



Queensland

Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005

Explanatory Notes for SL 2005 No. 121

made under the

State Penalties Enforcement Act 1999

Transport Operations (Marine Safety) Act 1994

Short Title of the Regulation

Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005.

Policy Objectives of the Legislation

The Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005 amends the Transport Operations (Marine Safety) Regulation 2004 to better regulate the operation of personal watercraft (jet skis). The proposed regulation will also amend the State Penalties Enforcement Regulation 2000 to allow on the spot infringement notices to be issued for a number of offences that have been created or amended under the proposed regulation.

Also, the proposed regulation will implement a number of other minor amendments to the Transport Operations (Marine Safety) Regulation 2004. These amendments have been prompted by experiences since the existing regulation was implemented in August 2004. These are non-controversial, administrative amendments that will benefit the marine industry.

Reasons for the regulation

Personal watercraft, or jet skis as they are commonly referred to, are an ever increasing presence on our waterways. A jet ski is a powered ship that has a fully enclosed hull that does not take on water if capsized and is designed to be ridden by a person standing, kneeling or sitting astride it.

The range of makes and models of personal watercraft is extensive, with many of the new models being capable of speeds in excess of 100 kilometres per hour.

Jet skis are unique in their nature of operation. They can accelerate rapidly, are capable of operating in very shallow waters (less than 1 metre), and have a high degree of manoeuvrability. They are designed to be operated at speed using an irregular driving pattern. That is they are designed to be jumped out of the water and across waves at high speeds.

While there have been major advances in engine technology which have resulted in much quieter and more environmentally friendly craft, it is the nature of the operation of jet skis that generally creates the noise, nuisance and other adverse impacts that are the subject of most complaints.

In December 2000 there were 3,348 registered recreational jet skis in Queensland. There were a further 166 jet skis registered for commercial use. At that time jet skis represented just 1.7% of the total registered vessel fleet in Queensland.

At the end of December 2004 there were 7,956 recreationally registered jet skis and 229 commercially registered jet skis in Queensland, representing a 133% increase in numbers over the four year period. Growth in registered jet ski numbers in 2004 alone was in excess of 18%, compared with 5% for registered ships generally. In 2005 jet skis make up approximately 4.2% of all registered ships in Queensland.

On the basis of continued 20% growth per annum, the number of jet skis registered in Queensland will more than double in the next four years (15,912) and will represent almost 7% of total registered recreational ships by 2009.

Eighty percent of jet skis are registered in South East Queensland. As a result, the majority of jet ski activity occurs on the densely populated Gold and Sunshine Coasts, Moreton Bay and in the Brisbane River.

While jet skis currently comprise only 4.2% of all registered recreational ships in Queensland, in 2004 jet ski incidents made up 26% of reported

serious injury marine incidents and were involved in more of these incidents than any other type of ship.

Complaints regarding the inappropriate actions of jet ski riders make up the majority of general boating safety and nuisance complaints received by Maritime Safety Queensland and its enforcement partners. Local Councils and community groups are the more common complainants, with issues such as noise, amenity and nuisance often cited as primary concerns.

The issue of effective management of jet skis, particularly in South East Queensland, has been an issue of contention among relevant local Councils, community groups and the general boating community for some time. Despite continuing education and targeted enforcement activity, complaints and problems relating to the operation of jet skis and the effective enforcement of relevant legislation continue to escalate.

In response to the growing concerns regarding the operation of jet skis on Queensland's waterways, an extensive review of jet ski operations was commenced in late 2003. The review resulted in the development of a five point Jet Ski Management Plan that was submitted to and approved in principle by Cabinet in December 2004. The plan was subsequently released for public comment.

The plan outlined five key initiatives for the better management of jet skis on Queensland waterways. These were:

- "Introduce a new category of licence for jet ski operators;
- "Increase the minimum registration numbering size from 75mm to 100mm;
- "Introduce a system of zoning areas where jet ski operations could be limited or excluded;
- "Increase education and enforcement activities through the establishment of a dedicated jet ski patrol team;
- "Increase the distance off requirements for jet skis

Achieving the Objectives

In order to implement the plan, it is necessary to amend the Transport Operations (Marine Safety) Regulation 2004 to-

Introduce a "personal watercraft licence" for persons wishing to operate jet skis and other associated amendments

The current licence requirement to operate a jet ski in Queensland is a recreational marine driver licence, the same as for any other type of powered recreational boat. To obtain a recreational marine driver licence a person must be 16 years or older and either undergo a training course or take a practical examination with an authorised testing officer. In both cases, the type of craft used would be a motorised boat, not a jet ski.

Under current requirements, to obtain a recreational marine driver licence for the purposes of operating a jet ski, no skill in operating jet skis is required to be demonstrated yet these craft can be operated at extreme speeds (in excess of 60 knots or 100kph); they are unique in the nature of their operation and handling; and they require specialised skills to operate them. From a regulatory perspective, a number of different rules apply to jet skis compared to other types of craft which would not be covered in a general boat licence course.

The introduction of a new category of licence for jet ski operators is aimed at increasing the skills and experience of operators on the particular operating characteristics and specific legislative requirements for jet skis, thereby improving operator behaviour and reducing the number of marine incidents.

The popular hire and drive 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 jet ski operators within a defined area of use.

Increasing the minimum size of jet ski registration numbering to allow for easier identification

The Transport Operations (Marine Safety) Regulation 2004 currently requires the registered owner of a jet ski to display its registration in numbers at least 75mm high.

The proposed regulation will require registration numbering on jet skis to be at least 100mm high. This increase in registration numbering size will bring Queensland requirements into line with New South Wales and Victorian legislation.

Increasing the minimum allowable registration number size from 75mm to 100mm will increase visibility by approximately 30%.

Providing capacity for the creation of exclusion or restricted use zones

The Transport Operations (Marine Safety) Act 1994 is the enabling legislation for Maritime Safety Queensland to establish regulations regarding the safe operation of vessels, including restricting or limiting certain activities. The heads of power have recently been extended to include the power to enact regulations about managing the operation or activities of ships for reasons beyond safety.

In areas where there are a large number of waterside residences, narrow stretches of navigable water and the waterway is used for other low impact activity (that is, swimming, rowing, and so on), excluding jet skis from these areas is considered the only feasible way of effectively managing the range of impacts created by their use.

Local Councils or other government entities, for example the Environmental Protection Agency, may propose to Maritime Safety Queensland to have a zone considered for regulation. Such proposals will be subject to a standardised zoning assessment criteria (an approved form) which will include but is not limited to:

- a) an analysis of the types and number of ships operating in an area;
- b) an analysis of the impacts on waterways users and local residents;
- c) full community consultation;
- d) commitment to providing ongoing support through the provision of appropriate enforcement and education activities for the zone.

Extending existing "distance off" regulations

Distance off requirements refer to the regulations limiting the speed and distance that ships can operate near people in the water, anchored vessels, infrastructure and so on.

These regulations currently require jet ski operators to reduce their speed to not more than 6 knots when within 30 metres of a ship at anchor, moored or made fast to the shore or aground, a jetty, wharf, boat ramp, or a pontoon. Further, a jet ski cannot be operated at more than 6 knots within 60 metres of a person in the water.

The proposed regulation will extend the distance off requirements for jet skis to operating at not more than 6 knots within 60 metres in all cases,

including from the shore. There are currently no restrictions on how close a jet ski can operate to the shore, apart from general wash provisions.

The proposed regulation will also limit freestyling and wave jumping activities within 200m of the shore if one or more dwellings are within 100 metres of the shore and visible to the jet skier.

Provisions have been included to enable a jet ski to be operated at more than 6 knots for the purpose of water skiing or to transit through a section of waterway at the gazetted speed.

Other Amendments

A number of unrelated amendments are also proposed in this submission. These are non-controversial, administrative amendments that are highly desirable to enhance the efficient application of the Regulation as a whole.

Administrative Costs

The administrative costs associated with the introduction of the regulation will be absorbed within existing budget allocations.

Authorising Law

The proposed Regulation will be made under the provisions of the Transport Operations (Marine Safety) Act 1994.

- "Part 18 of the Transport Operations (Marine Safety) Act 1994 provides for the making of regulations under the Act and allows these regulations to cover a wide range of matters relating to safety and the operation and activities of ships.
- "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.

Consequential amendments are also proposed to the State Penalties Enforcement Regulation 2000 made under the State Penalties Enforcement Act 1999. Section 165 of the State Penalties Enforcement Act 2000 provides the authority for the 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.

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

The proposed regulation is 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 Regulation is consistent with other legislation and is part of a broader framework of state and federal maritime safety law.

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. 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.

Consultation

In response to the growing concerns regarding the operation of jet skis on Queensland's waterways, an extensive review of jet ski operations was commenced in late 2003. The review resulted in the development of a five point Jet Ski Management Plan that was submitted to and approved in principle by Cabinet in December 2004. The plan was subsequently released for public comment.

On 6 December 2004, Cabinet approved the release of a Jet Ski Management Plan for further consultation. Submissions on the Jet Ski Management Plan were invited until 27 February 2005.

Maritime Safety Queensland directly distributed just over 400 copies of the plan. A further 935 copies of the plan were downloaded from the Maritime Safety Queensland website. Over 600 personal contacts were made with jet ski operators at boat ramps or on the water.

Officers from Maritime Safety Queensland also conducted extensive consultation with local councils across the state as well as with the Local Government Association of Queensland.

The government's review of jet ski operations and the availability of the initial discussion paper and Jet Ski Management Plan were also reported in the media.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Regulation as the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005.

Commencement

Clause 2 provides that Parts 2 and 3 of the Regulation will commence on 1 July 2005 immediately after the commencement of the Transport Legislation Amendment Regulation (No. 1) 2005, and that Part 4 will commence on 1 January 2006.

Part 2 Amendment of the State Penalties

Enforcement Regulation 2000

Clause 3 provides that this part of the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005 amends the State Penalties Enforcement Regulation 2000.

Clause 4 replaces Schedule 3, (entry for Transport Operations (Marine Safety) Regulation 2004), columns 1 and 2 to insert infringement notice offences for penalties under the new and amended provisions of the regulation.

Part 3 Amendment of the Transport Operations (Marine Safety) Regulation 2004 commencing 1 July 2005

Clause 5 provides that this part of the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005 amends the Transport Operations (Marine Safety) Regulation 2004.

Clause 6 amends section 42(3) (Application of Act, pt 5, div 4) which describes when design approval is required prior to building. This change will allow small vessels less than six metres to be built without prior design approval, providing certain conditions are met.

Clause 7 amends section 60 (Application of Act, pt 5, div 2) to exempt a personal watercraft from the requirement to be registered as a commercial ship if the personal watercraft is being provided and operated by a person participating in an approved personal watercraft training program. This

allows for training to be undertaken on personal watercraft provided by the student.

Clause 8 amends section 66(2)(a) and (b) (Exception for particular ships) to allow for documents for registration of commercial ships under 6 m in length and operating in smooth, partially smooth waters, or within 15 nautical miles of land to be produced by an accredited ship designer, an accredited ship builder or accredited marine surveyor, as well as by the ship's builder or builder's agent.

The clause also allows for documents to apply to a group of standard production vessels which are all built to the same design, rather than requiring individual documents. These amendments will significantly simplify commercial registration of smaller vessels, particularly production line vessels.

Clause 9 amends section 74 (Registration number of commercial ship or recreational ship to be displayed) to increase the minimum registration numbering size required for personal watercraft from 75mm to 100mm.

Clause 10 makes several changes to section 84 (Application of Act, pt 5, div 3 - Licensing Requirements) to specify the application of the Act to personal watercraft.

The amendment allows exemption from holding a personal watercraft licence for persons undergoing training or examination on a personal watercraft.

The amendment also requires the operator of a personal watercraft which is a commercial ship or a fishing ship to hold a personal watercraft licence.

The amendment preserves the exemption from licensing requirements for ships operated in accordance with the Hire and Drive Standard. That is, a person who hires a ship and operates the ship at the point of hire, is exempt from the requirement to hold a licence.

Clause 11 amends section 86 (Owner or master to ensure master and crew members appropriately licensed) to exclude commercial ships or fishing ships that are personal watercraft from the requirement to have a person aboard holding a licence to act as an engineer for the personal watercraft.

Clause 12 amends section 87 (Operation of ship by unlicensed person) to provide clarity about circumstances where an unlicensed person may operate a commercial ship or fishing ship. This amendment will provide greater certainty for situations where an unlicensed person may operate a commercial ship as part of a tourist activity.

The amendment also removes reference to an unlicensed person operating a ship 'as its master' to clarify that the master of a ship remains the master of the ship at all times.

Clause 13 replaces section 97 (Chief executive and general manager may issue licences) to provide greater administrative flexibility to allow either the chief executive or general manager to issue licences.

Clause 14 amends section 99 (Qualifications for recreational marine driver licence) to provide greater administrative flexibility to allow either the chief executive or general manager to issue recreational marine driver licences.

Clause 15 inserts a new section 99A (Qualifications for personal watercraft licence) which outlines the qualifications required before being granted a personal watercraft licence.

The qualifications are that the person holds a current marine licence (recreational, fishing or commercial), is 16 years or older, has knowledge of the relevant rules and has demonstrated competence in the operation of a personal watercraft.

The new section also provides that the chief executive or general manager may recognise equivalent licences issued by another State.

Clause 16 replaces section 100 (Chief executive or general manager may recognise other qualifications) to recognise the new section 99A (Qualifications for personal watercraft licence).

The clause also provides greater administrative flexibility by providing that either the chief executive or the general manager may recognise qualifications other than those prescribed by sections 98, 99 or 99A.

Clause 17 amends section 102 (Examinations of applicants for licences) to provide both the chief executive and the general manager with the authority to conduct examinations for personal watercraft or recreational ship licences.

Clause 18 amends section 105 (Application of div 4) to provide for the application of division 4 to personal watercraft as well as to commercial ships or fishing ships.

Clause 19 changes the title part 5, division 9 from "Speed limits and wash" to "Speed limits and other restrictions" in line with other changes to division 9.

Clause 20 replaces section 127 (Speed limit for ship operating in particular places) with new sections -

127 (Speed limit for ship, other than personal watercraft, operating in particular places),

127A (Speed limit for personal watercraft operating in particular places) and

127B (Other restrictions for personal watercraft operating in particular places).

The new section 127 specifies that the existing minimum 30m distance off requirement and 6knot speed limit applies to ships other than personal watercraft.

The new section 127A(1) specifies the minimum distance off requirements for personal watercraft as being 60 metres and creates a new distance off requirement from the shore.

The new section 127A(2) enables a personal watercraft to be operated at more than 6 knots for the purpose of water skiing or to transit through a section of waterway at the gazetted speed if the waterway is less than 120 metres wide.

The new section 127B prohibits freestyling and like activities within 200 metres of the shore in coastal waters or if 1 or more dwellings are within 100 m of the shore and are visible from, and in the vicinity of, where the personal watercraft is being operated in the waters.

Clause 21 amends section 131 (Application of particular provisions to enforcement officers) to extend the exemption from complying with the provisions of the regulation (which enforcement officers require to perform enforcement duties) to include new provisions regulating the use of personal watercraft.

New section 131(3)(c) extends the definition of enforcement officer to include Maritime Safety Queensland shipping inspectors such as the new dedicated jet ski patrol.

Clause 22 amends section 147 (Definition for pt 6) to extend the definition of administering agency to recognise approvals for recreational ships or personal watercraft that have been issued by either the chief executive or the general manager.

Clause 23 amends section 151 (Issuing of authority if application granted) to provide for a personal watercraft licence as well as a recreational marine

driver licence. This will allow personal watercraft licences to be issued by either the chief executive or the general manager, in the same way as a recreational marine driver licence.

Clause 24 amends section 152 (Term of authority) to provide for the unlimited term of a personal watercraft licence, the same as for a recreational marine driver licence.

Clause 25 amends section 153 (Temporary authorities) to address a wording anomaly.

Clause 26 amends section 170 (Keeping of authority) and adds a new section 170A (Defacing or changing authority).

This change allows an authority issued in the name of the owner of a ship to be transferred to a new owner of a ship without being reissued in the new owner's name.

The new section 170A makes it an offence for a person to deface or change an authority.

Clause 27 inserts a new section 171A (A Copy of an authority may be given to a person) to complement section 171 (Replacement of authority). This allows for registration papers to be simply reissued if the only change to the authority is the ownership of the vessel.

Clause 28 amends section 216 (Harbour master or general manager may carry out direction). The change clarifies that for certain purposes a harbour master or the general manager may require or allow a suitably qualified person to carry out a direction originally given by the harbour master or general manager. The requirement may only be made to a person who is a shipping inspector or a person who is eligible to be appointed as a shipping inspector under the Act.

Clause 29 amends section 222 (Water skiing or riding on toboggan or tube) by removing the definition of "skier" from this section and placing it in the dictionary so that it applies to the whole Regulation not just to section 222 as it did previously.

Clause 30 creates a new Part 9A Marine Zones which provide for the making of zones where the operations or activities of ships are limited. This amendment will enable the creation of marine zones where, for instance, the operation of personal watercraft is limited or excluded.

The areas where zones apply and the nature of the restrictions within the marine zones will be included in a new Schedule 14A.

222A(2) makes it an offence for a person to operate a ship in contravention of the requirements of the zone.

222B establishes that a government entity or a local government can propose a marine zone to the general manager and that this proposal must be in an approved form and outlines the information required to be included in the proposal.

222C makes it a requirement that before a government entity or local government makes a proposal for a marine zone, they must consult on the proposal. This includes a requirement for public notification and submission.

Clause 31 inserts a new Part 10, div 2 to insert a new Division 3 Signs. This new section makes it an offence for a person to interfere with a sign erected for the purposes of section 221 or a marine zone established in Schedule 14A.

Clause 32 amends section 233 (Crew to complete safety course) to extend the deadline, by which time the crew of a commercial or fishing ship must complete the Occupational Health and Safety at Sea training course, from 1 September 2005 to 1 September 2006. This amendment addresses industry concerns that the most practical periods during which crew could attend the safety training is during the legislated fishing season closure periods and these will occur after the expiry of the current transitional period for several of the fisheries.

Clause 33 amends Schedule 3 (Classes of licences) to include a personal watercraft licence.

Clause 34 amends Schedule 10 (Fees and charges) to establish the fee for a personal watercraft licence as \$34.85 in line with the fee for a recreational marine driver licence.

Clause 35 creates a new Schedule 14A (Schedule 14A Marine Zones) to list those marine zones established under the new section 222A.

The schedule includes a restriction on the operation of personal watercraft in the waters of Tallebudgera Creek. This is an existing restriction that has been translated into the schedule.

Clause 36 amends schedule 15 (Dictionary) to provide definitions for personal watercraft operating characteristics referred to in new section 127B (Other restrictions for personal watercraft operating in particular places). Defined terms are 'freestyle', 'surf', 'water ski' and 'wave jump'.

Part 4 Amendment of the Transport Operations (Marine Safety) Regulation 2004 commencing 1 January 2006

Clause 37 provides that this part of the Transport Operations (Marine Safety) and Other Legislation Amendment Regulation (No. 2) 2005 amends the Transport Operations (Marine Safety) Regulation 2004.

Clause 38 amends section 85 (Definitions for div 2) to clarify the definitions of a commercial ship and fishing ship to include personal watercraft in the class of ships that section 85 excludes from the licensing requirements in sections 88 and 92 respectively.

Clause 39 amends section 86 (Owner or master to ensure master and crew members appropriately licensed) to establish that an owner of a commercial ship or fishing ship which is a personal watercraft must ensure that the operator holds a personal watercraft licence. A maximum penalty of 200 penalty units applies for this offence similar to other licensing offences.

This provides a six month transitional period (from 1 July 2005) during which existing marine licence holders may obtain a personal watercraft licence before the mandatory requirement to hold a licence commences on 1 January 2006.

Clause 40 amends section 88 (Required licences for commercial ships) to establish the requirement for the master of a personal watercraft (which is a commercial ship) to have both a licence as a master of a commercial ship and a personal watercraft licence. A maximum penalty of 200 penalty units applies for this offence similar to other licensing offences.

Clause 41 amends section 92 (Required licences for fishing ships) to establish the requirement for the master of a personal watercraft (which is a fishing ship) to have both a licence as a master of a fishing ship and a personal watercraft licence. A maximum penalty of 200 penalty units applies for this offence similar to other licensing offences.

Clause 42 amends section 95 (Required licences for recreational ships) to establish the requirement for the master of a recreational personal watercraft to have both a recreational marine driver licence and a personal watercraft licence or an equivalent personal watercraft licence issued under the law of another State. A maximum penalty of 200 penalty units applies for this offence similar to other licensing offences.

ENDNOTES

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