



Queensland

Transport Operations (Marine Safety) Amendment Regulation (No. 3) 2006

Explanatory Notes for SL 2006 No. 238

made under the

Transport Operations (Marine Safety) Act 1994

1 General Outline

A national standard for the Australian Builders Plate (APB) for recreational boats has been developed by the National Marine Safety Committee (NMSC) and approved by the Australian Transport Council (ATC). Each jurisdiction is working towards the introduction of legislation to adopt the national standard. The proposed regulation addresses that need.

2 Short Title

The short title of the proposed amendment regulation is the *Transport Operations (Marine Safety) Amendment Regulation (No. 3) 2006*.

3 Authorising Law

The power to make the proposed amendment regulation is set out in section 208(1) and 212 of the *Transport Operations (Marine Safety) Act 1994*. A regulation may be made about marine safety and issues affecting marine safety.

4 Policy Objectives

The main policy objective of the builders plate is to contribute to the safety objectives of the *Transport Operations (Marine Safety) Act 1994* by providing basic safety information for the consumer about:

- a boat's loading;
- the number of persons that can be safely carried;
- outboard engine ratings and weights; and
- if a boat is less than 6 metres in length, its buoyancy performance.

This will assist the consumer in choosing the right boat for the right situation and provide information about the boat's capabilities enabling it to be operated safely.

5 How the Amendment Regulation will achieve the Policy Objectives

The proposed amendments will prescribe the fitting of an ABP to new boats sold and/or registered in Queensland from commencement.

6 Alternative ways of achieving Policy Objectives

The requirement for a builders plate to be attached to boats must be given legislative backing through amending the current regulation, otherwise it will be of no effect.

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

The proposed amendment regulation is consistent with the overall objectives outlined in section 3(1) of the Act and contributes 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.

8 Consistency with Other Legislation

The proposed amendment 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 legislation.

Specifically this amendment regulation is to adopt requirements for the "National Standard for the Australian Builders Plate for Recreational Boats" ("the ABP Standard") which was developed by the National Marine Safety Committee (NMSC) and endorsed by the Australian Transport Council (ATC) on 23 May 2003. The standard was developed through a lengthy consultation process including a major workshop in 2000, a number of smaller workshops around Australia, and meetings with the Australian Marine Industries Federation, Boating Industry Associations, ship builders and importers.

On 13 April 2005 the NMSC published and circulated a Legislative Intent Discussion Paper to encourage feedback from industry and interested parties on model legislation for the Australian Builders Plate. In response to feedback from the discussion paper the NMSC amended the Standard and published an Implementation Package Paper in September 2005 as the proposed basis for national uniformity with a planned implementation date of 1 July 2006. Amendments to the standard were approved by the ATC on 18 November 2005.

9 Benefits and Costs of the Amendment Regulation

Costs and benefits have been included in the national Regulatory Impact Statement (RIS) prepared by the NMSC. The mean average of manufacture and fitting is \$17 per plate. The average cost per boat would increase by this amount. On average about 10, 000 new recreational boat registrations occur each year in Queensland based on the past three years.

10 Notes on Sections

Short Title

Section 1: Sets out the short title of the amendment regulation.

Regulation amended

Section 2: Sets out that this regulation amends the *Transport Operations (Marine Safety) Regulation 2004*.

New section 62A

Section 3: The new section 62A states that a ship may not be registered without a builders plate being affixed. The chief executive may refuse to register a recreational ship if the plate has not been affixed in accordance with the ABP Standard, or has not been approved by a builder or importer of the ship or a competent person, or there is reason to believe the information on the builders plate is incorrect and the general manager may refuse to register a commercial or fishing ship for the same reasons.

Insertion of new part 3, division 7A

Section 4: This section inserts new sections 79A to 79M in four subdivisions summarised as follows:

Subdivision 1 – Preliminary

Section 79A sets out the purpose of the new division as giving effect to the ABP Standard published under the authority of the ministers comprising the Australian Transport Council. This purpose is achieved by ensuring that builders plates are affixed to particular ships when sold in Queensland and by requiring information on the plates that will promote the safe use of ships.

Section 79B contains a number of definitions peculiar to the new division 7A.

Section 79C sets out the ships to which the division does not apply including ships that were in a specified substantial state of construction prior to the commencement date; a personal watercraft on which is clearly stated required information; or an inflatable boat which has a European or US National Marine Manufacturers Association certification.

Details of the European and US certification can be obtained from the website addresses provided in the footnotes to subsections (5)(a) and (b). Note that the professional persons affected by these provisions, being boat

builders, importers and dealers may reasonably be expected to be familiar with these documents.

Section 79D varies the ABP standard by extending references to the builder to other persons who may approve information on a builders plate.

Subdivision 2 – Offence of selling ships to which division applies and defences

Section 79E states that a person must not sell a ship to which the division applies unless a builders plate containing correct information in accordance with the ABP Standard is fixed to the ship, in accordance with that standard, the information has been approved by a builder, importer or competent person and that information is correct at the time of sale of the ship. A penalty of 50 penalty units applies.

Sections 79F to 79I set out the circumstances for which a defence for an offence against section 79E may be established. If the ship is a commercial ship or fishing ship and the correct documentation for registration of that ship has been, or is to be, obtained, then it is a defence to not have a builders plate attached (Section 79F). If the person was not the builder of the ship and a builders plate was attached containing information which the person believed was correct and had been approved by the relevant person, and was not aware of any modification that affected the accuracy of the plate, then it is a defence (Section 79G). If the ship was to be exported overseas (Section 79H), or was to be used only for racing purposes (Section 79I), then a defence exists.

Subdivision 3 – Approval of information on builders plates and other offences

Section 79J sets out the persons who may approve information on builders plates as the builder of the ship, a competent person (subject of definition in section 79B) or a person who imported the ship into Australia from overseas.

Section 79K creates the offences of fixing a builders plate to a ship when a person has reason to believe the information is incorrect or does not comply with the ABP Standard, and the information has not been approved by an authorised person mentioned in section 79J, and a builders plate is altered to contain incorrect information or altered so that it does not

comply with the ABP Standard, or the altered information has not been approved by a person mentioned in section 79J.

Section 79L states that a person must not approve information on a builders plate affixed to, or about to be affixed to, a ship, unless the person is a person mentioned in section 79J, the information is correct and complies with the ABP Standard, and the person is a person or corporation residing or registered in Australia. The offence is punishable by a maximum penalty of 20 penalty units.

Section 79M states that a person who changes, defaces, conceals, removes or obliterates a builders plate commits an offence unless they are, or are authorised to do so by, a person mentioned in section 79J.

Amendment of schedule 1 (Standards)

Section 5 omits the previous standard description in item 13, schedule 1 from 'ISO 6185:1982' and inserts 'ISO 6185' in its place to take into account later versions of the standard.

Amendment of schedule 15 (Dictionary)

Section 6(1): Omits the previous definition of *capacity label*.

Section 6(2): This section amends Schedule 15 of the *Transport Operations (Marine Safety) Regulation 2004* by inserting new definitions. Each of the additional definitions is specific to a particular purpose within the limits of the division or section containing the definition:

- *ABP Standard* see section 79B
- *builders plate* see section 79B
- *capacity label* – new definition to incorporate the ABP Standard and bring greater consistency between the capacity label and the ABP
- *competent person* for part 3 division 7A, see section 79B
- *sell* for part 3, division 7A, see section 79B.

Section 6(3) omits the previous standard description in the definition of *inflatable ship* from 'ISO 6185:1982' and inserts 'ISO 6185' in its place to take into account later versions of the standard.

Section 6(4) amends the definition of *personal watercraft* by inserting after "*astride it*" the words "*rather than within the confines of it*" in the interests of national consistency.

ENDNOTES

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