



Queensland

# Transport Infrastructure (Public Marine Facilities) Regulation 2011

## Explanatory Notes for SL 2011 No. 161

made under the

*Transport Infrastructure Act 1994*

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## General outline

### Short title

This regulation may be cited as the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*.

### Authorising law

Section 490 of the *Transport Infrastructure Act 1994*.

### Policy objectives and the reasons for them

There are no changes to current Queensland government policy through the remake of the regulation. The Queensland Government has been involved in the provision of public marine transport infrastructure for recreational boat usage since the early 20th century with the basic objective of encouraging recreational boating.

The policy objective of the proposed *Transport Infrastructure (Public Marine Facilities) Regulation 2011* is to enable the state to continue to administer public marine facilities, such as boat harbours, boat ramps and pontoons.

The regulation includes provisions for:

- management, use and safety at public marine facilities;
- control of activities, approvals, and fees in state-managed boat harbours;
- appointment of authorised officers, enforcement and regulatory notices for public marine facilities;
- prescribing powers of Authorised Officers;
- punitive arrangements for non-compliance; and
- the collection of levies from appointed managers of facilities.

The historical basis for the department's boating facilities operations derives from Sections 140 and 187 of the repealed *Harbours Act 1955*.

These repealed provisions are now continued in chapter 15 of the *Transport Infrastructure Act 1994* and *Transport Infrastructure (Public Marine Facilities) Regulation 2000*.

Under sections 459 and 460 of the *Transport Infrastructure Act 1994* the Governor in Council may, by regulation, appoint a person (the manager) to manage a public marine facility. The manager is responsible for maintaining the public marine facility in good condition to an appropriate standard. The *Transport Infrastructure (Public Marine Facilities) Regulation 2000* provided the statutory basis for the administrative arrangements which govern the day-to-day use of public marine facilities (i.e. state boat harbours).

### **Achievement of policy objectives**

Since commencement in 2001, the *Transport Infrastructure (Public Marine Facilities) Regulation 2000* has been successful in ensuring the continued effective operation and safety of public marine facilities (i.e. state boat harbours).

The *Transport Infrastructure (Public Marine Facilities) Regulation 2011* seeks to deliver the following policy objectives:

- gives effect to sections and schedules of the *Transport Infrastructure Act 1994* relating to public marine facilities;
- provides the state with punitive measures to take action against proscribed offences and misuse of public marine facilities;

- provides a regulatory mechanism for the state's cost recovery to maintain, sustain and commission public marine facilities; and
- provide other powers, where required, to effect regulation in state managed boat harbours.

These regulatory mechanisms support the purpose of the Act and the objectives of government and the Department of Transport and Main Roads through the coordination, delivery and management of public marine transport infrastructure by providing safe, efficient and economically sustainable public marine transport infrastructure to all Queenslanders.

The regulation incorporates some desirable minor amendments and administrative changes in accordance with current drafting and legislative practices.

### **Consistency with policy objectives of authorising law**

The regulation is consistent with the policy objectives of chapter 1 of the *Transport Infrastructure Act 1994*, which for public marine transport, is to establish a regime under which public marine facilities and the use of waterways are effectively and efficiently managed.

The objectives of the regulation are generally met by placing obligations and responsibilities on the appointed managers and users of public marine facilities.

### **Inconsistency with policy objectives of other legislation**

The regulation is consistent with the policy objectives of other legislation.

### **Alternative ways of achieving policy objectives**

**Option 1** Do nothing: This would result in the *Transport Infrastructure (Public Marine Facilities) Regulation 2000* expiring on 1 September 2011. The state would have no effective regulatory framework or enforcement measures for the effective administration and management of state-owned public marine facilities.

There would be no ability or power to place the management of state-owned facilities in local management authority control

and there is doubt about whether the existing management arrangements for state-owned facilities would remain valid. By default all state-owned facilities would become the responsibility of the Department of Transport and Main Roads. Without the regulation the state may be exposed to liability and would suffer loss of revenue.

**Option 2** Remake the regulation with no changes: Under this option the regulation would be remade in its current form. This is not a viable option. The state would be unable to administer the three state boat harbours recently transferred to it from the Port of Brisbane Corporation.

**Option 3** Remake the regulation with minor amendments: This is the preferred option, because incorporating these minor amendments will improve and update the regulation. This will be achieved by removing provisions that are obsolete or provisions that have been incorporated into other maritime and transport legislation and are no longer required in the regulation, and will allow the state to effectively administer the three state boat harbours recently transferred to it from the Port of Brisbane Corporation.

## **Benefits and costs of implementation**

Implementing the regulation is not expected to result in significant cost to government.

The benefits of implementation of the regulation will primarily be for the continued operational safety and effective management of Queensland's public marine facilities, particularly state-managed boat harbours.

## **Consistency with fundamental legislative principles**

The proposed regulatory remake does not introduce any new obligations and is generally consistent with fundamental legislative principles (FLPs). Departures from FLPs occur in the context of balancing the need to safeguard the rights of individuals and the need to provide safe, efficient and effective public marine facilities.

The following provisions provide detail and justification where there is a potential inconsistency with FLPs:

- **Moving illegally moored ships, moving illegally left goods and moving illegally parked vehicles.** These provisions are consistent with FLPs as movement of ships, goods or vehicles only occurs if the owner/person in charge can not be found, or is unable/unwilling to move it and the safety/efficiency of the harbour or waterway is compromised.
- **The disposal of abandoned property** is consistent with FLPs because reasonable steps will be taken to locate the owner of the property. Any claimed abandoned property must be returned and if not claimed it may be sold with the proceeds of the sale dealt with fairly. Fees and expenses incurred by the Department of Transport and Main Roads would be withheld and the balance paid to the owner.
- **Protection from liability for an act done or omission made by an authorised officer** is consistent with FLPs. This is because liability for an act done will attach to the state. An authorised officer who in the course of his or her duties does something where liability might attach to them, and does so honestly and without negligence, should not be held civilly liable for that act.
- **The power of an authorised officer to require production and certification of a document** does not breach FLPs. This is because sufficient protections are in place for individuals who produce or certify these documents. The documents are not admissible against the person in any proceeding if these documents tend to incriminate the person.
- **In the event of any damage caused by an authorised officer.** The inclusion of the compensation provision in the regulation for any possible damage is a safeguard against any inconsistency with FLPs.
- **Entry and inspection of a loading place by an authorised officer** will not be inconsistent with FLPs because there will always be someone present at the loading place or on relevant land when an authorised officer enters that loading place or land.
- **The verbal refusal or granting on condition for a short term approval of one month or less** is consistent with FLP's because it is not practicable for the chief executive to give written notice in those circumstances.

## Consultation

In September 2009, the Department of Transport and Main Roads conducted consultation with key stakeholders across government and non-government sectors. Correspondence notified them of the Department of Transport and Main Roads' intention to remake the regulation and requested comments. This was done to identify stakeholders' level of interest.

In November 2010, formal correspondence was undertaken with all known stakeholders requesting comments/feedback and suggestions for the proposed remake. Further consultation was conducted in June 2011 with government departments.

The overwhelming feedback received supported the remake of the regulation.

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### ENDNOTES

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

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