

Transport Legislation Amendment Regulation (No. 2) 2013

Explanatory notes for SL 2013 No. 207

made under the

Transport Infrastructure Act 1994

Transport Operations (Marine Safety) Act 1994

General Outline

Short title

Transport Legislation Amendment Regulation (No. 2) 2013

Authorising law

Sections 274 and 490 of the *Transport Infrastructure Act 1994* and sections 71, 71A and 207 of the *Transport Operations (Marine Safety) Act 1994*.

Policy objectives and the reasons for them

Prescribing responsible pilotage entities for compulsory pilotage areas

The *Transport Legislation (Port Pilotage and Document Verification) Amendment Act 2013* (Port Pilotage Act) amended the *Maritime Safety Queensland Act 2002*, the *Transport Infrastructure Act 1994* and the *Transport Operations (Marine Safety) Act 1994* (TOMSA) to facilitate the devolvement of responsibility for pilotage services in particular areas to port authorities.

Pilotage is a compulsory service that applies to most ships 50 metres or longer that enter designated compulsory pilotage areas. A pilot is a qualified ship's master who has high level skills in ship handling and a detailed knowledge of the port area in which they work. Pilots help the master of a ship operate safely within compulsory pilotage areas, particularly in regard to manoeuvring in potentially congested port channels, and with berthing and departures.

The Port Pilotage Act inserted new section 71A into TOMSA which specifies that a regulation may prescribe an entity as the responsible pilotage entity for a compulsory pilotage area. A responsible pilotage entity has the function of providing, or arranging for the provision of pilotage services in its compulsory pilotage areas.

The regulation will prescribe which entity, either a port authority or Maritime Safety Queensland (MSQ), is the responsible pilotage entity for each compulsory pilotage area.

Port, pilotage and compulsory pilotage area boundary amendments for Cape Flattery and Cairns

Under the *Transport Infrastructure Act 1994* a regulation may define the limits of a port within which a port authority has particular functions and may exercise certain powers.

Under TOMSA a regulation may define pilotage areas within which a harbour master and the general manager of MSQ may exercise certain powers. A pilotage area or part of a pilotage area may be declared under TOMSA to be a compulsory pilotage area. In a compulsory pilotage area a person must not navigate a ship 50 metres or more in length or other specified types of ships without the services of a pilot unless they hold an exemption.

Due to the close proximity of the inner shipping route of the Great Barrier Reef to the Queensland coast at Cape Flattery, there is a risk that trading vessels that are not scheduled to enter the port of Cape Flattery may inadvertently cross into the port limits or pilotage areas. If this occurs the vessels may unintentionally breach Queensland maritime legislation in relation to obligations that apply in those areas.

MSQ has worked with the Australian Maritime Safety Authority, the Australian Hydrographic Office and the port authority regarding re-alignments of a number of existing boundaries in the area to negate this risk.

The Regional Harbour Master (Cairns) has established a new anchorage point in more protected waters close to the Cairns entrance channel to be used by cruise ships that currently disembark passengers at Yorkeys Knob. This anchorage point is marginally within the existing compulsory pilotage area for the port of Cairns which would require all vessels of 50 metres or more accessing the anchorage to use the services of a pilot.

A minor amendment to the boundaries of the Cairns compulsory pilotage area is required which will allow vessels to use the new anchorage point and thereby improve passenger transfer safety and vessel access to the port of Cairns.

A minor amendment will also be made to the description of the Cairns pilotage area to adopt a consistent approach with the description of the Cairns compulsory pilotage area. The boundaries of the pilotage area will not be changed.

Achievement of policy objectives

Prescribing responsible pilotage entities for compulsory pilotage areas

The Regulation achieves the policy objectives relating to the Port Pilotage Act by amending the *Transport Operations (Marine Safety) Regulation 2004* to prescribe which entity will be the responsible pilotage entity for each compulsory pilotage area for the purpose of section 71A of TOMSA.

MSQ will retain responsibility for pilotage services in the compulsory pilotage areas of Brisbane, Southport and Abbot Point. Responsibility in other areas will be devolved to port authorities as set out in Schedule 6A of the *Transport Operations (Marine Safety) Regulation 2004*.

In addition, the *Transport Operations (Marine Safety) Regulation 2004* will be amended so that the pilotage areas of Bowen, Cooktown, Maryborough and Port Douglas are no longer declared to be compulsory pilotage areas. These areas are not used by ships requiring pilotage. This will mean that there is no requirement to prescribe a responsible pilotage entity for these areas.

Port, pilotage and compulsory pilotage area boundary amendments for Cape Flattery and Cairns

The regulation will achieve the policy objectives in regard to port limits and pilotage and compulsory pilotage area boundaries by:

- amending the port limits of Cape Flattery set out in schedule 1 of the *Transport Infrastructure (Ports) Regulation 2005*;
- amending the pilotage area and compulsory pilotage area boundaries of Cape Flattery set out in schedules 5 and 6 of the *Transport Operations (Marine Safety) Regulation 2004*;
- amending the boundaries of the compulsory pilotage area of Cairns in schedule 6 of the *Transport Operations (Marine Safety) Regulation 2004*;
- amending the description of the pilotage area of Cairns in schedule 5 of the *Transport Operations (Marine Safety) Regulation 2004* to be consistent with the description of the compulsory pilotage area.

Consistency with policy objectives of authorising law

The amendment to the *Transport Infrastructure (Ports) Regulation 2005* is consistent with the main objectives in section 2 of the *Transport Infrastructure Act 1994*, that is, to establish a regime under which a ports system is provided and can be managed within an overall strategic framework.

The amendments to the *Transport Operations (Marine Safety) Regulation 2004* are consistent with the main objectives in section 3 of the *Transport Operations (Marine Safety) Act 1994* which include providing a system that achieves an appropriate balance between regulating the maritime industry to ensure marine safety and enabling the effectiveness and efficiency of the

Queensland maritime industry to be further developed and managing the operation and activities of ships.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Port authorities, as managers of ports and port infrastructure, have the local knowledge and interest to better implement port pilotage services. The match of pilotage services with other port services and responsibilities will also bring efficiencies to port users and have an overall positive economic benefit for Queensland.

The Department estimates that the administrative cost to government associated with the transfer of responsibility for pilotage services to the government owned port corporations will be minimal and met out of existing funding arrangements.

By the State adjusting the port and pilotage limits for the port of Cape Flattery, vessels will be able to transit the inner route past Cape Flattery without the risk of inadvertently crossing the port or pilotage limits. By amending the boundaries of the compulsory pilotage area for Cairns, vessels will be able to use this anchorage without having to engage the services of a marine pilot for a journey of less than 1 nautical mile.

There will be no additional costs incurred in the implementation of the amendments to the Cape Flattery and Cairns port limits and pilotage areas.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

Consultation with port authorities was undertaken in relation to prescribing responsible pilotage entities for compulsory pilotage areas.

Consultation with the Australian Maritime Safety Authority, the Australian Hydrographic Office, the Great Barrier Reef Marine Park Authority, and the Far North Queensland Ports Corporation Limited was undertaken for the amendments to the port limits and pilotage area and compulsory pilotage area boundaries for Cape Flattery and Cairns.

Consultation on the proposed amendments was undertaken with the Department of Premier and Cabinet, Queensland Treasury and Trade, the Department of Justice and Attorney-General, the Queensland Police Service, the Department of Agriculture, Fisheries and Forestry and the Office of Best Practice Regulation. All agencies support the proposed amendments.