



Queensland

# Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 1) 2005

## Explanatory Notes for SL 2005 No. 50

made under the

*Transport Operations (Marine Pollution) Act 1995*

*Transport Operations (Marine Safety) Act 1994*

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### 1 General Outline

This amendment to the Transport Operations (Marine Safety) Regulation 2004 relates to the introduction of new fees for port pilotage and some changes to the requirement for pilotage for ships under 50 metres in length. The changes re-establish consistency between ports in the quantum of the fees and the way in which they are applied.

### 2 Short Title

The short title of the regulation is the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 1) 2005.

### 3 Policy Objectives of the Legislation

The proposed new arrangements for port pilotage fees seek to deliver the specific objectives of:

- Introduction of a new fee regime for port pilotage that collects revenue sufficient to offset the full cost of service delivery;
- Improvement to the level of transparency in port pilotage fee setting;

- Establishment of a consistent approach to the requirement for pilotage and the application of the pilotage fee; and
- Improvement to the alignment between the fees applied within ports and to individual ships and the costs incurred in the delivery of services.

#### **4 Reasons for the regulation**

- It is estimated current port pilotage fees will return about \$2.4m less than the cost of service provision for the period up to 30 June 2007.
- The current fee structure for pilotage contains many inconsistencies between neighbouring, comparable ports and has been identified by sectors of industry as lacking sufficient transparency.
- The current method of application of the pilotage fees – gross tonnage – tends to be typically associated with the carrying capacity of the ship and is seen as challengeable in the Courts as being an excise.

#### **5 Administrative Costs**

- Administrative costs are being met by MSQ and are expected to equal about \$150,000 by the time of implementation.
- This cost includes the development of components of new systems to record pilotage transactions and the development of suitable models for the establishment of the proposed new length based fees.
- The administrative cost of subsequent pilotage fee reviews will be significantly lower due to the likelihood that the systems now developed will remain in place for the foreseeable future.
- All administrative costs of MSQ and Queensland Transport will ultimately be recovered through the new fees as a component of all pilotage fees relates to the indirect costs government incurs providing the service.

## **6 Achieving the Objectives**

### **Introduction of a new fee regime for port pilotage that collects revenue sufficient to offset the full cost of service delivery.**

The fees currently in place will not fully recover the direct and indirect cost of the planned port pilotage services. From the present to the end of the 2006/07 financial year the current fees are expected to return on average \$30.4m but deliver an overall shortfall of about \$2.4m. This amount is based on estimates of the impact of the immediate cessation of the annual application of the consumer price index (CPI) and increases in the direct costs associated with port expansions and growth in shipping movement numbers.

In comparison, the proposed fees seek to recover on average \$32 m a year for the period ending 30 June 2007 ensuring a surplus of about \$2.5m above the cost of service provision.

### **Improving the level of transparency in fee setting.**

Full cost recovery from individual ports is not considered viable given the substantial increases that would be required in existing remote, developing or low volume ports. Further, such an approach would likely significantly restrict any future proposed new port developments in locations other than at major population centres.

To better support government's goals of building Queensland's regions it is proposed to establish a standard pilotage fee for the state which is then varied by specific characteristics of the movement. Variations proposed include the length of the ship, the category of pilotage service that is to be provided within the port - proposed categories of service align with pilot training and skill requirements - and the distance of the pilotage run (pilot boarding ground to wharf).

The proposed approach will significantly improve the level of transparency in the way fees are varied from port to port, address inconsistencies in port pilotage charges and continue to provide the necessary assistance to developing ports, which without some form of pricing support may not remain viable.

### **Establishment of a consistent approach to the requirement for pilotage and the application of the pilotage fee.**

Foreign registered ships below 50 metres length overall (LOA) will no longer be required to take a pilot, bringing them in line with existing arrangements for Australian registered ships of the same size. All ships 35 metres and above but less than 50 metres LOA will, however, be required to report their intended movements within pilotage areas to the relevant Regional Harbour Master.

The adoption of LOA as the means by which pilotage fees will be applied better addresses the charging of ships in the smaller range and categories of ships such as naval ships which often do not have gross tonnages. The move to length based charging significantly improves the validity of the pilotage fees as being a fee for service as opposed to a form of taxation or excise.

### **Improving the alignment between the fees applied within ports and to individual ships and the costs incurred in the delivery of services.**

Specific new charges or changes to existing charges or charging arrangements are proposed for a number of pilotage related services. These changes seek to better recover the cost of individual services that have in the past returned revenue less than the cost of service provision.

New arrangements are proposed for:

- Removal fees – typically pilotage movements from one berth to another within a single pilotage area.
- Cancellation fees – currently a full pilotage fee can currently be imposed if a pilotage is cancelled within two hours of the planned service. This nominated period does not reflect the needs of ports where the pilot is required to travel and the current charge could be considered to recover significantly more than the costs incurred. It is proposed to increase this period for all ports to three hours and introduce new cancellation charges that better reflect the costs incurred by the service.
- Restricted Use Flags - the issuing of restricted use flags (RUFs) to some ships has been identified as a service that does not recover the full cost of service provision. It is proposed to apply new RUF fees on

the basis of 5 length categories that better reflects the costs incurred in delivering the service.

New fees are proposed for:

- Delay fees – currently there is no ability for the pilotage service to charge where planned movements are delayed due to the operation of the ship. In instances where such delays to the planned movement time negatively affect other planned ship movements a new hourly delay rate will be applied.
- Pilotage Charge for Exempt Masters - in some ports it has been noted on a number of occasions that exempt masters of inbound ships are requesting a pilot after they have navigated the channel, which for current exempt ships is a reasonably straightforward operation. Under present regulations the ship is only charged for a removal, based on distance rather than the full pilotage. Under the proposed new arrangements for such movements, a full pilotage fee will be applied whenever an exempt master chooses to use the services of a pilot in such circumstances.

## **7 Fundamental Legislation Principles**

- There are no implications for fundamental legislative principles arising from the proposed changes to pilotage fees.

## **8 Consultation**

- Consultation was undertaken with the Queensland maritime industry and government departments including Queensland Treasury, Department of Premier and Cabinet, Department of Tourism, Fair Trading and Wine Industry Development, Department of Justice and Attorney-General, Department of Aboriginal and Torres Strait Islander Policy, Department of Primary Industries, Department of State Development and Innovation, Department of Employment and Training.
- External consultation raised concerns with the intention to recover costs across the network of ports. The larger ports of Brisbane and Gladstone were unsupportive, Cairns and to an extent the Ports Corporation of Queensland are supportive.
- All issues raised by central agencies have been resolved.

## **Notes on Clauses**

### **Part 1 - Preliminary**

#### **Short Title**

**Clause 1** sets out the short title of the Act as the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 1) 2005.

#### **Commencement**

**Clause 2** provides that the Act will commence on 1 April 2005.

### **Part 2 - Amendment of Transport Operations (Marine Safety) Regulation 2004**

#### **Regulation amended**

**Clause 3** provides that the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 1) 2005 amends the Transport Operations (Marine Safety) Regulation 2004.

**Clause 4** amends the references to the length of a ship. Pilotage fees have in the past been applied on the basis of the gross tonnage of a ship. Concerns were raised that this method of application could be interpreted as being a form of excise. The proposed new fees are applied on the basis of a ship's length – which is the characteristic adopted in the qualification and training schedule for pilots – improving the link between fees and cost incurred.

Previous references to a ship's length within the Transport Operations (Marine Safety) Regulation 2004 related only to the Uniform Shipping Law (USL) Code and remain valid for Queensland registered commercial and recreational ships.

The new reference to length overall (LOA) relates to the larger Safety of Life at Sea (SOLAS) ships typically involved in coastal, national and international trade and typically requiring pilotage services.

**Clause 5** minor heading change.

**Clause 6** amends section 176 (application of the Act, part 8) and describes the ships that are required to be piloted. The changes to this section reflect the intention to bring Australian and foreign flagged ships visiting Queensland ports under the same arrangements. In the past, foreign flagged ships 35 metres LOA and above were required to take the service of a port pilot when visiting Queensland ports. This requirement did not apply to Australian registered ships less than 50 metres LOA. New arrangements establish the common length of 50 metres LOA as requirement for pilotage, irrespective of the ship's country of registration.

**Clauses 7 and 8** amend section 181 (Owner or master to report shipping movements in pilotage area) and introduces a new section 181 A. The change to section 181 reflects the ongoing need for ships 35 metres LOA and above to report their intended movements within a pilotage area to the relevant harbour master. The change described under Clause 5 would have resulted in removing the requirement for foreign flagged ships 35 metres LOA and above to report their intended movements within pilotage areas. Clauses 6 and 7 ensure that all ships, irrespective of their country of registration, will be required to notify the relevant harbour master of their intended movements within any pilotage area within the state. Clause 7 goes further by describing less onerous time periods for notification for ships under 50 metres LOA.

**Clause 9** provides for a minor amendment to section 190 (Report requested by harbour master) to reflect preferred wording.

**Clause 10** amends sections 193 to 195 and in general seeks to remove sections of the current regulation that had been described within the schedule of fees, for example "Fee if pilot cannot leave ship" (section 195).

Also, under section 193 the changes separate the fee for standard pilotage services, that is piloted arrivals, departures and removals within pilotage areas from non-standard services provided by port pilots within pilotage areas and any service provided by pilots within the pilotage areas of the Daintree River, Noosa and Whitsundays. Section 193 also now provides for a way of charging for these non-standard pilotage services.

Section 194 describes the change to the way the pilotage service is delivered. The proposed change recognises an efficiency improvement for the operations of a port where a pilot, having just provided a departure service will, with the approval of the harbour master, port authority, ship's agent and master or owner of the ship, start an arrival movement where the ship can be berthed at an inner anchorage within the port. This split or

deferred service will only take place if the ship can be berthed within 24 hours of the initial movement, thus completing its arrival.

Section 195A describes the new arrangements for the application of cancellation fees. Previously if a ship master or owner had cancelled a booked pilotage service within 2 hours of the nominated service time a cancellation fee would be charged. This 2 hour period does not adequately reflect the nature of pilotage services in all Queensland ports and the implications such cancellations have for the pilotage service. This period of notice is to change to 3 hours for all ports.

Section 195B introduces a new charge for delays (to the pilotage service) that are caused by the operation of the ship. Where ships delay their sailing time it has implications for all other planned movements in the port. New arrangements will allow for delays up to 30 minutes but beyond this period hourly delay rates will apply. Where such delays extend beyond 2 hours the pilotage service will be cancelled and the pilotage will be rescheduled at a time that meets all port movements.

**Clause 11** amends section 196 to establish consistency between ports for the charging of conservancy dues. Conservancy charges are applied every 30 day period ships remain within the Queensland port network. Currently some ships will incur conservancy fees from the time they enter port limits – even though they may be simply queuing to access a berth up to 6 weeks in the future. Such ships could be charged conservancy fees twice in this period without having commenced loading or unloading.

The change to section 196 ensures consistency in the treatment of such ships at all ports across the state by establishing that conservancy charges will only apply from the time the ship completes its first arrival, departure or removal in any port that is, the time the ship begins to conduct its business within the port.

**Clause 12** Provides for transitional arrangements for specific ships that set their charges (fares) in advance and have no means of altering the published rates. The transitional arrangements ensure such ships will not be financially disadvantaged as the current fee will continue to apply for the period the published fares remain valid, but no longer than 30 June 2007.

**Clause 13** amends schedule 6 (Compulsory pilotage areas) by removing both Noosa and Daintree from the schedule of compulsory pilotage areas. These areas will remain as pilotage areas but due to the physical constraints



of the waterways are unlikely to involve ships of a size as to warrant pilotage.

**Clause 14** introduces new pilotage fees based on length of the ship, replacing current charges applied through gross tonnage.

**Clause 15** amends existing definitions.

### **Part 3 - Amendment of the Transport Operations (Marine Pollution) Regulation 1995**

**Clause 16** provides for changes to the Transport Operations (Marine Pollution) Regulation 1995.

**Clauses 17 and 18** provide an amendment to the date of the Regulation.

**Clause 19** provides for minor amendments to the terms contained within the dictionary.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Transport.