



Queensland

Transport Operations (Marine Safety—Bareboat Ships) Standard 2007

Explanatory Notes for SL 2007 No. 113

made under the

Transport Operations (Marine Safety) Act 1994

1 General Outline

The proposed standard provides for how a bareboat 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 – Bareboat 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 bareboat ships. 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 bareboat 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 bareboat ships which provide detailed guidance about how to fulfil the general safety obligations in the Act when operating a bareboat 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 bareboat ships 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 for the proposal to require all users to be licensed. This proposal was modified to require a licence only when a bareboat is to be operated under power at a speed greater than 10 knots.

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 bareboat ships to understand their 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 bareboat ships.

Dictionary

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

Meaning of bareboat ship

Clause 5 – identifies the essential elements of a bareboat ship.

Part 2 Obligations of intending 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 boarding ladder

Clause 7 – details that bareboat ships must have a boarding ladder that conforms to certain requirements.

Safety management plan

Clause 8(1) – states that the provider of a bareboat 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.

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

Clause 9 – states that bareboat providers must have reasonable grounds to believe that users hiring bareboat ships have the necessary skills to operate and navigate the ship having suitable regard to the ship's size, type, propulsion power and intended area of operation, unless a guide

accompanies the ship. Providers will be required to document their reasons for deciding an operator has the necessary skills to operate and navigate the ship (e.g. interstate or overseas licence held, marine qualifications, relevant boating experience, or observation of operator's skills).

This clause applies whether or not the user is licensed.

Documents to be given to user

Clause 10 – outlines the documents which the provider must give to the user to enable the user to safely operate the ship.

Briefing before user operates ship

Clause 11(1) – outlines all the matters about which the provider must ensure a user is briefed before the user operates a bareboat ship.

Clause 11(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 11(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 12 – states that the briefing must be given by someone with sufficient knowledge and experience in all the matters that must be covered in the briefing, and holds at least a restricted coxswain's licence if the ship is under 15 metres or a restricted master class 5 licence if the ship is 15 metres or longer.

Records to be kept

Clause 13(1) – outlines the records to be completed before the user operates the bareboat ship. The records must be signed by the provider, the user and the person who gave the briefing.

Clause 13(2) – states that a provider of a bareboat ship must make a signed record of when the ship is returned.

Clause 13(3) – requires the provider to keep a record made under this section for at least 1 year after it is made.

Ship's guide

Clause 14 – this section applies if the person conducting the briefing under clause 11 considers the user has insufficient skills or abilities to operate the ship safely. If a user is unable to operate the ship safely, the provider may allow the user to operate the ship under the supervision of a guide. The guide must have the skills and ability to operate a bareboat ship safely and hold a restricted coxswain's licence if the bareboat ship is under 15 metres or a restricted master class licence if the bareboat ship is 15 metres or longer.

Minimum age to operate ship

Clause 15(1) – states that the provider of a bareboat 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 15(2) – entitles the provider to rely on a person's statement of the person's age.

Delivery of ship to, or collection from, user

Clause 16 – provides that if a bareboat ship needs to be delivered or collected, the delivery or collection must be done by a person who holds at least the licence required under clause 12(b).

Provider to require user to operate ship within ship's intended area of operation

Clause 17 – states that the provider of a bareboat ship must require the user of the ship to operate it within the ship's intended area of operation and stipulates that the ship's intended area of operation must be within the area of operation stated in the ship's registration certificate.

When provider must ensure user is appropriately licensed

Clause 18 – states that the user must be appropriately licensed if the ship is going to be operated under power at more than 10 knots.

The dictionary provides that a user is "appropriately licensed" when the user holds a recreational marine drivers licence; a current equivalent licence issued by another state or country; or a current licence to operate a commercial ship or fishing ship as its master.

Provider to arrange twice daily voice contact

Clause 19 – outlines the required procedure for two daily voice contacts during a bareboat ship's voyage. The first is to advise the ship's itinerary for the day, and the second is to advise where the ship will anchor overnight. The person receiving the contacts on behalf of the provider must be competent to advise on the safe operation of the ship and hold any licence needed to operate the radio.

Search and Rescue

Clause 20 – states that if the user of a bareboat ship fails to make 3 voice contacts as arranged with the provider of the ship, the provider must initiate a search and rescue operation for the passengers of the bareboat ship in accordance with the ship's safety management plan.

Part 3 Obligations of users

When user must be appropriately licensed

Clause 21 – states that the user of a bareboat ship must not operate the ship under power at more than 10 knots, unless the user is appropriately licensed.

User to give provider information

Clause 22 – outlines the information that the user is required to give to the provider of the ship before the bareboat 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 outside its intended area of operation

Clause 23 – states that the user of a bareboat ship must not operate the ship outside the ship's intended area of operation.

User not to operate ship in a particular way

Clause 24 – states that the user of a bareboat ship must not operate the ship in a way that is contrary to an express direction of the provider of the ship for the safe operation of the ship.

User not to allow non-user to be master of ship

Clause 25 – states that the user of a bareboat ship must not allow a person other than another user of the ship to be the master of the ship.

A “user” is defined in the dictionary as an individual to whom the ship is hired; or an individual who may have command or charge of the ship under a hiring.

The effect of this clause, together with clause 11, is that the ship may only be operated by a person who has been briefed on how to operate it safely.

User to make twice daily voice contact

Clause 26 – sets out the user’s obligation to arrange with the provider to make two daily voice contacts during a bareboat ship’s voyage. The first is to advise the ship’s itinerary for the day, and the second is to advise where the ship will anchor overnight.

Hours of operation and night anchorage

Clause 27(1) – states that the user of a bareboat ship must ensure the ship is not underway between sunset and sunrise.

Clause 27(2) – states that the user of a bareboat ship must anchor the ship at night in a commonly recognised safe anchorage approved by the provider of the ship.

Part 4 Repeal

Repeal

Clause 28 – repeals the *Transport Operations (Marine Safety—Bareboat Ships) 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.