



Queensland

Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007

Explanatory Notes for SL 2007 No. 112

made under the

Transport Operations (Marine Safety) Act 1994

1 General Outline

The proposed standard provides for how a hire and drive ship should be appropriately equipped and operated to satisfy general safety obligations under the *Transport Operations (Marine Safety) Act 1994* (the Act).

2 Short Title

The short title of the proposed standard is the *Transport Operations (Marine Safety – Hire and Drive Ships) Standard 2007*.

3 Authorising Law

The power to make the standard, and the required procedure, is set out in part 4 division 2 of the Act. A standard may provide for any matter about which a regulation may be made but may not prescribe for offences, fees or charges. A regulation may be made about marine safety and issues affecting marine safety.

The proposed standard is a regulatory provision for the purposes of section 42 of the Act, which deals with the relationship between regulatory provisions and the general safety obligation about the condition of ships. In

general terms, a person who complies with the standard is taken to have satisfied this general safety obligation in the Act. A person who does not comply with the standard will be taken to have contravened the general safety obligation unless a court can be satisfied otherwise.

4 Policy Objectives

The primary function of the proposed standard in the context of Queensland's performance based regime for the regulation of marine safety is to help people understand and comply with the general safety obligations under part 4 division 1 of the Act about the condition and operation of ships.

The proposed standard applies to providers and users of hire and drive ships and tour guides. Its purpose is to set out ways in which they may discharge the obligations not to operate a ship unless it is in a safe condition, and not to cause it to be operated in an unsafe manner. It also provides other measures for marine safety in relation to hire and drive ships.

5 How Standard will achieve the Policy Objectives

The operative parts of the proposed standard set out certain obligations for providers and users of hire and drive ships and tour guides which provide detailed guidance about how to fulfil the general safety obligations in the Act when operating a hire and drive ship.

6 Alternative ways of achieving Policy Objectives

An alternative way of approaching the policy objective of ensuring compliance with the general safety obligations would be to incorporate a prescriptive set of rules in the *Transport Operations (Marine Safety) Regulation 2004*. The use of a standard, which may not prescribe for offences, as a guide to compliance with the general safety obligations has been adopted as a more flexible solution that is more in keeping with the Act's objective of enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed. The use of a standard is consistent with the statement in section 31 of the Act that standards will help people understand the general safety obligations.

7 Consistency of the Standard with the Policy Objectives of the Authorising Law

The proposed standard 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 standard 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.

9 Benefits and Costs of Standard

Providers and users of hire and drive ships and tour guides will continue to be subject to the general safety obligations regardless of whether the standard is made. Standards may not impose fees or charges, and are designed to allow people to find the most cost efficient ways of achieving safety and satisfying the general safety obligations.

In the absence of a standard, each operator would need to develop a regime for compliance with the general safety obligations at his or her own expense.

The cost of complying with the proposed standard will not increase substantially from the cost of complying with the expiring standard. The benefits to industry and the boating public include the provision of a flexible guide to the general safety obligations and improved marine safety.

The reduction in the social and economic costs that result from unsafe procedures and the accidents and injuries they cause outweighs the cost of complying with the standard.

10 Consistency with fundamental legislative principles

The proposed standard is consistent with fundamental legislative principles as outlined in the *Legislative Standards Act 1992*.

11 Consultation

The proposed standard is based on the consultation process required under part 4 division 2 of the Act, including the publication of a proposal document, and consultation draft standards. The advice of the Marine Board was sought at each stage.

There was general support for the making of the standard except with regard to the proposals that all users be licensed, and that briefings be conducted under the direct supervision of the holder of a coxswain's licence. These proposals were modified to require users to be licensed only in identified situations of heightened risk (see clause 13), and adjusting the qualifications required of briefers (see clause 11).

Notes on sections

Part 1 Preliminary

Short title

Clause 1 – sets out the short title of the standard.

Commencement

Clause 2 – provides for the standard to commence on 15 June 2007.

Purposes of standard

Clause 3 – states that the purpose of the standard is to help providers and users of hire and drive ships and tour guides understand the general safety

obligations imposed on them under part 4, division 1 of the Act; and to provide other measures for marine safety in relation to hire and drive ships.

Dictionary

Clause 4 – refers to the dictionary defining certain words located in the schedule to the standard.

Meaning of hire and drive ship

Clause 5 – identifies the essential elements of a hire and drive ship.

Part 2 Obligations of intending providers and providers

Inspection of ship before each hiring

Clause 6 – states that the provider of the ship must ensure that the ship and its equipment are inspected to ensure the ship is seaworthy and is appropriately equipped for the intended voyage before it is hired.

Ship must have positive flotation before hiring

Clause 7 – states that a person must not hire out a hire and drive ships unless the ship has positive flotation, which is defined by reference to the *Transport Operations (Marine Safety) Regulation 2004*.

Positive flotation means that the ship, because of the way it is built or the materials from which it is constructed or both, is able, when filled with water, to remain afloat in an upright position while carrying its normal operational equipment and the total number of persons stated in its registration certificate.

Safety management plan

Clause 8(1) – states that the provider of a hire and drive ship must have a written safety management plan for the ship in regard to certain factors.

Clause 8(2) – outlines the different matters which must be dealt with in the safety management plan.

Clause 8(3) – states that the provider of the ship must give the user a summary of the action to be taken under the ship's safety management plan in an emergency.

Provider not to allow user to operate ship if user has insufficient skills or abilities

Clause 9 – specifies that the provider of a hire and drive ship must not allow the user of the ship to operate it unless the provider has reasonable grounds to believe that the user has the necessary skills to operate the ship safely having regard to the ship's size, type, propulsion power and where it will be operated; and the user has signed a declaration stating that they do not have a medical condition that would make them unable to operate the ship safely.

This clause applies whether or not the user is licensed.

Briefing before user operates ship

Clause 10(1) – outlines all the matters about which the provider must ensure a user is briefed before the user operates a hire and drive ship.

Clause 10(2) – states that the briefing must include a practical demonstration of:

- ship's safety equipment;
- ship's steering and emergency steering;
- bilge pumping;
- starting and operating the motor; and
- if the ship is a sailing ship, sail handling, reefing and furling.

Clause 10(3) – states that the briefing must, when necessary, include a practical demonstration of the handling of the ship while it is underway.

Who must give briefing

Clause 11(1) – states that the person who gives the briefing must have sufficient experience and knowledge in all the matters mentioned in section

10, and that they hold at least a recreational marine driver licence, and, if necessary, a personal watercraft licence.

Clause 11(2) – states that if the briefer has conducted less than 100 briefings then they must be overseen by someone who either holds a recreational marine drivers licence and has sufficient experience and knowledge; or holds at least a restricted coxswains licence. The overseer should, if necessary, also hold a personal watercraft licence.

Clause 11(3) – specifies how briefings are to be overseen.

Clause 11(4) – clarifies that the overseer is not required to monitor the delivery of each briefing.

Records to be kept

Clause 12(1) – outlines the records to be completed before the user operates the hire and drive ship. The records must be signed by the provider, the user and the person who gave the briefing.

Clause 12(2) – states that a provider of a hire and drive ship must make a signed record of when the ship is returned.

Clause 12(3) – requires the provider to keep a record made under this section for at least 1 year after it is made.

When provider must ensure user is appropriately licensed

Clause 13(1) – requires the provider of a hire and drive ship to ensure the user is appropriately licensed if:

- the user of the ship does not intend to operate the ship directly from the point of hire; or
- the user of the ship intends to operate the ship at night; or
- the user of the ship intends to operate the ship beyond smooth waters away from the supervision of the provider or a tour guide; or
- the user of the ship intends to operate the ship under power at more than 10 knots away from the supervision of the provider or a tour guide.

Clause 13(2) – states that before the user operates the ship the provider must make sure that the user is appropriately licensed. Ships operated at speeds less than 10 knots will remain exempt from licence requirements.

Ships operated at more than 10 knots and under direct line of sight supervision of provider (for example, personal watercraft operating in a confined area or on a supervised tour) will also remain exempt from licence requirements. The new licence requirements thus apply only in the identified situations of heightened risk specified in clause 13(1).

Appropriately licensed means that the user of the ship must hold the licences that would be required if the ship were recreationally registered. To operate a recreational ship a person must hold a recreational marine driver licence; a similar licence issued in another Australian State; or a licence to operate a commercial ship or fishing ship. In addition, if the ship is a personal watercraft, the person must hold a personal watercraft licence or a similar licence issued in another State.

Supervised operation is detailed in clause 16 and requires that the provider of the hire and drive boat, or a tour guide, has direct line of sight supervision of the boat, monitors the way it is being used, and can give the user any express direction necessary to ensure its safe operation.

Minimum age to operate ship

Clause 14(1) – states that the provider of a hire and drive ship must not allow a person who is under 16 years of age to operate a ship unless:

- the person is under the direct supervision of someone who is at least 18 years; and
- the person supervising can immediately resume operating the ship.

Clause 14(2) – entitles the provider to rely on a person's statement of the person's age.

Provider to require user to operate ship within particular area and not to operate ship beyond particular area

Clause 15 – states that the provider of a hire and drive ship must require the user of the ship to operate it within the ship's intended area of operation, which must be within the area of operation stated in the ship's registration certificate. The provider must also require the user of the ship to operate it within smooth waters unless the provider considers the sea conditions are safe.

Provider to monitor and give directions

Clause 16 – when a ship is being operated under the supervision of the provider of the ship, the provider must monitor the operation of the ship; and, if necessary, give the user directions to ensure the ship is operated safely.

Rescue ship to be available

Clause 17 – requires that, except when a hire and drive ship is not operated from the point of hire, the provider must have a rescue ship available to rescue the hire and drive ship while it is operated within its intended area of operation.

The rescue ship must be appropriately sized, powered and equipped to rescue the hire and drive ship and its passengers.

Search and rescue

Clause 18 – provides that if the user does not return the hire and drive ship within the agreed time the provider must try to locate the ship and determine whether the passengers on board are safe, and if the provider can not locate the ship and the passengers the provider must initiate a search and rescue operation.

Provider must have tour plan for tour

Clause 19(1) – requires the provider of a hire and drive tour to have a written tour plan.

Clause 19(2) – states that the tour plan must set out appropriate operating conditions to ensure the safe operation of the ships in the tour.

Clause 19(3) – deals with the tour guide's obligations with regard to:

- the number of ships to be allowed on a tour,
- maintaining safe formation and safe distance,
- monitoring ships in the tour,
- regrouping after a break of formation, and
- reporting tour details to marine radio if the tour crosses a bar or operates in surf conditions.

Provider to ensure tour guide is qualified

Clause 20 – specifies that the provider of a hire and drive ship must ensure that the tour guide holds a restricted coxswains licence and, if necessary, a personal watercraft licence, and has the experience and skills to safely lead or guide a tour.

Provider to ensure tour guide complies with tour guide's obligations

Clause 21 – the provider of the hire and drive ship must ensure that the tour guide complies with the tour guide's obligations under the standard.

Part 3 Obligations of tour guides

Tour guide to comply with tour plan

Clause 22 – states that the tour guide must comply with the tour plan for the tour.

Tour guide to monitor and give directions

Clause 23 – provides that a tour guide must monitor the operation of ships on a tour and, if necessary, give the user directions to ensure the ship is operated safely.

Tour guide to ensure tour leader ship is equipped with additional equipment

Clause 24 – requires the ship used by the tour guide to be equipped with a marine radio or similar communications device, and a basic first aid kit.

Part 4 Obligations of users

When user must be appropriately licensed

Clause 25 – requires the user of a hire and drive ship to be appropriately licensed while operating the ship if:

- the user of the ship does not intend to operate the ship directly from the point of hire; or
- the user of the ship intends to operate the ship at night; or
- the user of the ship intends to operate the ship beyond smooth waters away from the supervision of the provider or a tour guide; or
- the user of the ship intends to operate the ship under power at more than 10 knots away from the supervision of the provider or a tour guide.

Ships operated at speeds less than 10 knots will remain exempt from licence requirements. Ships operated at more than 10 knots and under direct line of sight supervision of provider (for example, personal watercraft operating in a confined area or on a supervised tour) will also remain exempt from licence requirements. The new licence requirements thus apply only in the identified situations of heightened risk specified in clause 13(1).

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Supervised operation is detailed in clause 16 and requires that the provider of the hire and drive boat, or a tour guide, has direct line of sight supervision of the boat, monitors the way it is being used, and can give the user any express direction necessary to ensure its safe operation.

User to give provider information

Clause 26 – outlines the information that the user is required to give to the provider of the ship before the hire and drive ship is operated, including a

declaration that to the best of the user's knowledge, the user has no medical condition that makes the user unable to operate the ship safely. This clause applies whether or not the user is licensed.

User not to operate ship in a particular way

Clause 27 – provides that the user of a hire and drive ship must operate the ship in the area specified by the provider under clause 15, and must not operate the ship contrary to any express direction for the safe operation of the ship given by the provider or a tour guide.

Part 5 Repeal

Repeal

Clause 28 – repeals the *Transport Operations (Marine Safety—Hire and Drive) Standard 2000*.

Schedule Dictionary

The schedule contains the definitions of terms and phrases used throughout the standard.

ENDNOTES

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