, legibly and permanently marked on its exterior, above the waterline when the ship is afloat, with the word 'TENDER' and also with—

- the same markings required by the *Fisheries Regulation 1995*, section 103 for the fishing ship to which it is a tender; or
- the registration number of the commercial or recreational ship to which it is a tender.

The markings must be in characters not smaller than 75 mm.

However, if a tender cannot be practicably marked on its exterior in the way required or in the size of characters required, it must be marked on its interior in the largest characters practicable.

If a tender does not permanently attend the same ship but is used by its owner to attend a number of ships owned by the owner, the tender may be marked with the owner's name or business name instead.

Division 8—Restricted use flag

Consent to use restricted use flag

Section 80 provides that the general manager may consent to the use of a restricted use flag for a ship.

The general manager may give the consent for the ship only if the general manager is satisfied the ship is safe to operate for its intended use in its intended area of operation.

If the general manager consents to the use of a restricted use flag for a ship, the flag authorises the operation of the ship for the following, to the extent stated in the consent—

- a genuine trial, test or demonstration of the ship's seaworthiness or some other operational aspect of the ship or its equipment;
- demonstration or display purposes associated with the sale of the ship;
- building, disposing of, fitting out, relocating, removing or repairing the ship;
- if building of a commercial or fishing ship has been completed and documents and certificates are being obtained—use as a commercial or fishing ship;
- use for a purpose necessarily directed at maintaining the effectiveness and efficiency of the Queensland marine industry.

The procedure for obtaining the consent is in part 6.

Operation of ship under consent to use restricted use flag

Section 81 provides that the holder of a consent to use a restricted use flag for a ship must not operate, or allow someone else to operate, the ship unless—

- the consent, or a copy of it is carried on the ship while it is operating and if it is reasonably practical to do so, is displayed in a conspicuous place on the ship and in a way that it can be read by anyone on the ship;
- the holder tells a person who is to operate the ship as its master, or to act as a crew member of the ship how the ship may be operated under the consent and the conditions to which the consent is subject; and
- the ship prominently displays the flag.

A maximum penalty of 20 penalty units is provided for the offence.

The conditions of the consent may require a person operating the ship as its master, or acting as a crew member, to hold a licence stated in the conditions. A person must comply with the conditions of the consent if the person is—

- the holder of the consent; or
- a person operating the ship as its master; or
- a person acting as a crew member of the ship.

A maximum penalty of 50 penalty units is provided for the offence.

Misuse of restricted use flag

Section 82 prohibits the holder of a consent to use a restricted use flag for a ship from operating, or allowing someone else to operate, a ship displaying a restricted use flag unless the ship is the ship for which the consent was given. A maximum penalty of 50 penalty units is provided for the offence.

A person must not operate a ship displaying a restricted use flag if the person knows there is no consent to use the flag for the ship. A maximum penalty of 50 penalty units is provided for the offence.

Also, a person must not operate a ship displaying a restricted use flag for a purpose other than the purpose stated in the conditions of the consent. A maximum penalty of 50 penalty units is provided for the offence.

Flag to be returned

Section 83 provides that a person to whom a restricted use flag is issued under a consent to use a restricted use flag for a ship must return the flag to the general manager within 14 days after any of the following happens, unless the person has a reasonable excuse—

- the consent expires or is cancelled;
- the consent is suspended and the general manager asks for the return of the flag.

A maximum penalty of 20 penalty units is provided for the offence.

PART 4—LICENCES TO OPERATE SHIPS

Division 1—Application of Act for licensing of masters, crew members and pilots

Application of Act, pt 5, div 3

Section 84 prescribes the ships to which the requirements for licensing of masters, crew members and pilots under part 5, division 3 of the Act applies.

However, this does not include the following ships—

- A ship connected with Queensland under section 6(c) of the Act while the ship is not operating in Queensland waters.
- An unpowered commercial or fishing ship, or a powered commercial or fishing ship with an engine of less than 3 kW.
- A commercial training ship operated by a person participating in a training program in the operation of ships, if the person is operating the ship under the direct and immediate supervision of the training provider or an employee of the provider. The

provider or the employee must accompany the training ship in another ship. If a licence is required to operate the accompanying ship, the provider or the employee must hold an appropriate licence to operate it, at the level of at least a coxswain licence. In this instance a “commercial training ship” means a commercial ship being used by a training provider for persons participating in a training program in the operation of ships, if the ship—

- is less than 6 metres; and
- is not carrying anyone on board other than the persons providing the training under the program and the persons participating in the program.
- A tender to a commercial ship operating within a radius of 1 000 m from the commercial ship if the tender is operated by a person under the direct supervision, and in sight of, of the master of the commercial ship. The master of the commercial ship must have a way of immediately helping the person if the need arises.
- A tender to a commercial ship, if the tender is less than 6 m and is operated by the holder of a recreational marine driver licence.
- An unpowered recreational ship, or a powered recreational ship with an engine of 4.5 kW or less. However, this does not apply to a powered or unpowered commercial ship to which a standard under the *Transport Operations (Marine Safety) Act* about hired ships applies, if the ship is being operated and used in accordance with the standard.
- A ship operated in a way that complies with the *Transport Operations (Marine Safety—Bareboat Ships) Standard 2000* or *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2000*.
- A commercial ship owned and operated by a volunteer marine rescue association, a surf lifesaving association accredited by the Emergency Services Department; or the Emergency Services Department. However, the ship must only be operating in the course of one of these entity’s activities by a person who holds a current certificate issued by the entity authorising the person to operate the ship.

- A fishing ship less than 10 m, or a recreational ship operated by a person holding a current certificate to operate a fishing ship less than 10 m issued by the Queensland Fishing Industry Training Council.

Division 2—Masters, crew members and pilots to be licensed

Subdivision 1 – Definitions for div 2

Definitions for div 2

Section 85 provides definitions that apply in division 2.

Subdivision 2 – Licensing responsibilities of owners and masters

Owner or master to ensure master and crew members appropriately licensed

Section 86 provides that the owner or master of a commercial or fishing ship must ensure that 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. A maximum penalty of 200 penalty units is provided for the offence.

The owner of a commercial or fishing ship must ensure that the ship is operated by a master who holds an appropriate current licence to operate the commercial or fishing ship as its master. A maximum penalty of 200 penalty units is provided for the offence.

A person who is the owner or master of a commercial or fishing ship must ensure that the ship has a person acting as engineer of the ship who holds an appropriate current licence to act as engineer of the ship. A maximum penalty of 200 penalty units is provided for the offence. However, if the propulsion power of the commercial or fishing ship is less than 750 kW, the master of the ship may act as engineer of the ship or act as both master and engineer of the ship if the master holds an appropriate current licence.

Operation of ship by unlicensed person

Section 87 provides that the master of a recreational ship must not allow an unlicensed person to operate the ship unless—

- the person is under the direct supervision of the master; and
- the master is immediately able to resume operating the ship.

A maximum penalty of 50 penalty units is provided for the offence.

The master of a commercial or fishing ship must not allow an unlicensed person to operate the ship unless the master—

- believes, on reasonable grounds, the person is competent to operate the ship; and
- gives the person clear instructions on the way the person is to operate the ship; and
- is on board and able to resume operating the ship.

In addition, the unlicensed person must hold at least a recreational marine driver's licence or a current certificate to operate a fishing ship less than 10 m issued by the Queensland Fishing Industry Training Council. A maximum penalty of 200 penalty units is provided for the offence.

The master of a ship must not allow an unlicensed person who does not hold an appropriate licence to operate the ship while the ship is towing someone else by a line attached to the ship, including for example, some one water skiing or riding on a toboggan or tube. A maximum penalty of 100 penalty units is provided for the offence.

Subdivision 3—Licensing requirements for commercial ships

Required licences for commercial ships

Section 88 provides that, subject to section 87, a person must hold an appropriate licence to operate a commercial ship as its master or act as a crew member.

The appropriate licence for a person to hold for a commercial ship operating in an area is, at least, the class of certificate stated in section 2, part 4, clause 37 of the USL code for the area.

For applying section 2, part 4, clause 37 of the USL code—

- a reference to a trading vessel is taken to be a reference to a commercial ship; and
- a reference to a certificate or a certification requirement is taken to be a reference to a licence or a licensing requirement; and
- a reference to a class of certificate ‘master class 5 endorsed’ is a reference to ‘master class 5’; and
- the relativity between the classes of certificates is stated in section 2, part 2, clause 9 of the USL code.

Licensing exceptions for particular commercial ships

Section 89 provides that despite anything in section 88(2), the appropriate licence to operate a commercial ship is as follows —

- To operate a commercial ship 35 m or more but less than 80 m within 50 n miles of the coast or in the Great Barrier Reef Region or Torres Strait Zone is—
 - if the person is operating the ship as its master—at least a master class 4 licence; or
 - if the person is operating the ship as its chief mate—at least a master class 5 licence.
- To operate as the master of a cable ship that is a commercial ship registered as a class 1E or 2E ship of 24 m or more but less than 80m—at least a master class 5 licence.
- To operate as the master of a ship the operational area for which is set out in section 108(7)—at least a coxswain’s licence.
- To act as chief engineer of a commercial ship in the Great Barrier Reef Region or Torres Strait Zone—
 - at least an engineer class 3 licence if the propulsion power of the ship is 1 500 kW or more but less than 3 000 kW; or
 - at least a marine engine driver grade 1 licence if the propulsion power of the ship is 750 kW or more but less than 1 500 kW.

In the section—

“chief engineer” means a chief engineer under section 2, part 4, clause 34 of the USL code.

“chief mate” means a chief mate under section 2, part 4, clause 34 of the USL code.

Hovercraft

Section 90 provides that a person who holds a licence to operate a commercial ship as its master is not appropriately licensed to operate a commercial ship that is a hovercraft unless—

- the person satisfies the general manager the person is competent to operate a hovercraft of the intended size in the intended area of operation; and
- the general manager amends the person’s licence to permit the operation of the hovercraft in the intended area of operation.

The general manager may require the person to give the general manager a practical demonstration of the person’s skills in operating a hovercraft. If the general manager is satisfied the person is competent to operate a hovercraft, the general manager must amend the person’s licence accordingly.

Wing in ground effect craft

Section 91 provides that a person is not appropriately licensed to operate a commercial ship that is a wing in ground effect craft unless—

- the person satisfies the general manager the person is competent to operate a wing in ground effect craft of the intended size in the intended area of operation; and
- the general manager issues a licence to the person to operate the wing in ground effect craft in the intended area of operation.

The general manager may require the person to give the general manager a practical demonstration of the person’s skills in operating a wing in ground effect craft. If the general manager is satisfied a person is competent to operate a wing in ground effect craft, the general manager must issue a licence to the person to operate the wing in ground effect craft.

Subdivision 4—Licensing requirements for fishing ships**Required licences for fishing ships**

Section 92 provides that, subject to section 87, a person must hold an appropriate licence to operate a fishing ship as its master or act as a crew member.

The appropriate licence for a person to hold for a ship operating in an area is, at least, the class of certificate stated in section 3, part 4, clause 24 of the USL code for the area. For applying section 3, part 4, clause 24 of the USL code—

- a reference to a certificate or a certification requirement is taken to be a reference to a licence or a licensing requirement; and
- the relativity between the classes of certificates is as stated in section 3, part 2, clause 6 of the USL code.

Licensing exceptions relating to operating fishing ship as master

Section 93 provides that the appropriate licence is, at least, a coxswain's licence for a person operating a fishing ship as its master if the ship is less than 15 m and operating within the ship's operational area.

The appropriate licence is, at least, a skipper grade 3 licence for a person operating a fishing ship as its master if the ship is less than 24 m and operating—

- within the ship's operating area; or
- not more than 200 n miles from the coast, when not within the ship's operational area.

The appropriate licence is a recreational marine driver's licence for a person operating a fishing ship as its master, if the ship is—

- a tender to a commercial fishing boat licensed under the Fisheries Act 1994; and
- operating only in its licensed area of operation under that Act.

Licensing exceptions relating to operating fishing ship as chief engineer

Section 94 provides that the appropriate licence is, at least, a marine engine driver grade 3 licence for a person acting as the chief engineer of a fishing ship if the propulsion power of the ship is less than 300 kW and the ship is operating—

- within the ship's operational area; or
- not more than 200 n miles from the coast, when not within the ship's operational area.

The appropriate licence is, at least, a marine engine driver grade 1 licence for a person acting as the chief engineer of a fishing ship if the propulsion power of the ship is more than 750 kW but less than 1 500 kW and the ship is operating—

- within the ship's operating area; or
- not more than 50 n miles from the coast, when not within the ship's operating area.

The appropriate licence is, at least, an engineer class 3 licence for a person acting as the chief engineer of a fishing ship if—

- the propulsion power of the ship is 1 500 kW or more; and
- the ship is operating within 600 n miles from the coast.

This section has effect despite anything in section 92(2). In the section—
“chief engineer” means a chief engineer under section 3, part 4, clause 21 of the USL code.

Subdivision 5 – Licensing requirements for recreational ships**Required licences for recreational ships**

Section 95 provides that, subject to section 87, a person must hold an appropriate licence to operate a recreational ship as its master.

The appropriate licence for a person to hold to operate a recreational ship as its master is any of the following—

- a recreational marine drivers licence;

- a current equivalent licence issued under the law of another State;
- a licence to operate a commercial or fishing ship as its master.

Consultation and feedback over the last five years suggests that many in the boating community consider the name Recreational Ship Master's Licence, as it is called in the current regulation, out-of-date and out-of-touch with common language usage. Licence holders have suggested the name be changed to a simple, more meaningful name such as 'boat licence' or 'boat drivers licence'. The proposed regulation will rename the licence as a "marine drivers licence".

Subdivision 6 – Licensing requirements for pilots

Required licence to have the conduct of a ship as its pilot

Section 96 provides that a person must hold a pilot's licence to have the conduct of a ship as its pilot.

Division 3—Issue of and qualifications for licences

Chief executive and general manager may issue licences

Section 97 provides that the chief executive may issue a recreational ship master licence as mentioned in schedule 3, column 1, item 3 to a person.

Otherwise, the general manager may issue all other classes of licences mentioned in schedule 3 to a person—

- to operate a ship as its master; or
- to act as a crew member of a ship; or
- to have the conduct of a ship as its pilot.

The procedure for obtaining a licence is in part 6.

Qualifications for licences for commercial ships and fishing ships

Section 98 provides that the general manager may grant an application for a licence of the type specified in schedule 3, column 1 only if the

applicant meets the requirements stated in section 2 or 3 of the USL code for the issue of a certificate appearing opposite the licence in schedule 3, column 2.

To allow the general manager to assess whether an applicant meets the qualifying service requirement stated in the USL code, the applicant must give the general manager evidence of the applicant's sea service.

The general manager may accept evidence of the applicant's sea service in one or more of the following ways—

- a book containing details of the applicant's record of sea service or practical experience or both, endorsed by the master or owner of the ships in which the applicant's sea service or experience was obtained;
- any other document signed by the master or owner of a ship in which the applicant's sea service was obtained;
- the applicant's statutory declaration about the applicant's sea service.

The master or owner of a ship must not endorse a sea service book or sign another document if the master or owner knows that the information the subject of the endorsement or signing is false, misleading or incomplete in a material particular. A maximum penalty of 50 penalty units is provided for the offence.

Qualifications for recreational marine driver licence

Section 99 provides that the chief executive may grant an application for a recreational marine driver's licence only if the applicant—

- is 16 years or more; and
- has knowledge, to the chief executive's satisfaction, of the Act and the regulation as they effect recreational ships and the collision regulations; and
- has demonstrated competency in seafaring skills and safe operating practices for recreational ships to the chief executive's satisfaction.

Under section 84(2)(f), a licence will be required to operate powered recreational vessels, including recreational sailing boats and motorboats, powered by engines of 4.5 kilowatts or more (greater than 6 horsepower) — irrespective of their hull design or speed capability.

Presently, a recreational marine driver licence is required to operate vessels:

- powered by an engine of 4.5 kilowatts or greater (greater than 6 horsepower); and
- capable of speeds in excess of 10 knots; and
- capable of planing.

In contrast, registration requirements apply to vessels powered by an engine of 3 kilowatts or greater (greater than 4 horsepower).

The proposed changes will bring the criteria for recreational boat licensing and registration closer together, by removing the earlier mentioned speed and hull design criteria. The operators most likely to be affected by this change are operators of recreational motorboats including launches and vessels with displacement or non-planing hulls and operators of sailing boats with auxiliary engines. However, fully aligning licensing with registration by changing the power criteria from 4.5 to 3 kilowatts is not proposed due to the significant impact on operators of small boats.

Those affected by the proposed changes to recreational boat licensing will be able to obtain a licence by undertaking a practical test and paying the Queensland Transport one-time licence application fee of \$33.15 (for a lifetime licence). Section 232 of the proposed regulation provides a twelve-month transitional period to enable those affected to obtain the necessary licence.

However, popular hire and drive boats, including hire jet skis, will not require a licence when operated in accordance with the requirements of a specific 'hire and drive boat' standard made under the Act. These requirements include formal supervision of hire boat operators within a defined area of use. If hire and drive boats are not operated in accordance with these requirements, the person operating the vessel may be subject to the normal recreational licensing provisions, depending on the type of hire and drive boat.

Chief executive or general manager may recognise other qualifications

Section 100 applies if—

- an applicant for a licence does not have the qualifications required for the licence under the section; and
- the chief executive or general manager is satisfied the applicant has other qualifications or training equivalent to, or better than, the qualifications required under the section.

Despite section 98 or 99, the chief executive or general manager may issue the licence to the applicant.

Qualifications for licence as ship's pilot

Section 101 provides that the general manager may grant an application for a licence to have the conduct of a ship as its pilot in a pilotage area, or part of a pilotage area, only if the applicant satisfies the general manager the applicant has—

- a licence to operate a ship as its master of a class appropriate for the ships the person would have the conduct of as pilot in the pilotage area; or
- skills and experience that in the opinion of the general manager are equivalent to the skills and experience of a person holding a pilots licence; and
- appropriate ship handling ability to have the conduct of the ships as its pilot; and
- a detailed knowledge of the pilotage area, or the part of the pilotage area, for which the licence is sought.

Examinations of applicants for licences

Section 102 provides that the chief executive may conduct examinations, in the way the chief executive considers necessary and appropriate in the circumstances, to establish whether an applicant for a recreational ship licence has the qualifications for the licence under the regulation.

The general manager may conduct examinations, in a way the general manager considers necessary and appropriate in the circumstances, to

establish whether an applicant for a commercial or fishing ship licence has the qualifications for the licence under the regulation.

Approval of entity to conduct examinations

Section 103 provides that the general manager may approve an entity to conduct examinations for issuing licences only if the entity qualifies as an entity to conduct the examinations under a standard made for the section.

An entity approved under this section may conduct examinations as if it were the general manager. In exercising a power, an approved entity is subject to any conditions of the approval and directions of the general manager about the conduct of examinations.

The procedure for obtaining the approval is in part 6.

Approval of entity to provide training

Section 104 provides that the general manager may approve an entity to provide training programs in the operation of ships only if the entity qualifies as an entity to provide training programs under a standard made for the section.

The procedure for obtaining the approval is in part 6.

Division 4—Temporary permits

Application of div 4

Section 105 provides that division 4 applies to a commercial or fishing ship mentioned in section 85.

General manager may issue temporary permit for master or crew member

Section 106 provides that the general manager may issue a permit to a person to operate a ship as its master, or to act as a crew member of a ship, on a particular voyage or for a stated period.

The general manager may issue a permit only if the general manager is satisfied—

- the person is, for the voyage or the period, competent to operate the ship as its master or act as a crew member of the ship; and
- maritime operations will not be endangered on the voyage; and
- the voyage is necessary to maintain the effectiveness and efficiency of the Queensland maritime industry.

The term of the permit must not be longer than 30 days. The procedure for obtaining the permit is in part 6.

Permit holder taken to be appropriately licensed if complying with conditions

Section 107 provides that a person to whom a temporary permit is issued is taken to be appropriately licensed to operate the ship as its master, or act as a crew member of the ship, for section 88 or 92. However, this only applies if the person complies with the conditions of the permit.

PART 5—SHIP OPERATIONS

Division 1—Operational areas

Operational area of commercial ship or fishing ship

Section 108 specifies the operational areas for commercial or fishing ships if their registration certificate does not include a condition about their operational area.

The owner or master of the ship must not operate the ship in waters beyond the waters stated in the USL code for a ship of the ship's class. The USL code describes the classification system for the registration of commercial ships. Each class of ship is limited to operate within the operational area described for that class as defined in the USL Code. A maximum penalty of 200 penalty units is provided for the offence.

However, if another operational area is stated for the ship, the person may also operate the ship in the stated operational area.

The operational area for a commercial ship registered as a class 1C or 2C ship or a fishing ship registered as a class 3C ship has changed when operating within the Great Barrier Reef Region or Torres Strait zone – from any distance from the coast not more than 50 nm within the region or zone to anywhere within the region or zone.

The operational area for a commercial ship that is a pontoon registered as a class 1E ship is within the Great Barrier Reef Region.

The operational area for a commercial ship registered as a class 1D, 1E, 2D or 2E ship that is permanently based at a pontoon within the Great Barrier reef Region is, if the pontoon is anchored outside the operational area for the ship, the area in which the ship is in sight of, and is able to communicate with, the pontoon.

The operational area for a commercial ship registered as a class 1D, 1E, 2D or 2E commercial ship that is operating from an island is the area in which the ship is in sight of, and is able to communicate with, the island.

The operational area of a 1D, 1E, 2D or 2E commercial ship that is a tender to a commercial ship has changed from "within 5 nm of the main ship" to within a radius of 2 nm from the commercial ship if operated by a person under the direct supervision of the master of the commercial and the master has a way of immediately helping the person operating the tender if required.

In the section "pontoon" means a barge that is unpowered and permanently anchored. If a commercial ship registered as a class 1 ship capable of carrying everyone on the barge is not moored to it then the pontoon must be equipped with the safety equipment that would be required for a class 1 ship operating lawfully in the area where the barge is anchored.

This provision modifies the operational areas described in the USL Code to address anomalies that are specific to the Great Barrier Reef Region and the Torres Strait zone. The operational area for a 3C fishing ship and class 1C or 2C commercial ship has changed when operating within the Great Barrier Reef Region and the Torres Strait zone, from any distance from the coast not more than 50 nautical miles within the region to anywhere within the region or zone.

Division 2—Number of persons ships may carry**Commercial ship**

Section 109 provides that a person who is the owner or master of a commercial ship must not carry on the ship, or on a part of the ship, more persons than is stated for the ship, or for the part of the ship, in the ship's registration certificate, unless the person has a reasonable excuse. A maximum penalty of 200 penalty units is provided for the offence.

Division 3—Safety training for crew**Crew to complete safety course**

Section 110 provides a new provision specifying training that commercial and fishing ship crew must complete. However, the section does not apply to a cable operated ship.

A person must not be part of the crew of a commercial or fishing ship unless the person has completed—

- if the person has been employed as part of the crew for at least 6 months—the course 'Occupational Health and Safety at Sea' provided by a training provider approved by the general manager to provide the course, or an equivalent course; or
- a safety induction course approved by the general manager appropriate to the person's expected length of the employment.

A maximum penalty of 100 penalty units is provided for the offence.

The owner or master of a commercial or fishing ship must ensure that every person in the ship's crew complies with this section. A maximum penalty of 100 penalty units is provided for the offence.

The current regulation deals with crew competencies and levels for certificates issued to masters, mates and engineers but not deckhands or other crew. It is estimated there are approximately 3900 deckhands and other crew on commercial and fishing vessels operating in Queensland. While the general safety obligations under the Transport Operations (Marine Safety) Act and Workplace Health and Safety legislation would require any person employed on a vessel to be suitably trained, the quality of the training provided varies greatly between employers.

The proposed regulation will require the crew of a commercial or fishing ship to complete the training course "Elements of Shipboard Safety". This course provides students with the skills and knowledge needed to identify occupational health and safety responsibilities of personnel at sea, the correct actions required in the event of an emergency, and the use of lifesaving equipment. At present, formal training and assessment of the nature proposed is seldom provided by owners to entry level crew on commercial and fishing ships until and unless the individuals become regular members of the crew . Therefore, the proposed regulation also provides an alternative for crew to complete a safety induction course approved by the general manager appropriate to the length of employment of the crew.

Division 4—Compliance with particular USL code provisions

Ship to be operated under USL code, s 15

Section 111 provides that the master of a registrable commercial or fishing ship must comply with section 15, parts 1 and 2 of the USL code when operating the ship. A maximum penalty of 200 penalty units is provided for the offence.

Division 5—Load line certificates

Definitions for div 5

Section 112 provides the following definitions for division 5—

“appropriately accredited”, for a ship designer or marine surveyor, means accredited as a ship designer or marine surveyor for load line.

“ship” means a registrable commercial ship other than a ship for which a load line certificate, or an exemption from a requirement for a load line certificate, has been granted under the law of another State; or a current restricted use flag has been issued.

Application of div 5

Section 113 provides that division 5 applies to a ship that is a vessel under section 7, part 1 of the USL Code.

General manager may issue load line certificate for ship

Section 114 provides that the general manager may issue a load line certificate for a ship.

The general manager may issue the certificate only if the application for the certificate is accompanied by a certificate of compliance for the ship's load lines from an appropriately accredited ship designer or marine surveyor.

The certificate of compliance must have been issued not more than 1 month before the application for the load line certificate is made.

The procedure for obtaining a ship's load line certificate is in part 6.

Ship not to be operated unless load line certificate issued

Section 115 provides that a person who is the owner or master of a ship must not operate the ship unless a current load line certificate has been issued for the ship. A maximum penalty of 100 penalty units is provided for the offence.

In the section "load line certificate" means a load line certificate issued under the regulation or by another State, a classification society or a marine authority of a foreign country under the International Convention on Load Lines 1966.

Load line certificate to be displayed on ship

Section 116 provides that the owner or master of a ship for which a current load line certificate is issued must ensure the certificate is displayed—

- in a conspicuous place on the ship; and
- in a way allowing it to be read by anyone on board.

A maximum penalty of 100 penalty units is provided for the offence.

However, if it is not reasonably practicable to comply with this requirement, the person must ensure that the ship's load line certificate is kept on the ship. A maximum penalty of 100 penalty units is provided for the offence.

Renewal of load line certificate

Section 117 provides that the general manager may renew a load line certificate only if the application for the renewal of the certificate is accompanied by a certificate of compliance for the ship's load line from an appropriately accredited ship designer or marine surveyor.

The certificate of compliance must have been issued not more than 1 month before the application for the renewal of the load line certificate is made. This section has effect despite anything in part 6.

USL code, s 7 applies to assignment of freeboard

Section 118 provides that only an appropriately accredited ship designer or marine surveyor may assign a ship's freeboard and mark the ship's load line under section 7, parts 2, 3, 5, 6, 10 and 11 of the USL code.

For applying the USL code, a reference to authority, assigning authority or survey authority is taken to be a reference to an appropriately accredited ship designer or marine surveyor.

For section 7, part 6, clause 56 of the USL code, the mark of the assigning authority that assigns the ship's freeboard is to be "QA".

USL code, s 7 applies to loading of ship

Section 119 provides that the owner or master of a ship must, when operating the ship, comply with section 7, part 14 of the USL code. A maximum penalty of 200 penalty units is provided for the offence. However, the owner or master of a ship does not commit an offence if section 7, part 15, clause 78 of the USL permits the ship to be overloaded.

Stability documents to be carried on ship

Section 120 provides that the owner or master of a ship must, when operating the ship, have on board the stability documents stated for the ship

in section 8, subsection A, clause A.4 of the USL code. A maximum penalty of 100 penalty units is provided for the offence.

Division 6—Signals

Signals of distress

Section 121 provides that a V sheet and the signals stated in section 16, annex IV, clauses 1 and 397 of the USL code are prescribed signals of distress for section 206(1)(a) of the Act.

A person may use or display a prescribed signal of distress only for indicating distress and a need for help. A person must revoke a prescribed signal of distress when the distress or need for help finishes.

Authority to use or display prescribed signal for training or demonstration

Section 122 provides that the general manager may consent to the use or display of a prescribed signal of distress by a person for genuine training or demonstration purposes. The procedure for obtaining the consent is in part 6.

Prescribed signal and information—Act, s 129

Section 123 provides that the signal for section 129(2) of the Act is the word ‘SECURITE’ spoken 3 times. The information required under section 129(2) and (3) of the Act about a danger to navigation is the information appropriate to the danger stated in section 15, clause 181 of the USL code.

Division 7—Monitoring radio communications

Fishing ship to have speaker on afterdeck

Section 124 provides a new provision that the owner or master of a fishing ship must ensure the ship is equipped with a speaker on its afterdeck that is suitably located, workable and adequate to allow crew

working on the afterdeck to monitor VHF radio communication with other ships. A maximum penalty of 50 penalty units is provided for the offence.

This new operational safety requirement has been included in the proposed regulation for fishing vessels in response to a recommendation from an Oil Spill Risk Assessment for the Coastal Waters of Queensland and the Great Barrier Reef Marine Park. The risk assessment report recommended that all trawlers be fitted with a loudspeaker to the after deck as an aid to monitoring VHF radio transmissions and maintaining a proper lookout. The new requirement will take effect with the commencement of the new regulation.

Division 8—Prevention of collisions

Application of collision regulations

Section 125 provides that the collision regulations have effect as if they were part of the regulation.

Person operating ship to comply with collision regulations

Section 126 provides that a person involved with a ship's operation (including a person who is the owner, master, pilot or deck watchkeeper) must comply with the collision regulations.

In the section “deck watchkeeper” means—

- for a commercial ship—a deck watchkeeper under section 2, part 4, clause 34 of the USL code; or
- for a fishing ship—a deck watchkeeper under section 3, part 4, clause 21 of the USL code.

Also, “ship” includes an aircraft when it is on water or is taking off, or landing on, water.

Division 9—Speed limits and wash**Speed limit for ship operating in particular places**

Section 127 provides that a person must not operate a ship, other than a personal watercraft, at a speed of more than 6 knots in waters if the ship is within 30 m of any of the following—

- a person in the waters;
- a ship at anchor, moored or made fast to the shore or aground;
- a jetty, wharf, boat ramp or pontoon in or on the waters.

A new provision requires a person must not operate a personal watercraft at a speed of more than 6 knots if the watercraft is within 60 m of a person in the water.

These provisions do not apply to a ship if the ship is in waters for which the general manager has fixed a speed limit of 6 knots or less under section 206A of the Act.

Speed limit for ship if wash can cause marine incident or shoreline damage

Section 128 provides that a person must not operate a ship at a speed at which the ship's wash is reasonably capable of causing a marine incident or damage to the shoreline. A maximum penalty of 200 penalty units is provided for the offence.

No offence if ship operated at speed necessary for safety

Section 129 provides that a person does not commit an offence against sections 127 or 128 if—

- a ship must be operated at a control speed that is more than the highest speed at which the ship may be operated under section 127 or 128 (the “statutory speed”) because it is unsafe for the ship to be operated at a speed less than the ship's control speed; and
- the person operates the ship at a speed more than the statutory speed only to the extent that it is reasonably necessary for the safe operation of the ship.

In the section “control speed”, of a ship, means the minimum speed at which the ship can be kept on its course in the prevailing circumstances and conditions.

Interfering with speed sign

Section 130 provides that a person must not interfere with a speed sign erected or marked by the general manager under section 206A(4) of the Act unless the person has a reasonable excuse. A maximum penalty of 200 penalty units is provided for the offence. In the section “interfere with” includes damage, destroy, mark and remove.

Division 10—Enforcement officers

Application of particular provisions to enforcement officers

Section 131 applies to an enforcement officer who holds a licence to operate a commercial ship as its master and operates a ship in carrying out the officer’s duties.

Despite anything in sections 88,126, 127, 128, 219 and 220, the officer may, if reasonably necessary in performing the officer’s duties, operate the ship—

- beyond the operational area stated in the officer’s licence; or
- at any safe speed; or
- displaying lights and sounding a repeater horn or siren in addition to the lights and sound devices required for operating the ship under the collision regulations; or
- in a place mentioned in section 219 or 220.

In the section “enforcement officer” means a police officer or an officer of the Queensland Boating and Fisheries Patrol. Also, “operate” a ship, includes anchor, berth and moor the ship.

Division 11—Documents for ship

Purpose of div 11

Section 132 declares the purpose of division 11 is to require the person who is the owner or master of particular ships to keep documents for the ships. Generally, the documents must be kept on board the ship.

Manuals and plans to be kept

Section 133 applies to a ship that is more than 8 m if it is—

- a registrable commercial ship operating in Queensland waters, other than a ship operating in smooth waters that does not make voyages of more than 15 minutes duration; or
- a registrable fishing ship operating beyond partially smooth waters.

The length restriction of ships this section is applicable to has changed from over 6 m to more than 8 m. The proposed regulation includes an exemption for a registrable commercial ship operating in smooth waters that does not make voyages of more than 15 minutes duration.

The owner or master of the ship must ensure the following documents are on board and are available to the ship's crew, and that the crew is familiar with their contents—

- the operational manual for the ship;
- the technical manual for the ship;
- the maintenance and service manual for the ship;
- the marine occupational health and safety manual for the ship;
- the safety management plan for the ship for onboard emergencies;
- the manual of procedures for verification of passenger numbers.

A maximum penalty of 100 penalty units is provided for the offence.

Records to be kept

Section 134 provides that the owner or master of a registered or registrable commercial or fishing ship must ensure that operating records about the subject matters mentioned in schedule 5 are kept. A maximum penalty of 100 penalty units is provided for the offence.

Currency and accuracy of documentation mentioned in ss 133 and 134

Section 135 requires the owner or master of a ship to ensure that the manuals and plan mentioned in section 133 and the records and certificates and other documents mentioned in section 134 are kept in a secure place on board the ship. However, if the ship is an open ship and it is impracticable to keep the records on board the ship, the documents may be kept at a prescribed place that is accessible to the ship's crew. A maximum penalty of 100 penalty units is provided for the offence.

The owner or master of the ship must ensure that entries in the records are complete, accurate and up-to-date. A maximum penalty of 100 penalty units is provided for the offence.

Also, the owner or master of the ship must not, or allow anyone else to—

- deface, erase or obliterate an entry in a document for the ship;
- destroy or otherwise dispose of a document for the ship.

A maximum penalty of 100 penalty units is provided for the offence.

Division 12—Orderly control for particular ships**Application of Act, pt 14, div 2**

Section 136 provides that all commercial ships on Queensland intrastate voyages are ships to which part 14, division 2 of the Act applies.

Division 13—Dangerous cargo**Duties of person sending dangerous cargo by ship**

Section 137 provides that a person must not send dangerous cargo (other than dangerous goods) by ship unless, before sending the cargo, the person

gives the master of the ship a written notice about the cargo stating each of the following—

- the proper shipping name of the cargo;
- the UN number for the cargo stated in the IMDG code;
- the quantity of the cargo;
- if the cargo has a flash point—its flash point or flash point range.

A maximum penalty of 200 penalty units is provided for the offence.

A person must not send dangerous goods by ship unless, before sending the goods by ship, the person—

- packs, secures, marks, labels, placards (for a cargo transport unit) and documents the goods in the way required under the IMDG code; and
- gives the master of the ship the documents required under the IMDG code.

This section is a regulation to which section 213(3) of the Act applies.

Application of dangerous cargo codes

Section 138 provides that the dangerous cargo codes have effect as if they were part of the regulation.

Duties of owner or master about dangerous cargo

Section 139 provides that the owner or master of a ship handling a dangerous cargo on a ship, other than dangerous goods, must comply, to the extent it is reasonably practicable, with the appropriate dangerous cargo code for the cargo while handling the cargo. A maximum penalty of 200 penalty units is provided for the offence.

The owner or master of a ship handling dangerous goods on the ship must, to the extent it is reasonably practicable, comply with the IMDG code for the goods while handling the goods.

This section is a regulation to which section 213(3) of the Act applies.

Reporting requirements for ship with dangerous cargo

Section 140 applies if—

- a ship, other than a ship that is to be operated on a local marine service, is carrying dangerous cargo and is to arrive at, or depart from, a pilotage area or is at a berth or anchorage in a pilotage area and—
 - is to be removed to another berth or anchorage in the pilotage area; or
 - is to transfer the cargo to another ship in the pilotage area; or
- a ship, other than a ship that is to be operated on a local marine service, is to load dangerous cargo while in a pilotage area; or
- a ship is to be operated on a local marine service.

The owner or master of the ship, other than a ship to be operated on a local marine service, must report the following matters in the approved form and in the way required under the section—

- the expected time of the arrival, departure or removal of the ship, or of the transfer or loading of the dangerous cargo;
- the information mentioned in AS 3846—1998, section 3 (Advance notification).

A maximum penalty of 200 penalty units is provided for the offence.

A person who is the owner or master of a ship to be operated on a local marine service must report the following matters in the approved form and in the way required under the section—

- the start of the local marine service;
- voyages under the service;
- the nature of the dangerous cargo to be handled.

A maximum penalty of 200 penalty units is provided for the offence.

However if the dangerous cargo are dangerous goods the penalty provision does not apply but the section is a regulation to which section 213(3) of the Act applies.

The report must be made—

- for an arrival—at least 48 hours before the expected arrival; or

- for a departure or removal—at least 3 hours before the expected departure or removal; or
- for a transfer—at least 24 hours before the expected transfer; or
- for the loading of a ship—at least 24 hours before loading is expected to start; or
- for operation on a local marine service—
 - for the start of the service—at least 48 hours before the start of the service; and
 - for subsequent voyages that are part of the service—at the time (if any) the harbour master or general manager as appropriate considers reasonable and of which written notice is given to the owner or master of the ship.

If an event to be reported is to happen in a pilotage area, the report must be made to the harbour master of the pilotage area.

If an event to be reported is to happen outside a pilotage area, the report must be made to the general manager.

The general manager may, by gazette notice, change the time for giving a report, if the general manager is satisfied the change is necessary in a particular place to—

- ensure marine safety; or
- enable the effectiveness and efficiency of the Queensland marine industry to be developed.

A person who is the owner or master of a ship operating the ship on a local marine service must notify the general manager within 14 days after the person stops operating the service. A maximum penalty of 50 penalty units is provided for the offence.

In the section—

- “handle” includes carry, discharge, load, move, restow, stack, stow and unload and anything incidental to carrying, discharging, loading, moving, restowing, stacking, stowing or unloading.
- “local marine service” means a shipping service in which a ship is operated on Queensland intrastate voyages to handle dangerous cargo.

Reporting dangerous cargo event

Section 141 applies to a person if—

- the person is a person in charge of a place where a ship is, or is about to be, berthed, or is the owner or master of a ship; and
- the person becomes aware that a dangerous cargo event has happened at the place or on the ship.

The person must report the event in the approved form and in the required way. A maximum penalty of 100 penalty units is provided for the offence.

The person must report the event as soon as reasonably practicable after the person finds out about it. The person must report the event—

- if the event happens in a pilotage area, to the harbour master of the area; or
- otherwise—to the general manager.

In the section—

“dangerous cargo event” means—

- for a dangerous cargo—
 - the loss, or likely loss, of the cargo from a ship into Queensland waters; or
 - a breach, or danger of a breach, of the containment of the cargo that could endanger marine safety; or
 - another event involving, or that could involve, the cargo, because of the risk of explosion, fire, a person’s death, or grievous bodily harm to a person; or
- for a cargo that is an MHB—an event that causes a risk of explosion, fire, a person’s death, or grievous bodily harm to a person.

“MHB” means materials hazardous only in bulk under the BC code.

General manager may require declaration about ship’s cargo

Section 142 provides that if the general manager believes on reasonable grounds that a ship in Queensland waters, other than the waters of a pilotage area, is carrying dangerous cargo, the general manager may ask

the owner or master of the ship to tell the general manager about the cargo the ship is carrying.

The request may be made in the quickest and most convenient way. If the request is not written, the general manager must make a written note of the request and its details. The note is evidence that the request was made.

The person given the request must comply with the request by radio, or another form of electronic communication, in the shortest practicable time, unless the person has a reasonable excuse. A maximum penalty of 200 penalty units is provided for the offence.

Restriction on loading combination carrier

Section 143 provides that the owner or master of a combination carrier that has carried bulk liquid dangerous cargo on 1 or more of its last 3 voyages must not load the carrier with bulk solid cargo in a pilotage area unless an approved chemist has—

- tested the atmosphere in all places on the carrier that had previously contained the dangerous cargo to ensure that they are gas free in the way stated in ISGOTT; and
- verified that the ship's tanks containing slops are in an inert condition in the way stated in ISGOTT; and
- issued a safety test certificate in the approved form for the ship.

The owner or master of the carrier must give the harbour master of the pilotage area a copy of the safety test certificate. A maximum penalty of 200 penalty units is provided for the offence.

In the section—

“approved chemist” means an approved chemist under part 41 of the Marine Orders.

Exceptions to restrictions under s 143

Section 144 provides that section 143 does not apply to a combination carrier if—

- the carrier has not been loaded with bulk liquid dangerous cargoes on its last 3 loaded voyages; and

- after the last voyage when the carrier carried a bulk liquid dangerous cargo consisting of crude oil or petroleum products with a flash point of not more than 60°C, an approved chemist—
 - tested the atmosphere in all places on the carrier that had previously contained the cargo to ensure that they are gas free in the way stated in ISGOTT; and
 - verified that tanks on the ship containing slops are in an inert condition in the way stated in ISGOTT; and
 - issued a safety test certificate in the approved form for the ship; and
- the owner or master of the carrier has given the harbour master—
 - a copy of the safety test certificate; and
 - a statement in the approved form about the carrier's last 3 loaded voyages and the cargoes it carried on each voyage.

In the section “approved chemist” means—

- an approved chemist under part 41 of the Marine Orders; or
- a competent person under AS 3846—1998.

Obligations under s 139 not limited

Section 145 provides that sections 143 and 144 do not limit the obligations of the owner or master of a ship under section 139.

Division 14—Other operational issues

Start of particular business activities to be notified

Section 146 applies if the owner or master of a commercial ship starts using the ship in carrying on business for any of the following purposes—

- carrying passengers for reward other than as part of a leisure tourism or entertainment activity;
- providing the ship for another person to use as a commercial hire ship;

- providing a leisure tourism or entertainment activity for a person for reward including, for example, parasailing or waterskiing.

The owner or master must give a written advice of the starting of the business. A maximum penalty of 50 penalty units is provided for the offence.

The written advice must be given to—

- if the business is started in a pilotage area—the harbour master of the area; or
- if the business is started in waters outside a pilotage area—the general manager.

The written advice must contain the following particulars—

- the person's name and address;
- the starting date of the business;
- a brief description of the business and the waters where it will be mainly carried on.

If the owner or master stops carrying on the business, the owner or master must notify the harbour master or the general manager in writing within 1 month after the person stops carrying on the business. A maximum penalty of 50 penalty units is provided for the offence.

PART 6—AUTHORITIES

Division 1—Interpretation

Definitions for pt 6

Section 147 provides various definitions for part 6.

What is an authority

Section 148 identifies the types of authorities under the Act and regulation.

Division 2—How authority is obtained

Making the application

Section 149 provides that a person may apply to the administering agency for an authority.

The application must—

- be in the approved form; and
- be supported by enough information to enable the administering agency to decide the application; and
- be accompanied by the appropriate fee for the application.

Administering agency to decide application within 30 days

Section 150 provides that the administering agency must decide each application for an authority within 30 days after the application is made.

However, if within the 30 days, the administering agency has told an applicant that the application is not supported by enough information to enable the administering agency to decide the application, the administering agency must decide the application within 30 days after the further information is given to the administering agency.

If an application for an authority is an application for the accreditation of a person as a ship designer, ship builder or marine surveyor and the general manager grants temporary accreditation to the person, the general manager must decide the application for accreditation before the temporary accreditation ends.

Issuing of authority if application granted

Section 151 provides that if the administering agency decides to grant an application for an authority, the administering agency must issue the appropriate authority in the approved form to the applicant within 30 days after making the decision. The timeframe has changed from 10 days after making the decision to 30 days. The authority must include all conditions to which the authority is subject under section 155.

Term of authority

Section 152 provides that the term of an authority is the term stated in it.

However, the term of the following authorities is unlimited—

- a licence to act as coxswain of a commercial ship
- a licence to operate a fishing ship as its master
- a licence to operate a fishing ship as its engineer
- a recreational marine drivers licence.

Since the commencement of the current regulation on 1 January 1996, Maritime Safety Queensland has been issuing combined Marine Engine Driver (MED) certificates (licences) for both trading and fishing vessels in accordance with the provisions of the Uniform Shipping Laws (USL) Code. Under the USL Code MED certificates for trading vessels are valid for five years from the date of issue while MED certificates for fishing vessels are valid in perpetuity (do not have an expiry date).

An administrative difficulty has arisen in that the current regulation requires an expiry date to be shown on all MED certificates, thereby failing to differentiate between the five year validity of a trading vessel MED certificate and the perpetual validity of a fishing vessel MED certificate.

Section 152 specifically provides for the perpetual nature of fishing vessel MED certificates. Once implemented, all new MED certificates will still have an expiry date in relation to their trading vessel validity, but they will also include a rider statement indicating the perpetual status of the certificate when a certificate holder is working on fishing vessels.

Temporary authorities

Section 153 applies if an application for an authority is an application for—

- the accreditation of a person as a ship designer, ship builder or marine surveyor; or
- the registration of a ship; or
- the licensing of a person as a master, crew member or pilot.

The general manager may grant a temporary authority to the applicant for a term of not longer than 6 months.

The temporary authority is in force until the earliest of the following happens—

- the term stated in the authority ends;
- the application is finally decided by the general manager and the general manager notifies the applicant of the general manager's decision;
- the general manager suspends or cancels the authority under division 5.

Section 128 of the current regulation referred to temporary "accreditation" rather than authorities, as this section was only relevant to accredited people (ship designer, builder or marine surveyor). The proposed regulation has included temporary authorities for registration of a ship and licensing of a person as a master, crew member or pilot.

Refusal of application for authority

Section 154 provides that if the administering agency decides, to refuse an application for an authority, the administering agency must give written notice to the applicant of the decision within 14 days after making the decision. The notice must state the reasons for the refusal and that the person may appeal against the decision under part 16 of the Act. The timeframes for advising the applicant have changed from 10 days to 14 days after making the decision.

Grant of authority on conditions

Section 155 provides that the administering agency may grant an application for an authority on conditions the administering agency considers reasonable and relevant.

Division 3—Renewal of authority

Renewal of authority

Section 156 provides that the holder of an authority may apply for its renewal to the administering agency.

The application must—

- be made in the approved form; and
- be supported by enough information to enable the administering agency to decide the application; and
- be accompanied by the appropriate fee for the application.

Div 2 applies to application for renewal

Section 157 provides that division 2 applies to an application for renewal of an authority in the same way it applies to an application for an authority.

However, the administering agency may also refuse an application for renewal of an authority if—

- the authority was issued in error or because of a document or representation that—
 - is false or misleading, or
 - was obtained or made in another improper way; or
- the applicant has not complied with a condition of the authority; or
- if the authority is an approval to establish a buoy mooring—there has been a significant change in circumstances affecting marine safety in the vicinity of the buoy mooring.

Division 4—Amendment of authority

Amendment of authority at holder's request

Section 158 provides that the holder of an authority may apply to the administering agency for an amendment of the authority. The application for an amendment must—

- be made to the administering agency in the approved form; and
- be supported by enough information to enable the administering agency to decide the application; and
- be accompanied by the appropriate fee for the application.

Div 2 applies to application for amendment

Section 159 provides that division 2 applies to an application for an amendment of an authority in the same way it applies to an application for an authority.

Amendment of authority on administering agency's initiative

Section 160 provides that the administering agency may amend an authority at any time if—

- the holder of the authority agrees to the amendment; or
- the administering agency considers it necessary or desirable because;
 - the holder has contravened the Act or the regulation; or
 - the authority was granted because of a materially false or misleading representation or declaration, made either orally or in writing.

If the administering agency considers it necessary or desirable to amend an authority, the administering agency must give its holder a written notice under the section. The notice must state—

- the proposed amendment;
- the grounds for the proposed amendment;
- outline the facts and circumstances forming the basis for the grounds;
- an invitation to the holder to make representations to the administering agency to show why the authority should not be amended;
- the period, which must be at least 30 days after the notice is given to the holder, within which the representations may be made.

The representations must be made in writing. After the end of the period stated in the notice, the administering agency must consider all representations properly made by the holder.

The administering agency may amend the authority if the administering agency still considers the amendment is necessary or desirable. If the administering agency does not still consider the amendment is necessary or

desirable, the administering agency must give the holder written notice of the administering agency's decision.

When amendment of authority takes effect

Section 161 provides that if the administering agency amends an authority, the amendment takes effect from the day the authority is amended or if the administering agency provided for a later day when granting or deciding the amendment, the later day.

Authority to be returned for alteration after amendment

Section 162 provides that the administering agency may, by written notice, ask the holder of an authority to return the authority to the administering agency within a stated time, of at least 30 days, to enable the administering agency to alter the authority to reflect an amendment made to it.

The holder must comply with the notice, unless the holder has a reasonable excuse. A maximum penalty of 20 penalty units is provided for the offence.

After altering the authority, the administering agency must return it to the holder. The amendment of an authority by the administering agency does not depend on it being altered under the section.

Division 5—Suspension and cancellation of authorities

Grounds for suspension or cancellation of authorities

Section 163 provides that the administering agency may suspend or cancel an authority on any of the following grounds—

- the holder has contravened marine safety legislation;
- the authority was issued in error or because of a document or representation that—
 - is false or misleading or
 - was obtained or made in another improper way;
- the holder has not complied with a condition of the authority;

- the holder has been convicted of—
 - an indictable offence; or
 - if the authority is a licence, an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79 or 80;
- the holder has not paid fees payable under the Act;
- the authority is the registration of a ship, and the administering agency is satisfied, on reasonable grounds, that the ship is not seaworthy even though a certificate of compliance or survey has been issued for the ship.

The proposed regulation includes a new ground where the holder of a licence has been convicted of an offence (driving etc under the influence of liquor or drugs, or against provisions with respect to breath and laboratory tests) against the *Transport Operations (Road Use Management) Act 1995*.

Procedure for suspension or cancellation

Section 164 provides that if the administering agency considers a ground exists to suspend or cancel an authority (the “proposed action”), the administering agency may give the holder of the authority a written notice stating the following—

- the proposed action;
- the grounds for the proposed action;
- particulars identifying the facts and circumstances forming the basis for the grounds;
- if the proposed action is to suspend the authority, the proposed suspension term;
- an invitation to the holder to show within a stated time, which must be at least 30 days, why the proposed action should not be taken.

If, after considering all written representations made within the stated time, the administering agency still considers grounds to take the proposed action exist, the administering agency may—

- if the proposed action was to suspend the authority for a stated term—suspend the authority for not longer than the proposed suspension term; or
- if the proposed action was to cancel the authority—cancel the authority or suspend it for a term.

The administering agency must inform the holder of the decision by written notice. The notice must be given within 14 days after the administering agency makes the decision.

If the administering agency decides to suspend or cancel the authority, the notice must state—

- the reasons for the decision; and
- that the holder may appeal against the decision under part 16 of the Act.

The decision takes effect on the later of the following—

- the day when the notice is given to the holder;
- the day of effect stated in the notice.

However, if the authority is suspended or cancelled because of the conviction of a person for an offence the suspension or cancellation does not take effect until—

- the end of the time to appeal against the conviction; and
- if an appeal is made against the conviction—the appeal is finally decided.

Also, the suspension or cancellation has no effect if the conviction is quashed on appeal.

Action by general manager after marine incident

Section 165 applies to a person or ship involved in a marine incident if the general manager has required a shipping inspector to investigate the marine incident under section 126 of the Act.

The general manager may suspend or amend the approval by signed notice given to the holder of the approval. The signed notice must state—

- the grounds for suspension or amendment;

- the facts and circumstances forming the basis of the general manager's decision;
- if the notice suspends the approval—the suspension term, which, must be reasonable in the circumstances but not longer than 6 months;
- if the notice amends the approval—the way the approval is amended and for how long the amendment is to be in effect;
- that the holder of the approval may appeal against the suspension or amendment under part 16 of the Act.

The suspension or amendment takes effect on the later of the day on which the notice is given or the day specified in the notice.

Extension of term of suspension or amendment after marine incident

Section 166 applies if the general manager suspends or amends an approval under section 165(2) after a marine incident.

If, within 14 days after the general manager has considered shipping inspector's report about the marine incident, a board of inquiry is not established, but the general manager has issued a notice under section 164 to the holder of the approval before its suspension or amendment under section 165 ends, the suspension or amendment of the approval continues until the general manager informs the holder of the general manager's decision about the notice under section 164(3).

However, if a board of inquiry has been established within 14 days after the general manager has considered an inspector's report about the marine incident, the general manager may, by signed notice given to the holder of the approval suspended or amended under section 165, extend the term of the suspension or amendment of the approval until 7 days after the board has given the Minister its report under section 132 of the Act.

If a notice under section 164(1) has been given to the holder of the approval within 7 days after the board has given the Minister its report, the suspension or amendment of the approval under section 165 continues until the general manager informs the holder of the general manager's decision about the show cause notice under section 164(3).

If within 14 days after the general manager has considered an inspector's report about the marine incident, a board of inquiry has not been established and the general manager has not issued a notice under section

164 to the holder of the approval, the suspension or amendment of the approval under section 165 ends and the general manager must promptly notify the holder of the approval accordingly.

The provisions of this section have been amended following experience gained from the first Board of Inquiry conducted under the Act in 2002.

Effect of suspension on renewal of authority

Section 167 provides that if an authority is suspended, it may be renewed, but the suspension continues until the end of the suspension period.

Authority to be returned after suspension or cancellation

Section 168 provides that a person whose authority is suspended or cancelled must return the authority to the administering agency within 7 days after the suspension or cancellation takes effect, unless the person has a reasonable excuse. A maximum penalty of 20 penalty units is provided for the offence.

If a suspended authority is returned to the administering agency, the administering agency must return it to the holder at the end of the suspension term.

Division 6—Other provisions about authorities

Holder to notify change of address

Section 169 provides a new requirement that if the holder of an authority changes address, the holder must, within 14 days after the change, give the administering agency written notice of the holder's new address, unless the holder has a reasonable excuse. A maximum penalty of 10 penalty units is provided for the offence.

Keeping of authority

Section 170 requires the holder of an issued authority must keep the authority, or a document about the granting of an authority, and must not deface or otherwise change it. A maximum penalty of 20 penalty units is provided for the offence.

Replacement of authority

Section 171 provides that the holder of a lost, damaged or destroyed authority may apply to the administering agency for a replacement authority. The application must be made in the approved form and be accompanied by the appropriate fee for the application. The administering agency may replace the authority only if the administering agency is satisfied it has been lost, damaged or destroyed.

Surrender of authority

Section 172 provides that the holder of an authority may surrender it by written notice given to the administering agency. The notice must be accompanied by the authority. The surrender of the authority takes effect on the day the notice is given or if a later day is stated in the notice, the later day.

Division 7—Transfer of ship's registration**Transfer of ship's registration**

Section 173 provides that the administering agency may transfer the registration of a ship.

A person who buys or otherwise acquires a registered ship from another person must, within 14 days after acquiring the ship, apply to the administering agency for the transfer the ship's registration. A maximum penalty of 20 penalty units is provided for the offence.

A ship's registered owner may apply for transfer of the ship's registration to another person if—

- the ship has been sold or otherwise disposed of to the other person; and
- the registered owner reasonably believes the other person has not applied for transfer of the ship's registration within 14 days after acquiring the ship.

Until the administering agency receives notice of the transfer of a ship's registration, the registered owner is taken to be, for the regulation, a person who is the owner of the ship.

Particular provisions about authorities apply to transfer of ship's registration

Section 174 provides that sections 149 to 151 and 154 apply, with all necessary changes, to an application for the transfer of a ship's registration in the same way they apply to an application for an authority.

If the administering agency decides to transfer a ship's registration, the administering agency must, within 14 days after making the decision—

- record the new registered owner's name and address in the register; and
- issue an amended certificate of registration for the ship in the new registered owner's name.

If the ship's registration is subject to conditions imposed by the administering agency under section 155, the conditions continue to apply after the registration is transferred.

**PART 7—PILOTAGE AREAS, COMPULSORY
PILOTAGE AREAS AND PILOTS*****Division 1—Pilotage areas and compulsory pilotage areas*****Declaration of pilotage areas and compulsory pilotage areas—Act,
s 71(a)**

Section 175 provides that Schedule 5 states the areas of Queensland waters that are pilotage areas. Schedule 6 states the pilotage areas, or parts of pilotage areas, that are compulsory pilotage areas.

Division 2—Pilots**Application of Act, pt 8**

Section 176 provides for the ships to which the pilot provisions of part 8 of the Act applies.

The proposed regulation includes another type of ship that part 8 of the Act does not apply to. This is a ship operated in a pilotage area by a master holding a licence to operate the ship as its master which is endorsed for the pilotage area if the ship is not more than 80m and registered under the Act. For the section that refers to dredge masters, the reference to the dredge being conducted on "dredging operations" has been removed.

Transfer of pilot to ship

Section 177 provides that a pilot may be transferred to or from a ship—

- from a pilot ship flying the appropriate distinguishing flag or showing the appropriate distinguishing lights; or
- by a helicopter that lands on the ship or from which the pilot is lowered by winch.

The way the pilot is transferred to a ship is at the sole discretion of the harbour master for the pilotage area of the pilot's operations.

The master of a ship to or from which a pilot is transferring by helicopter must give the harbour master for the pilotage area of the pilot's operations all information necessary to determine the suitability of the ship for landing the helicopter on the ship or transferring the pilot by winch.

A maximum penalty of 50 penalty units is provided for this offence.

Master to give pilotage charge to pilot

Section 178 provides that after a pilot has transferred to a ship and the ship is about to be navigated in a compulsory pilotage area, the master of the ship must, when requested by the pilot, give pilotage charge of the ship to the pilot, unless the master has a reasonable excuse. A maximum penalty of 100 penalty units is provided for the offence.

Pilotage exemption

Section 179 provides that the general manager may issue a pilotage exemption certificate to a person for a ship or class of ship in a pilotage area.

The general manager may issue the certificate only if—

- the person holds an appropriate licence to operate the ship, or class of ship, as its master issued under the regulation or the law of the Commonwealth or another State; and
- the person passes a pilotage exemption test comprising of—
 - a written test about the person’s knowledge of the pilotage area; and
 - a practical ship handling test in the pilotage area; and
- the general manager is satisfied—
 - the person has completed a reasonable number of voyages in the area as the master, or the chief mate in charge of a navigation watch, of a ship comparable in size to the ship, or class of ship; and
 - marine operations in the pilotage area will not be endangered by issuing the certificate.

The general manager may issue the certificate only for a ship that is—

- an Australian registered ship, other than a tank ship of 200 m or more; or
- a foreign registered ship that is less than 100 m and operating in a pilotage area stated in schedule 7.

The procedure for obtaining a pilotage exemption certificate is in part 6.

In the section “chief mate” means—

- for a commercial ship—a chief mate under section 2, part 4, clause 34 of the USL code; or
- for a fishing ship—a chief mate under section 3, part 4, clause 21 of the USL code.

Also, “tank ship” means a ship that is—

- an oil tanker; or
- a chemical carrier; or
- a liquefied gas carrier.

Division 3—Pilots and fatigue management

Fatigue management

Section 180 requires a person who employs pilots to perform pilotage services on the person's behalf at a port must devise and implement, for the pilots, a fatigue management program. A maximum penalty of 40 penalty units is provided for the offence.

The program must be capable of ensuring that the pilots are properly rested and fit to perform their duties. The program must make suitable provision for maximum work times, maximum pilotage times and minimum rest times. The person must take reasonable steps to ensure the pilots comply with the program. A maximum penalty of 40 penalty units is provided for the offence.

A pilot to whom the program applies must not have the conduct of a ship as its pilot if the pilot's fatigue level may cause the ship to be operated unsafely or the pilot has not substantially complied with the program. A maximum penalty of 40 penalty units is provided for the offence.

Division 4—Reporting movements of ships

Owner or master to report shipping movements in pilotage area

Section 181 applies if a ship mentioned in section 176(1)(a) to (d)—

- is to arrive at, or depart from, a pilotage area; or
- is to be removed from a berth or anchorage in a pilotage area to another berth or anchorage in the pilotage area.

The owner or master of the ship must report its expected arrival, departure or removal to the harbour master in the approved form and within stated times. A maximum penalty of 100 penalty units is provided for the offence.

The report must be made—

- for an arrival—not less than 48 hours before the ship's expected arrival; or

- for a departure or for a removal to another berth or anchorage—not less than 24 hours before the ship’s expected departure or removal.

Division 5—Reporting ship movements to VTS

Definitions for div 5

Section 182 provides definitions for division 5—

- “area VTS”, for a pilotage area, means the vessel traffic services operated by the general manager in the pilotage area.
- “radio” means VHF radio.
- “small ship” means a ship less than 35 m.

Application of div 5

Section 183 provides that division 5, other than section 190, applies to a ship only if it is 1 of the following and is fitted with radio—

- a ship that is 35 m or more;
- a small ship (the “relevant ship”) if—
 - it is combined with another small ship for propelling one of the ships; and
 - the length of the combined ships is 35 m or more; and
 - the master of the relevant ship has command of the combined ships;
- a small ship whose master asks for the services of a pilot;
- a small ship whose master is directed by a harbour master to use the services of a pilot;
- a small ship carrying dangerous cargo;
- a small ship (the “relevant ship”) if—
 - it is combined with another small ship for propelling one of the ships; and

- the length of the combined ships is less than 35 m and either of the ships is carrying dangerous cargo; and
- the master of the relevant ship has command of the combined ships;
- a small ship that is a fishing ship that is 10 m or more and operating in a pilotage area or part of a pilotage area stated in schedule 8;
- a small ship that is 10 m or more and operating in a pilotage area or part of a pilotage area stated in schedule 9.

Obligation under s 181 not limited

Section 184 provides that the division is in addition to and does not limit a person's obligations under section 181.

Entering pilotage area

Section 185 provides that the master of a ship that is underway and entering, or about to enter, a pilotage area must report to the area VTS by radio the following particulars for the ship—

- the ship's name;
- the ship's position with reference to the closest aid to navigation;
- the place in the pilotage area the ship is navigating to;
- the name and quantity of all dangerous cargo the ship is carrying;
- details of damage to, and defects and deficiencies in, the ship that could affect the safety of the ship, a person or the environment;

If requested by the harbour master for the area the master of a ship must also report—

- the ship's draught fore and aft; and
- the expected arrival time at the place the ship is navigating to.

A maximum penalty of 100 penalty units is provided for the offence.

Navigating ship from berth or anchorage

Section 186 applies if the master of a ship that is at a berth, or at anchor, in a pilotage area is about to navigate the ship in the pilotage area.

The master must report to the area VTS by radio the following particulars for the ship—

- the ship's name;
- the name of the berth, or if at anchor, the name of the anchorage or the position where the ship is anchored with reference to the closest aid to navigation;
- if the ship is to leave the area—the place where it will leave the area;
- if the ship is not leaving the area—the place the ship is navigating to;
- the name and quantity of all dangerous cargo the ship is carrying;
- details of damage to, and defects and deficiencies in, the ship that could affect the safety of the ship, a person or the environment;

If requested by the harbour master for the area the master of a ship must also report—

- the ship's draught fore and aft; and
- the expected arrival time at the place the ship is navigating to.

A maximum penalty of 100 penalty units is provided for the offence.

Reaching destination

Section 187 provides that when a ship mentioned in section 185 or 186 arrives at its destination in a pilotage area, its master must, as soon as practicable after the ship has been made fast or is anchored, report to the area VTS by radio the following particulars for the ship—

- if the ship is secured at a berth—the time at which the ship was fully secured; or
- if the ship is anchored—the time at which the ship was brought up at anchor.

A maximum penalty of 100 penalty units is provided for the offence.

This does not apply to a ship leaving a pilotage area. However, when a ship leaves a pilotage area its master must report to the area VTS by radio the time of leaving the area. A maximum penalty of 100 penalty units is provided for the offence.

Ship entering pilotage area using services of a pilot

Section 188 provides that if a ship entering a pilotage area is to be navigated in the area using the services of a pilot, as soon as practicable after the pilot transfers to the ship, its master must report to the area VTS by radio when the transfer was made. A maximum penalty of 100 penalty units is provided for the offence.

Ship navigating in pilotage area using services of a pilot

Section 189 applies if a ship mentioned in section 186 is being navigated in the area using the services of a pilot. As soon as practicable after the ship stops being navigated using the pilot's services, its master must report to the area VTS by radio when the pilot transfers, or is expected to transfer from the ship. A maximum penalty of 100 penalty units is provided for the offence.

Report requested by harbour master

Section 190 provides that the harbour master of a pilotage area may direct the master of any ship navigating in the area and equipped with radio to report to the area VTS by radio the following particulars for the ship—

- its name;
- its position by reference to an aid to navigation;
- the place in the pilotage area to which it is navigating.

The ship's master must not contravene the direction unless the master has a reasonable excuse. A maximum penalty of 100 penalty units is provided for the offence.

Radio frequencies

Section 191 provides that the radio frequencies used by an area VTS are stated in notices to mariners published by the Maritime Safety Agency of Queensland.

PART 8—PILOTAGE FEES AND CONSERVANCY DUES***Division 1—Pilotage fees*****Application of div 1**

Section 192 provides that division 1 applies to a ship to which part 8 of the Act applies under section 176.

Pilotage fees for pilotage service

Section 193 provides that pilotage fees are payable when a person navigates a ship in a pilotage area and uses the services of a pilot.

Pilotage fees if pilotage amended or cancelled

Section 194 provides that pilotage fees are payable if an owner or master of a ship who has arranged pilotage for the ship with a harbour master amends or cancels the pilotage without giving the harbour master at least 2 hours notice of the amendment or cancellation. However, the general manager may, by gazette notice, specify another time for a particular pilotage area if the general manager considers another time is necessary for the effective and efficient operation of the pilotage service in that area.

Pilotage fees if pilot cannot leave ship

Section 195 provides that pilotage fees are payable if the pilot cannot leave the ship after the pilotage ends. This does not apply if the pilot is not able to leave the ship after the pilotage ends because of something beyond the control of the master of the ship.

Division 2—Conservancy dues

Conservancy dues for ships

Section 196 provides that conservancy dues are payable for the ships mentioned in section 176(1)(a) to (d). A conservancy due is payable on the day of the ship's first arrival at, or departure from, a pilotage area. The fee payable includes all the ship's arrivals at, or departures from, any pilotage area for 30 days after the fee is payable. After the 30 days, another conservancy due is payable.

However, this does not apply to a ship that arrives at a pilotage area for any of the following purposes and does not otherwise discharge or load any cargo or land or take on board any passenger in the pilotage area—

- discharging residue or slops;
- relieving stress of weather or distress to the ship from anything else;
- taking off a sick or injured passenger or any of the ship's crew;
- effecting repairs;
- refitting or docking;
- obtaining fuel or provisions for the ship.

Division 3—General

Definition for div 3

Section 197 provides a definition, for division 3, of “fees” meaning pilotage fees or conservancy dues payable for a ship under the part.

Who is liable to pay fees

Section 198 provides that the owner of a ship must pay the fees payable for the ship and interest on unpaid fees under section 200.

Time for paying fees

Section 199 provides that the owner of a ship must pay fees for the ship within 30 days after the day the invoice for the fees is issued.

Interest on unpaid fees

Section 200 provides that interest calculated daily at the rate stated in schedule 10 is payable on fees that are not paid within the required time under section 199.

Recovery of fees and interest

Section 201 provides that unpaid fees for a ship and interest on them may be recovered by the State from the ship's owner as a debt by action in a court with jurisdiction for the amount claimed.

PART 9—OTHER MATTERS ABOUT MARINE SAFETY*Division 1—Approval of harbour masters for pt 9***Definition for pt 9**

Section 202 provides that in part 9 “harbour master” means a harbour master approved by the chief executive under section 203(1) to exercise powers under the part.

Chief executive may approve harbour master and general manager may give directions

Section 203 provides that the chief executive may approve a harbour master to exercise powers under the part. The powers may be limited by the approval or by a later notice of the chief executive to the harbour master. The general manager may give a harbour master any directions about the exercise of the harbour master's powers the general manager considers necessary for marine safety.

Limitation on exercise of power under this part

Section 204 provides that a harbour master may exercise a power under the part only if the harbour master considers it necessary to ensure safety. The powers under sections 205 and 206 for a marine incident may not be exercised by a harbour master after the first of the following—

- the end of the marine incident;
- the end of 14 days after the harbour master first exercises a power under the part for the marine incident.

The proposed regulation specifies when the harbour master may not exercise his powers where as the current regulation specifies when the harbour master may exercise his powers for a marine incident.

A harbour master must comply with a direction of the general manager under section 203(3).

Division 2—Marine incidents outside pilotage area**Harbour master's powers for marine incident outside pilotage area**

Section 205 applies if a harbour master believes a marine incident has happened, or is likely to happen, in an area of waters outside a pilotage area.

The harbour master may direct the master of a ship in or adjacent to the relevant area to navigate or otherwise operate the ship in a specified way, including, for example—

- not to cause the ship to enter the relevant area;
- to cause the ship to enter the relevant area in a specified way;
- to navigate the ship in the relevant area in a specified way;
- to anchor, berth or moor the ship at a specified place in the relevant area;
- to move the ship from an anchorage, berth or mooring in the relevant area;
- to cause the ship to leave the relevant area or to leave the relevant area in a specified way.

The harbour master may direct the person in charge of a place in, or adjacent to, the relevant area—

- to allow a ship to be berthed at the place or moved from the place; or
- to allow access through the place to and from the ship.

A maximum penalty of 200 penalty units is provided for this offence.

The person must comply with the direction unless the person has a reasonable excuse. A direction may be given to any of the ship's crew if it is not possible to give the direction to the master of the ship. A direction given to any of the ship's crew is taken to have been given to the master of the ship.

Division 3—Removal of obstruction to navigation outside pilotage area

Direction to person about obstruction

Section 206 provides that a harbour master may direct a person who is responsible for something that is obstructing, or may obstruct, navigation outside a pilotage area, to remove it. A person must comply with the direction unless the person has a reasonable excuse. A maximum penalty of 200 penalty units is provided for the offence.

Division 4—Buoy moorings

Buoy mooring category areas

Section 207 provides that the general manager may, by gazette notice, define areas of Queensland waters as category areas for buoy moorings.

The general manager may define a category area as a category 1 or category 2 area. A category area that is not defined as a category 1 or 2 area is a category 3 area.

The general manager may, by written agreement, vest in the person the management and control of buoy moorings within a category 1 area.

Establishment of unauthorised buoy mooring

Section 208 provides that a person must not establish a buoy mooring—

- in a category 1 area, unless the mooring manager for the area consents to the establishment of the buoy mooring; or
- in a category 2 or 3 area, unless the general manager approves the establishment of the buoy mooring under section 209.

A maximum penalty of 50 penalty units is provided for the offence.

If a person establishes a buoy mooring in a pilotage area in contravention of the section, a harbour master may direct the person to remove the buoy mooring.

If a person establishes a buoy mooring outside a pilotage area, in contravention of the section, the general manager may direct the person to remove the buoy mooring.

The person given the direction must comply with the direction, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units is provided for the offence.

A person must not use a buoy mooring—

- in a category 1 area, unless the mooring manager for the area has consented to the establishment of the buoy mooring; or
- in a category 2 or 3 area, unless the general manager has approved the establishment of the buoy mooring under section 209.

A maximum penalty of 50 penalty units is provided for the offence.

The proposed regulation includes new subsections that relate to whether the harbour master or the general manager can direct a person to remove an unauthorised buoy mooring. It has also expanded on when a person must not use a buoy mooring in particular categories with the mooring manager's consent.

Approval of establishment of buoy mooring by general manager

Section 209 provides that the general manager may approve the establishment of a buoy mooring for a category 2 or 3 area. The approval may be for the establishment of either a restricted or unrestricted use buoy mooring. The procedure for obtaining the approval is in part 6.

Limitations on buoy mooring approvals

Section 210 provides that the general manager may approve the establishment of a buoy mooring only if the general manager is satisfied the mooring does not significantly interfere with marine safety or the effectiveness or efficiency of the Queensland maritime industry.

If a buoy mooring is to be established within a port, the general manager may approve the establishment of the buoy mooring only if the general manager is satisfied the port authority for the port has consented to the establishment.

Conditions of buoy mooring approvals

Section 211 provides that the conditions the general manager may impose on an approval to establish a buoy mooring may include conditions about the colour, shape and size of the buoy.

Notice of establishment of buoy mooring

Section 212 provides that a person who establishes a buoy mooring under an approval to establish it, must give written notice, containing the details required by the general manager when issuing the approval, to—

- for a buoy mooring established in a pilotage area—the harbour master; or
- for a buoy mooring established outside a pilotage area—the general manager.

A maximum penalty of 20 penalty units is provided for the offence.

The details required by the general manager may include the following—

- the date the buoy mooring was placed;
- the precise location of the buoy mooring;
- the type and size of the mooring apparatus.

The notice must be given within 14 days after the buoy mooring is established.

Buoy mooring to display identifying number

Section 213 provides that the holder of an approval to establish a buoy mooring must ensure—

- the identifying number issued by the general manager for the buoy mooring is permanently and legibly displayed on the buoy; and
- the buoy and its identifying number are not obscured from view.

A maximum penalty of 20 penalty units is provided for the offence.

Unlawful use of buoy mooring

Section 214 provides that a person must not moor a ship to a restricted use buoy mooring unless the ship is the ship stated in the approval to establish the buoy mooring. A maximum penalty of 50 penalty units is provided for the offence.

A person must not moor a ship to an unrestricted use buoy mooring unless the person has the consent of the holder of the approval to establish the buoy mooring. A maximum penalty of 50 penalty units is provided for the offence.

Removal of buoy mooring on expiry, cancellation or surrender of approval

Section 215 applies if an approval to establish a buoy mooring has expired, or has been cancelled or surrendered under part 6.

The person to whom the approval was granted must remove—

- the buoy whose mooring is authorised under the authority; and
- the mooring apparatus for the buoy; and
- the mooring block for the buoy;

A maximum penalty of 20 penalty units is provided for the offence.

Unless the person has a reasonable excuse, the buoy, its mooring apparatus and its mooring block must be removed—

- if the approval has expired or been surrendered—within 14 days after the expiry or surrender; or

- if the approval has been cancelled and no appeal is made against the cancellation under part 16 of the Act—within 14 days after the time for making an appeal ends; or
- if the approval has been cancelled and an appeal is made against the cancellation and the court confirms the cancellation—within 14 days after the confirmation of the cancellation.

If the holder does not remove the buoy mooring, mooring apparatus or mooring block within the required time—

- the harbour master may direct the holder to remove the mooring, apparatus or block if the buoy mooring is established in a pilotage area; or
- the general manager may direct the holder to remove the mooring, apparatus or block if the buoy mooring is established outside a pilotage area.

The holder must comply with the direction, unless the holder has a reasonable excuse. A maximum penalty of 50 penalty units is provided for the offence.

Division 5—Directions of harbour master or general manager

Harbour master or general manager may carry out direction

Section 216 applies if a person has not complied with a direction given to the person by—

- a harbour master under section 205, 206, 208 or 215; or
- the general manager under section 208 or 215.

The section also applies if—

- it appears to a harbour master or general manager there is no-one to whom a direction under section 205, 206, 208 or 215 may be given; and
- the harbour master or general manager is satisfied on reasonable grounds that the harbour master or general manager must act urgently without giving the direction.

The harbour master or general manager may carry out the direction or proposed direction. The harbour master or general manager may—

- board a ship and operate it, including, for example, by moving or navigating it; or
- enter or remain in a place in, or adjacent to, an area to board a ship and anchor, berth, moor or move it.

Recovery by State of expenses of carrying out direction

Section 217 applies if a harbour master or the general manager incurs expense, whether the expense is the harbour master's expense or the State's expense, in exercising a power under section 216.

The amount of the expense may be recovered as a debt by the State by action in a court with jurisdiction for the amount claimed. If more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

Division 6—Aquatic events

Aquatic events

Section 218 applies if the holding of an aquatic event is likely to affect the normal operation of ships in the area of the event.

The person holding the aquatic event must obtain a consent for the holding of the event from—

- if the event is to be held wholly within a pilotage area—the harbour master for the pilotage area; or
- otherwise—the general manager.

A maximum penalty of 50 penalty units is provided for the offence.

A person must comply with any conditions applying to the person that are imposed on the consent by the general manager under section 155. A maximum penalty of 50 penalty units is provided for the offence.

The consent cannot authorise non-compliance with the regulation.

Division 7—Ships not to be anchored or otherwise operated in particular places**Prohibition on anchoring in particular places**

Section 219 provides that the owner or master of a ship must not anchor a ship—

- within 10 m of a boat ramp or jetty; or
- within 50 m of an underwater cable or pipeline if a sign indicates the presence of the cable or pipeline; or
- in waters where the presence of an anchored ship involves danger to aircraft or other ships.

A maximum penalty of 100 penalty units is provided for the offence.

The general manager, by gazette notice, may state the waters where the presence of anchored ships involves danger to aircraft or other ships.

Prohibition on ship operations near particular structures

Section 220 provides that the owner or master of a ship must not anchor, berth, moor or operate the ship within 100 m of a dam wall, spillway or weir. A maximum penalty of 100 penalty units is provided for the offence.

However, this does not apply to the owner or master of a ship engaged on genuine repairs to, or maintenance work on, the dam wall, spillway or weir.

Unlawful operations if endangering marine safety

Section 221 provides that the owner or master of a ship must not anchor, berth, moor or operate the ship in waters if doing so endangers marine safety. A maximum penalty of 100 penalty units is provided for the offence.

A person must not conduct an activity in waters if doing so in the waters endangers marine safety. A maximum penalty of 100 penalty units is provided for the offence.

The general manager, by gazette notice, may state the waters where the anchoring, berthing, mooring or operating of a ship, or type of ship, or the conducting of a stated activity, endangers marine safety.

The owner or master of a ship must not operate the ship within 30 m of a diver in the water if a code A flag is displayed in the vicinity of the diver. However, this does not apply to the ship attending the diver. A maximum penalty of 100 penalty units is provided for the offence.

Division 8—Other safety matters

Water skiing or riding on toboggan or tube

Section 222 provides that a skier must wear a PFD type 2 or 3. A maximum penalty of 100 penalty units is provided for the offence.

A skier does not commit an offence if the skier is participating in any of the following and it is impractical or unsafe to wear a personal flotation device—

- (a) a commercial display;
- (b) a trick or novelty skiing event in a program of events organised by a genuine water sports entity;
- (c) a genuine practice session for a display or event mentioned in paragraph (a) or (b).

A person must not operate a ship towing a skier unless—

- the skier is wearing a PFD type 2 or 3; and
- there is an observer on the ship, who is more than 12 years, and is competent to act as an observer, watching the skier at all times.

A maximum penalty of 100 penalty units is provided for the offence.

The observer must immediately tell the operator of the ship if—

- there is a danger, or potential for danger, to the skier; or
- the skier signals the observer; or
- the skier has a mishap.

In the section “skier” means a person being towed by a line attached to a ship including for example a person water skiing or riding on a toboggan or tube.

PART 10—MISCELLANEOUS

Division 1 – Fees and charges

Fees and charges

Section 223 provides that the fees and charges payable under the regulation are stated in schedule 10.

Refund of fees if application is refused

Section 224 provides that the chief executive must refund the fees paid by the applicant in relation to an application, other than the chief executive's reasonable costs of assessing the application, if the chief executive refuses an application for any of the following—

- (a) the registration of a recreational ship;
- (b) a recreational marine driver's licence;
- (c) the renewal or amendment of the registration or of a licence mentioned in paragraph (a) or (b);
- (d) the transfer of the registration of a recreational ship.

In addition, the general manager must refund the fees paid by the applicant in relation to the application, other than the general manager's reasonable costs of assessing the application, if the general manager refuses an application for any of the following—

- an authority in relation to a commercial or fishing ship;
- the renewal or amendment of an authority in relation to a commercial or fishing ship;
- the transfer of the registration of a commercial or fishing ship.

Refund of fees if ship's registration is surrendered

Section 225 applies if, under section 172—

- the chief executive receives a surrender of a recreational ship's registration; or

- the general manager receives a surrender of a commercial or fishing ship's registration.

The chief executive or general manager must refund to the person in whose name the ship was registered the unexpired part (the "refund") of the registration fee. The refund is to be worked out on a proportional basis according to the number of whole days from the end of the day when the registration was surrendered to the beginning of the day when the ship's registration would have otherwise expired. The chief executive or general manager may deduct from the refund the administration fee prescribed for the section in schedule 10.

Division 2—Production of authorities or documents

Shipping inspector may allow authority or document to be produced elsewhere

Section 226 applies if a shipping inspector—

- boards a ship under section 165(1) of the Act, to find out whether the Act is being complied with; and
- requires, under section 175(1) of the Act, a person to produce an issued authority that is a licence, or a document, that is required to be kept by the person under section 170 of this regulation; and
- the person is unable to produce the licence.

The shipping inspector may allow the person to produce the licence or document within a stated time, not being more than 48 hours after the requirement is made, to the officer in charge of an office stated by the inspector.

In this section "office" means—

- an office of the Maritime Safety Agency of Queensland; or
- an office of the Queensland Boating and Fisheries Patrol; or
- a police station.

PART 11—TRANSITIONAL PROVISIONS

Division 1—Matters relevant to former Act

Safety equipment for ships under a standard practice instruction

Section 227 applies if—

- a commercial or fishing ship to which part 2, division 3 or 4 (the “applicable division”) applies was—
 - the subject of an application mentioned in the expired section 196 of the 1995 regulation for the survey and registration of the ship under the 1987 regulation; or
 - built and operating immediately before 1 January 1996; and
- a standard practice instruction given by the former board under the former Act that stated safety equipment for ships and how the equipment should be marked, stowed, replaced or serviced applied to the ship; and
- there is an inconsistency between the instruction and the requirements of the applicable division for the ship; and
- the ship is equipped with the safety equipment required under the applicable division if read subject to the instruction; and
- the equipment is marked, stowed, replaced or serviced in the way required under the instruction.

The ship is taken to comply with the requirements of the applicable division.

Design and construction of ships under a standard practice instruction

Section 228 provides a ship is taken to comply with the standard if—

- a commercial or fishing ship was the subject of an application mentioned in the expired section 196 of the 1995 regulation for the survey and registration of the ship under the 1987 regulation; or
- a commercial or fishing ship was built and operating immediately before 1 January 1996; and

- a standard practice instruction given by the former board under the former Act about the design or construction of ships applied to the ship; and
- there is an inconsistency between the instruction and a standard about the design or construction of ships that applies to the ship under the regulation; and
- the ship is designed or constructed as required under the standard if read subject to the instruction.

Licensing exceptions—particular commercial ships less than 35 m

Section 229 applies to a commercial ship that—

- is less than 35 m; and
- was registered under the former Act immediately before its repeal; and
- was operated without an engineer before the repeal.

Despite section 88, the ship may continue to be operated without an engineer or other person holding a marine engine drivers licence if—

- the ship is designed to operate with an unattended machinery space; and
- the ship's propulsion machinery may be operated from the bridge or wheelhouse; and
- the ship is on a voyage that is intended to be less than 15 hours and starts and ends at a place where maintenance and service facilities are available; and
- a nominated safety hand is on board; and
- after considering the operational requirements and the fatigue factor of the crew, the owner or master of the ship reasonably believes the ship's operations will not be endangered by operating the ship without an engineer or other person holding a marine engine driver's licence.

In the section—

“nominated safety hand” means a person who has—

- successfully completed the course Occupational Health and Safety at Sea provided by a training provider approved by the general manager to provide the course or an equivalent course; and
- demonstrated, to the reasonable satisfaction of the owner or master of the ship, the person's—
 - knowledge and proficiency in the operation of the ship's fire fighting appliances, machinery and pumping systems; and
 - ability to satisfactorily complete the records required by section 134 for the things mentioned in the previous subparagraph.

The section expires 5 years after it commences.

Division 2—Transition to particular provisions

Insurance by accredited persons

Section 230 applies if, at the commencement of the section, an accredited person held a policy that complies with section 31 of the 1995 regulation.

While the policy remains in force, the accredited person is taken to comply with section 51. However, if the accredited person has not complied with section 31(1)(b) of the 1995 regulation, the person must give the general manager a copy of the certificate of insurance or renewal of the policy. Also, the person is only taken to comply with section 51 until the next renewal of the policy is due.

Capacity labels

Section 231 provides that section 77 does not apply to the owner or master of a registrable recreational ship until 1 September 2005.

Application of Act, pt 5, div 3

Section 232 provides that despite anything in section 84(2)(f), part 5, division 3 of the Act does not apply until 1 September 2005 to a powered recreational ship—

- with an engine of less than 4.5 kW; or
- that is not capable of a speed greater than 10 knots; or
- that does not have a planing or non-displacement hull.

Crew to complete safety course

Section 233 provides that section 110 does not apply to a person who is part of the crew of a commercial or fishing ship, or to a person who is the owner or master of a commercial or fishing ship, until 1 September 2005.

Division 3—Transition from 1995 regulation generally

Continuation of authorities under 1995 regulation

Section 234 provides that an authority issued by the chief executive under the 1995 regulation and in force immediately before the commencement of the section, the authority continues to have effect as an authority under the regulation.

Applications for authorities under 1995 regulation

Section 235 provides that if an application was made to the chief executive for an authority under the 1995 regulation and the application was not finally decided by the chief executive before the commencement of the section, the application continues to have effect as an application under the regulation.

References to 1995 regulation

Section 236 provides that a reference to the 1995 regulation in an Act or document may if the context permits be taken to be a reference to the regulation.

PART 12—REPEAL

Repeal

Section 237 provides for the repeal of the *Transport Operations (Marine Safety) Regulation 1995*.

PART 13—AMENDMENT OF STATE PENALTIES ENFORCEMENT REGULATION 2000

Regulation amended in pt 13

Section 238 declares that part 13 amends the *State Penalties Enforcement Regulation 2000*.

Amendment of sch 3 (Transport legislation)

Section 239 provides for consequential amendments to be made to schedule 3 (Transport legislation) of the *State Penalties Enforcement Regulation*.

SCHEDULES

Schedule 1 Standards

Schedule 1 specifies for section 7 of the regulation, the standards that are mentioned in this regulation

Schedule 2 Classes of ships

Schedule 2 specifies for section 63 of the regulation, the classes of commercial and fishing ships.

Schedule 3 Classes of licences

Schedule 3 specifies the licence classes under sections 97 and 98 of the regulation.

Schedule 4 Matters about which records to be kept

Schedule 4 specifies for section 134 of the regulation, the records that commercial and fishing ships must keep.

Schedule 5 Pilotage areas

Schedule 5 specifies for section 175(1) of the regulation, the areas of Queensland waters that are pilotage areas

Schedule 6 Compulsory pilotage areas

Schedule 6 specifies for section 175(2) of the regulation, the pilotage areas or parts of pilotage area that are compulsory pilotage areas.

Schedule 7 Pilotage areas for which exemption certificate may be issued

Schedule 7 specifies for section 179(3) of the regulation, the pilotage areas for which a pilotage exemption certificates may be issued, if the ship is less than 100 m and is a foreign registered ship.

Schedule 8 Pilotage area, or parts of pilotage area, for particular fishing ships for vessel traffic services

Schedule 8 specifies for section 183(g) of the regulation, the pilotage area (or part) for fishing ships that are 10 m or more where the ships must report to vessel traffic services if they have a radio.

Schedule 9 Pilotage area, or parts of pilotage area, for particular small ships for vessel traffic services

Schedule 9 specifies for section 183(h) of the regulation, the pilotage area (or part) for small ships that are 10 m or more where the ships must report to vessel traffic services if they have a radio.

Schedule 10 Fees and charges

Schedule 10 specifies the fees payable for all of the processes associated with the regulation which require a fee to be paid.

Schedule 11 Fishing ship operational area

Schedule 11 specifies the Queensland waters that are defined as the waters of the Fishing Ship Operational Area for schedule 15, definition "Fishing Ship Operational Area".

Schedule 12 Partially smooth waters

Schedule 12 specifies the Queensland waters that are defined as partially smooth waters for schedule 15, definition "partially smooth waters".

Schedule 13 Smooth waters

Schedule 13 specifies the Queensland waters that are defined as smooth waters for schedule 15, definition "smooth waters".

Schedule 14 Torres strait zone

Schedule 14 specifies the Queensland waters that are defined as the waters of the Torres Strait zone for schedule 15, definition "Torres Strait zone".

Schedule 15 Dictionary

Schedule 15 provides for section 4 of the regulation definitions for particular words used in the regulation.

Penalty Comparison Table

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
49(3)	Accredited person (Corp) issue certificate of compliance if no accredited individual supervising	200	29(3)	200	N/A
49(4)	Accredited person (Corp) fail to inform General Manager that accredited individual has ceased being employed.	20	New Provision	N/A	N/A
50(2)	Accredited person fails to bring into existence and keep certain required documents	100	30(2)	100	N/A
50(6)	Accredited person fails to ensure entries in documents are complete, accurate, done within 14 days and kept for 7 years	100	30(5)	100	N/A
51(1)	Accredited person issue, certificate of compliance without holding required insurance or allowed by General Manager	100	New Provision	N/A	3*
52(2)	Accredited person fail, to keep insurance policy in force if required	100	New Provision	N/A	3*
52(3)	Accredited person fail, to give General Manager copies of insurance certificate within 5 business days	50	New Provision	N/A	3*
53(4)	Fail to comply with general manager's conditions about issue of certificates of compliance	100	New Provision	N/A	3*
53(5)	Accredited person fails to give written notice about not holding insurance	100	New Provision	N/A	3*
56	Fail to give General Manager notice of intention to start building.	100	33	100	N/A

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
57(2)	Builder fails to have ship surveyed during building by accredited surveyor and obtain certificate of compliance	100	34(2)	100	N/A
57(3)	Builder fails to give copy of certificates to owner when delivering ship or part of ship	10	34(3)	100	N/A
57(5)	Person fails to have ship surveyed and obtain certificate if builder is not required to do so	100	New provision	N/A	N/A
59(2)	Accredited designer fails to give copy of certificate to General Manager within 5 days of issue	10	36(2)	100	N/A
59(4)	Accredited builder or surveyor fails to give copy of certificate to General Manager within 5 days of issue	20	36(2)	100	N/A
61(1)	Owner of registrable ship fails to register ship	200	38(1)	200	Commercial or Fishing Ship = 4, Recreational ship = 2
64(2)	Owner of commercial or fishing ship fails to enter date and time and nominated person in records before recreational use commences	20	New provision	N/A	2*
64(4)	Owner of commercial or fishing ship fails to enter date and time in records when recreational use ended	20	New Provision	N/A	2*
72(4)	Registered owner fails to inform chief executive of change of particulars of recreational ship within 14 days	10	48(4)	50	2

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
73(4)	Registered owner fails to inform General Manager of change of particulars of commercial or fishing ship within 14 days	10	48A(4)	50	2*
74(1)	Fail to properly display registration number	50	49(1)	50	2
75(1)	Fail to display registration certificate on commercial or fishing ship	100	50(1)	100	3
75(2)	Fail to carry registration certificate on commercial or fishing ship if it cannot be displayed	100	50(2)	100	3
76(1)	Fail to properly attach registration label to recreational ship	10	51(1)	50	1
77(1)	Fail to attach capacity label to recreational ship	10	New provision	N/A	2*
77(2)	Remove, deface, obliterate or conceal capacity label	20	New Provision	N/A	2*
78(1)	Fail to display ride smart sticker on PWC	10	51A(1)	50	2
79(2)	Fail to properly mark tender	50	52(2)	50	3
81(1)	Fail to carry/display restricted use flag consent or tell person about conditions or display restricted use flag	20	54(1)	50	2*
81(3)	Holder of consent fails to comply with conditions of consent	50	54(6)	50	2
82(1)	Operate ship under restricted use flag if no consent issued for that ship	50	54(3)	50	2
82(2)	Operate ship using flag for which no consent issued.	50	54(4)	50	2
82(3)	Use ship displaying restricted use flag for purpose not allowed under consent	50	54(5)	50	2
83	Fail to return restricted use flag	20	55	50	2

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
86(1)	Owner of commercial or fishing ship fail, to ensure master properly licensed	200	New Provision	N/A	3*
86(2)(a)	Owner or master fail, to ensure crew members are properly licensed	200	New Provision	N/A	3*
86(2)(b)	Owner or master fail, to ensure engineer is properly licensed	200	New Provision	N/A	3*
87(1)	Master of Recreational boat allows unlicensed person to operate without supervision etc.	50	182(1)	50	2
87(2)	Master of commercial or fishing ship allows person to operate ship without giving instructions and the other person not holding appropriate qualifications etc.	200	182(2)	200	5
87(3)	Master allows person without appropriate licence to operate ship while towing person on a line (waterskiing)	100	182(3)	100	3
98(4)	Master or owner of ship makes false, misleading or incomplete entry in a sea service book or signs another document if they know information is false, misleading or incomplete.	50	New Provision	N/A	2*
108(2)	Owner or master fails to operate commercial or fishing ship within limits allowed under USL code if limits not stated in registration certificate	200	79(2)	200	4*
109	Owner or master of a commercial ship carries more persons on ship or part of ship than stated in certificate	200	80	200	4*

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
110(2)	Person who is crew of commercial or fishing ship fails to complete approved OH&S course	100	New Provision	N/A	1*
110(3)	Owner or master fails to ensure all ship's crew have completed OH&S course	100	New Provision	N/A	2*
111	Master of commercial or fishing ship fails to comply with Part 15 (parts 1 and 2) of USL code	200	81	200	2*
115(1)	Owner or master of ship requiring load line certificate operate ship without current load line certificate having been issued	100	86(1)	100	5
116(1)	Owner or master fail to display load line certificate on ship as prescribed	100	86A(1)	100	5
116(2)	Owner or master fail to ensure load line certificate is kept on board ship if not practical to display it.	100	86A(2)	100	5*
119 (1)	Owner or master fail to comply with section 7, part 14 of USL code when operating ship	200	87(1)	200	5
120	Owner or master fail to keep stability documents onboard ship as required	100	88	100	2
124	Owner or master fail to ensure fishing ship is fitted with speaker on aft deck to monitor VHF radio communications	50	New Provision	N/A	2*
127(1)	Operate ship at sped over 6 knots within 30 metres of people in water, jetties etc	200	95(1)	200	3
127(2)	Operate PWC at speed over 6 knots within 60 metres of person in the water etc.	200	95(2)	200	3
128(1)	Operate a ship at a speed at which wash is likely to cause a marine incident etc	200	96	200	3

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
130(1)	Damage, mark, remove or destroy a speed sign	200	184(1)	200	2*
133(2)	Owner or master fail to keep required documents on board ship	100	106(2)	100	3**
133(3)	Owner or master must ensure manuals and plan are made available to ships crew and crew have a working knowledge of them.	100	New Provision	N/A	3*
134(2)	Owner or master fail to keep operating records on ship as required	100	107(2) & (3)	100	3
135(2)	Owner or master fail to ensure documents kept onboard or in secure place	100	106(2)	100	2*
135(3)	Ensure entries are complete, accurate and up to date	100	107	100	2*
135(4)	Deface, erase, destroy and so on.	100	107	100	2*
137(1)	Person fails to give master notice about dangerous cargo	200	111(1)	200	N/A
139(1)	Owner or master fails to comply with dangerous goods codes when handling dangerous cargo.	200	113(1)	200	N/A
140(2)	Owner or master fails to report movements of ship carrying dangerous cargo as required	200	114(2)	200	N/A
140(3)	Owner or master fails to advise of start of local marine service, voyages and dangerous cargo handled.	200	114(2)	200	N/A
140(9)	Owner or master fails to notify cessation of local marine service as required	50	114(7)	50	N/A
141(2)	Person fails to report dangerous cargo event as required	100	115(2)	100	N/A
142(6)	Person fails to comply with request about dangerous cargo on ship	200	116(6)	200	N/A

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
143(1)	Person fails to provide harbour master with certificate from approved chemist about inert condition of ship's tanks	200	117	200	N/A
146(2)	Person fails to notify commencement of certain business activity	50	122A(2)	50	2*
146(4)	Person fails to notify cessation of business	50	122A(4)	50	2*
162(2)	Fail to return authority document for amendment as required	20	137(2)	50	2
168(1)	Fail to return authority document if authority has been suspended or cancelled.	20	143(1)	50	2
169	Authority holder fails to notify change of address for authority	10	New Provision	N/A	1*
170	Keep authority or document and not deface or change it	20	New Provision	N/A	1
173(2)	New owner fails to apply for transfer of ship's registration within 14 days	20	146(2)	40	2
177(2)	Master fails to give harbour master information about suitability of ship for transfer of pilot by helicopter	50	151(3)	50	N/A
177(4)	Master fails to comply with Pilot's directions or Marine Orders about pilot's safety	200	150(2)	200	N/A
178	Master fails to give pilotage charge of ship to pilot on request	100	151A	100	N/A
180(1)	Employer of pilots fails to implement a fatigue management program	40	189(1)	40	N/A
180(4)	Fail to take reasonable steps to ensure pilots comply with fatigue management program	40	189(4)	40	N/A

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
180(5)	Pilot takes charge of ship if fatigued or not complying with fatigue management program	40	189(5)	40	N/A
181(2)	Owner or master fail to report ship's movements as required	100	153(2)	100	5
185	Master fails to provide required information to area VTS by radio when entering pilotage area	100	92C	100	5*
186(2)	Master fails to provide required information to area VTS by radio when navigating within pilotage area	100	92D	100	5*
187(1)	Master fails to provide required information to area VTS by radio when arriving at berth within pilotage area	100	92E(1)	100	5*
187(3)	Master fails to provide required information to area VTS by radio when leaving pilotage area	100	92E(3)	100	5*
188(2)	Master fails to provide required information to area VTS by radio when pilot transfers to ship when entering pilotage area.	100	92F(2)	100	5*
189(2)	Master fails to provide required information to area VTS by radio when ceasing use of a pilot within pilotage area.	100	92G(2)	100	5*
190(2)	Master fails to report to area VTS when directed by harbour master.	100	92H(2)	100	5*
205(4)	Person fails to comply with harbour master's direction following marine incident outside pilotage area.	200	166(3)	200	5
206(2)	Person fails to comply with direction of harbour master about obstruction	200	167(2)	200	5

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
208(1)	Establish buoy mooring without approval	50	177(1)	50	2
208(4)	Person fails to comply with direction to remove unauthorised mooring	50	177(1B)	50	2*
208(5)	Use unauthorised buoy mooring	50	177(2)	50	2
212(1)	Person fails to give notice of establishing buoy mooring as required	20	175(1)	50	1
213	Fail to display identifying number on buoy	20	173	50	1
214(1)	Moor incorrect ship to restricted use buoy mooring	50	174(1)	50	2
214(2)	Moor ship to unrestricted use mooring without owners consent	50	174(2)	50	2*
215(2)	Fail to remove buoy mooring after authority has expired or been cancelled	20	176(1)	50	2
215(5)	Fail to comply with direction to remove buoy mooring	50	176(4)	50	2*
218(2)	Fail to obtain consent to hold aquatic event	50	178(2)	50	2
218(3)	Fail to comply with conditions of consent for aquatic event	50	New Provision		2*
219(1)	Anchor ship near jetty, boat ramp, underwater cable or pipeline or where ships presence involves danger to aircraft or ships	100	179(1)	100	219(1)(a) and (b) = 2 219(1)(c) = 3
220(1)	Anchor, berth, moor or operate a ship within 100 metres of dam, spillway or weir.	100	180(1)	100	2
221(1)	Anchor, berth, moor or operate a ship in waters if doing so endangers safety	100	181(1)	100	3**
221(3)	Conduct an activity in waters if doing so endangers marine safety	100	181(2)	100	3**

Proposed Regulation Section	Offence	Proposed Penalty (Max.)	1995 Reg. Equiv. Sect.	Existing Penalty (Max.)	Proposed SPER (penalty units)
221(5)	Owner or master operate ship within 30 metres of diver if code a flag is displayed	100	New Provision	N/A	2*
222(1)	Skier fails to wear PFD	100	183(1)	100	2
222(3)	Operate ship if skier fails to wear PFD or no observer onboard	100	183(3)	100	3

* Indicates proposed SPER penalty provision that is not in existing SPER Schedule.

** Indicates a SPER penalty different to the equivalent offence in existing SPER Schedule.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Transport.