

Transport Operations (Marine Safety) Regulation 2016

Explanatory notes for SL 2016 No. 154

made under the

Fisheries Act 1994

Health Act 1937

Marine Parks Act 2004

Petroleum and Gas (Production and Safety) Act 2004

State Penalties Enforcement Act 1999

Transport Infrastructure Act 1994

Transport Operations (Marine Pollution) Act 1995

Transport Operations (Marine Safety) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport Operations (Marine Safety) Regulation 2016

Authorising law

Section 223 of the *Fisheries Act 1994*

Section 180 of the *Health Act 1937*

Section 150 of the *Marine Parks Act 2004*

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 490 of the *Transport Infrastructure Act 1994*

Section 133 of the *Transport Operations (Marine Pollution) Act 1995*

Section 207 of the *Transport Operations (Marine Safety) Act 1994*

Section 171 of the *Transport Operations (Road Use Management) Act 1995*

Policy objectives and the reasons for them

The primary policy objective of the *Transport Operations (Marine Safety) Regulation 2016* (the TOMS Regulation 2016) is, consistent with the objectives of the *Transport Operations (Marine Safety) Act 1994* (the Act), to provide for a regulatory system that achieves an appropriate balance between marine safety and an effective and efficient Queensland maritime industry.

The system is intended to effectively manage marine safety and related marine operations, contribute in general to transport efficiency and provide sufficient levels of safety while balancing cost. These objectives are achieved primarily by imposing general safety obligations to ensure seaworthiness and other aspects of marine safety, and facilitating alternative ways of discharging a general safety obligation by either compliance with standards or in other appropriate ways.

These matters are currently regulated by the *Transport Operations (Marine Safety) Regulation 2004* (the TOMS Regulation 2004). In accordance with Part 7 of the *Statutory Instruments Act 1992*, the TOMS Regulation 2004 will expire on 31 August 2016. This Regulation replaces the TOMS Regulation 2004.

The TOMS Regulation 2016 will make a number of amendments to the operation of the TOMS Regulation 2004 to reflect the operation of the Commonwealth *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. Schedule 1 of this Act contains the *Marine Safety (Domestic Commercial Vessel) National Law* (the National Law). Since the commencement of the National Law on 1 July 2013, it has regulated general safety duties, vessel construction requirements, vessel operation and crew competency for domestic commercial vessels (DCVs). DCVs are vessels for use in connection with a commercial, governmental or research activity, other than those excluded under the National Law, such as a vessel owned by a primary or secondary school.

The TOMS Regulation 2016 will work together with the Act to ensure a seamless interaction between Commonwealth and Queensland legislation for maritime regulation. The Act will be amended by the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (Marine Safety Amendment Act) to establish a new category of ships, known as *Queensland regulated ships*. Queensland regulated ships will include recreational ships and ships which were previously regulated as commercial or fishing ships under the Act but which are not DCVs. Those Queensland regulated ships which are not recreational ships will be referred to in the Act as *other Queensland regulated ships*.

Achievement of policy objectives

The TOMS Regulation 2016 will continue to provide for matters currently in the TOMS Regulation 2004 which are not dealt with by the National Law.

The TOMS Regulation 2016 will establish a new regulatory scheme for other Queensland regulated ships. In general, these ships will be regulated to the same extent as recreational ships under the Act. This reflects the fact that, because of their relatively low risk, they are not regulated as DCVs under the National Law. Where appropriate some higher level of regulation will be applied to other Queensland regulated ships in the TOMS Regulation 2016, primarily through conditions imposed on their registration. However, this will not result in any higher level of regulation than the regulatory scheme which applied to them under the TOMS Regulation 2004.

In addition, a number of minor amendments will be made to update, simplify and enhance the operation of the TOMS Regulation 2004. The amendments contained in the TOMS Regulation 2016 are described below.

Chapter 1 Preliminary

Chapter 1 sets out a number of preliminary matters for the TOMS Regulation 2016. A new provision will provide, for section 10 of the Act, that things which are declared not to be vessels under the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (Cwlth) are not ships. This will include surf-skis, surfboards and floating structures permanently connected to the shore. This is required to ensure consistency between the definition of a vessel under the National Law and the definition of a ship under the Act.

In relation to measuring the length of a ship, the references to the Uniform Shipping Laws Code (USL Code) will be replaced with a reference to the National Standard for Commercial Vessels (NSCV). The NSCV is being progressively introduced to replace the USL Code and is adopted in the National Law. References to the USL Code will be replaced throughout the TOMS Regulation 2016.

Chapter 2 Safety equipment for Queensland regulated ships

Chapter 2 prescribes safety equipment required to be carried or worn on Queensland regulated ships for section 44 of the Act.

There will be no change to the safety equipment requirements for recreational ships.

Under Chapter 2, other Queensland regulated ships will be required to be equipped with the same safety equipment as recreational ships. These requirements are equivalent to or lower than the requirements that currently apply to them as commercial or fishing ships under the TOMS Regulation 2004.

The following minor changes will be made to Part 2 to update the regulation:

- References to *personal flotation devices* will be updated to *lifejackets* to reflect the new Australian Standard (AS4758 (Lifejackets)) which was published on 13 August 2015.
- Red flares and orange smoke signals were previously required to comply with the USL Code. Under the TOMS Regulation 2016, they will be required to comply with the NSCV.
- The term 'positive flotation' will be changed to 'level flotation' throughout the regulation. Level flotation is the term commonly used in the maritime industry and defined in the National Standard for the Australian Builders Plate for Recreational Boats.
- The requirement for an emergency position indicating radio beacon (EPIRB) registration label issued by the Australian Maritime Safety Authority (AMSA) to be attached to the beacon will be removed. AMSA no longer issues these labels as proof of registration.

Chapter 3 Registration of Queensland regulated ships and related matters

Chapter 3, Part 1 deals with registration requirements for Queensland regulated ships, including providing which ships are required to be registered and conditions that are to apply to the registration of *other Queensland regulated ships*. The registration provisions in the TOMS Regulation 2004 which apply specifically to commercial and fishing ships will not be included. The registration scheme for recreational ships will remain the same.

All unpowered and low-powered (less than 3kW) other Queensland regulated ships, and tenders to other Queensland regulated ships which operate within a radius of 2 nautical miles from the ship, will be excluded from the requirement to be registered (see section 26(2)(a) and (c)). These exclusion categories currently apply to recreational ships (see section 60(2)(f) and (i) of the TOMS Regulation 2004) and are similar to the equivalent categories which currently apply to commercial ships (see section 60(2)(b), (c), (d), (h) and (j) of the TOMS Regulation 2004). The amendments will not impose any additional registration requirements on any other Queensland regulated ships than were imposed under the TOMS Regulation 2004.

An exemption from registration will apply for traditional inhabitant fishing ships if they are not used for commercial purposes and are therefore not DCVs. They are excluded from registration under the TOMS Regulation 2004 because they are under 10m fishing ships (see section 60(2)(e)). The TOMS Regulation 2016 will retain this exclusion by providing that Queensland regulated ships less than 10m in length which hold a licence under the *Torres Strait Fisheries Act 1984* (Cwlth) are not required to be registered (section 26(2)(f)).

Under the TOMS Regulation 2016, the chief executive and the general manager of Maritime Safety Queensland (MSQ) will be able to register other Queensland regulated ships (see section 28(2)). Previously, only the general manager could register commercial and fishing ships (see section 62(2) of the TOMS Regulation 2004). In practice this will simplify the registration process for other Queensland regulated ships, as their owners will generally be able to apply for registration at Customer Service Centres of the Department of Transport and Main Roads.

The TOMS Regulation 2016 will establish a new category of Queensland regulated ships. These are other Queensland regulated ships which are 6m or longer, are designed to carry more than 12 persons, or which will operate more than 15 nautical miles from land. These ships will be referred to as *prescribed other Queensland regulated ships* and, because of the relatively higher risk associated with their operations, a number of additional requirements will apply to their registration.

Under section 29, the first time a *prescribed other Queensland regulated ship* is registered, the chief executive or general manager may request a survey report for the ship or ask to inspect the ship. This will only be requested if there are reasonable grounds, such as where the use of the ship may involve activities that create a higher risk, the ship is not a standard model or has been involved in a marine incident. Under the TOMS Regulation 2004, these types of ships are normally required to provide a certificate of compliance for the whole ship from an accredited ship designer, ship builder or marine surveyor on first registration (see section 65).

A number of statutory conditions will be imposed on the registration of other Queensland regulated ships as follows (see section 30):

- The owner or master of the ship must have a safety management system that deals with relevant matters mentioned in the *National Standard for Commercial Vessels*, Part E Operation requirements (for example, procedures for onboard operations and emergency preparedness) or another plan which is approved as appropriate (for example the Curriculum Activity Risk Assessment (CARA)).
- The owner or master must not carry on the ship more persons than is stated on the ship's builders plate, or the registration certificate if the ship does not have a builders plate.
- Unless the ship is registered as an prescribed other Queensland regulated ship, it must not be operated:
 - o if the ship has basic flotation – outside smooth waters; or

- if the ship has level flotation – more than 15 nautical miles from land.

The TOMS Regulation 2016 will provide that the following discretionary conditions may be imposed on the registration of a prescribed other Queensland regulated ship if appropriate (see section 31):

- The owner or master must not operate the ship other than in waters stated on the ship's registration certificate.
- A person must not operate the ship as its master or crew member unless they hold a particular licence which is of a higher level than that usually required for the ship (for example, a master's certificate of competency under the National Law).
- The ship must be equipped with particular types of safety equipment in addition to those required under Chapter 2. If the particular safety equipment has an expiry date it must have a legible expiry date stated on it and must be serviced or replaced before the expiry date.

This does not limit the ability of the chief executive or general manager to impose other conditions on the registration.

The effect of these registration conditions will be to either preserve or relax requirements that apply to other Queensland regulated ships under the TOMS Regulation 2004, such as the requirements set out in:

- section 133(2)(e) which requires particular commercial ships to keep a safety management plan for the ship;
- section 109 which prescribes requirement regarding the number of persons a commercial ship may carry;
- section 108(1) which restricts the areas of operation of commercial ships;
- section 88 which requires particular licences for masters and crew members of commercial ships; and
- Part 2 Division 3 which prescribes safety equipment for commercial ships.

Under section 33 it will continue to be a requirement that the owner of another Queensland regulated ship record private recreational use of the ship in the ship's records (see section 64 of the TOMS Regulation 2004). While the ship is being used for this purpose, it will be taken to be registered as a recreational ship and be dealt with as a recreational ship under the TOMS Regulation 2016.

Chapter 3, Part 2 deals with the register of registered ships. Currently, the TOMS Regulation 2004 requires the general manager of MSQ to keep a register of commercial and fishing ships (section 73) and the chief executive to keep a register of recreational ships (section 72). These registers will become a single register of registered Queensland regulated ships, maintained jointly by the chief executive and the general manager (see section 34 of the TOMS Regulation 2016).

To mirror a provision recently inserted into the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (see section 117A), a new provision (section 36) will support the online release of non-personal information about Queensland regulated ships. This will enable people to check online to see whether a ship is currently registered.

Chapter 3, Part 3 sets out requirements in relation to the display of documents and markings on Queensland regulated ships. Under the TOMS Regulation 2004, commercial ships were required to display their registration certificate (see section 75) and recreational ships were required to have their registration label attached (see section 76). For consistency, under the TOMS Regulation 2016, all Queensland regulated ships will be required to have a registration label attached (see section 38). The display of a certificate will no longer be required. However, a transitional provision (section 222) will provide that registration certificates must continue to be displayed on other Queensland regulated ships until a registration label is issued on renewal of the ship's registration.

It will no longer be a requirement for a recreational ship to attach a capacity label, as the information on this label will be contained on a ship's Australian Builders Plate (see section 77 of the TOMS Regulation 2004). Further, 'ride smart' labels will no longer be required to be attached to personal watercraft (see section 78 of the 2004 Regulation). These stickers will be replaced by more effective marine safety education campaigns.

The purpose of Chapter 3, Part 4 is to give effect to the Australian Builders Plate Standard which is a national standard applying builders plates requirements to recreational ships. Under the TOMS Regulation 2004, this Division applies to all ships other than those specifically excluded (for example, second-hand ships, canoes and aquatic toys). There will be no changes to the operation of this Part.

Chapter 3, Part 5 provides for restricted use authorities to be granted to unregistered ships in certain circumstances. Under the TOMS Regulation 2004 these are given in the form of a flag which must be displayed on the ship (see Part 3 Division 8). These will become authorities issued in the form of a document which must be carried on the ship to align with modern maritime administration.

Chapter 4 Licences to operate particular Queensland regulated ships

Chapter 4 deals with licensing requirements for masters, crew and pilots of particular ships. The licensing scheme will remain the same as under the TOMS Regulation 2004 except for the changes described below.

Chapter 4, Part 1, Division 1 sets out which ships are required to be operated by licensed masters and crew. In general, the types of other Queensland regulated ships which do not need to be operated by a licensed master will be the same as those recreational ships which do not require a licensed master. This will include all Queensland regulated ships which are powered by an engine of 4.5kW or less (see section 55(d)). Under the TOMS Regulation 2004, only commercial ships with engines of 3kW or less did not require a licensed master (see section 84(2) of the TOMS Regulation 2004).

An exclusion will continue to apply to surf lifesaving ships (see section 84(2)(h) of the TOMS Regulation 2004). The exclusion for emergency services department and voluntary marine rescue ships will not be retained as these ships are now DCVs.

Chapter 4, Part 1, Division 2 provides for the required licences for operating a Queensland regulated ship as its master or crew member. Under the TOMS Regulation 2004, masters and crew of commercial and fishing ships required higher level licences than recreational marine driver licences (see Part 4, Division 2, Subdivision 3). These requirements have been removed and a consistent approach for licensing will apply to all Queensland regulated ships.

Masters of all Queensland regulated ships other than personal watercraft will be required to hold only a recreational marine driver licence, unless a higher level licence is required under a condition imposed on the registration of a particular other Queensland regulated ship (see sections 57 and 58). An equivalent licence from another State or country or a certificate of competency under the National Law will also be accepted.

Masters of all Queensland regulated ships that are personal watercraft will also be required to hold a personal watercraft licence or equivalent licence from another State or country (section 57(3)).

There will be no crew member licences granted under the TOMS Regulation 2016, although a registration condition may require licensed crew to operate a prescribed other Queensland regulated ship (see above). The licence required for these crew members will be the licence specified in the registration condition, for example, a certificate of competency granted under the National Law (section 58).

Chapter 4, Part 1, Division 3 sets out licensing responsibilities for owners and masters of Queensland regulated ships. The owner and master will continue to be responsible for ensuring that a person holds the required licence (section 59). The master will continue to be required to appropriately supervise the operation of a ship by an unlicensed person (section 60). However, under the TOMS Regulation 2004 a penalty of 200 penalty units applied to the owner or master of a commercial or fishing ship who committed one of these offences (see sections 86 and 88 of the TOMS Regulation 2004). A lower penalty of 50 penalty units, which applied to the master of a recreational ship under section 86(1) and 87(1) of the TOMS Regulation 2004, will apply to the equivalent offences in sections 59(1), 59(3) and 60 for all Queensland regulated ships under the TOMS Regulation 2016.

Chapter 4, Part 1, Division 4 provides for the granting of, and qualifications for, recreational marine driver licences and personal watercraft licences.

There will be no changes to the qualifications required for recreational marine driver licences under the TOMS Regulation 2016 (see section 99 of the TOMS Regulation 2004). The eligibility for personal watercraft licences will be updated to accept a certificate of competency issued under the National Law in place of a commercial or fishing licence (see section 99A(a)(ii) of the TOMS Regulation 2004).

Chapter 4, Part 1, Division 5 provides for the approval of entities to conduct training and examinations for issuing recreational marine driver licences and personal watercraft licences. These entities are commonly known as BoatSafe training organisations.

The *Transport Operations (Marine Safety—Examining and Training Program Approvals (Recreational Ships and Personal Watercraft)) Standard 2005* set out eligibility and suitability requirements for these approvals. These requirements will be relocated from the Standard to the TOMS Regulation 2016 (sections 66 and 68) and the Standard will be repealed.

The requirements will be unchanged apart from being updated to recognise certificates of competency and certificates of operation under the National Law where appropriate. The TOMS Regulation 2016 will be amended to allow the chief executive to approve BoatSafe training organisations. Also, the specific suitability requirements in Part 4 of the Standard have been omitted and replaced with a general requirement that an entity must be suitable for the

approval. This will enable the chief executive or general manager to take into account any relevant considerations, for example, the applicant's criminal history.

Chapter 4, Part 2 provides for the licensing of pilots. There will be no change to the requirements relating to pilot licences. Section 73 will clarify that the general manager may conduct examinations for pilot licences as necessary and appropriate.

Chapter 4, Part 3 will provide for issuing temporary permits for unlicensed persons to operate prescribed other Queensland regulated ships (see section 106 of the TOMS Regulation 2004). These temporary permits can be issued for a maximum period of 30 days and are considered to be equivalent to the relevant licence. There will be no change to the requirements for temporary permits.

Chapter 5 Ship operations

Chapter 5 provides for various matters relating to the operation of ships in Queensland waters, including speed limits and applying international conventions on the prevention of collisions at sea.

This chapter will be amended by omitting provisions which apply only to ships which are now DCVs (see Divisions 1 – 5, 7, 11 of the TOMS Regulation 2004). However, a number of key provisions in these Divisions will be retained as statutory or discretionary registration conditions for other Queensland regulated ships (see above).

Chapter 5, Part 1 regarding signals will continue to apply to all ships as this is a matter for which the State retains regulatory power (see section 6(2)(xi) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*). There will be no changes to this Part apart from updating a reference to the USL Code. This Code will be replaced with a reference to the *Navigation Act 2012* (Cwlth) for this purpose.

Similarly, Chapter 5, Part 2 regarding the prevention of collisions will continue to apply to all ships as this is a matter for which the State retains regulatory power (see section 6(2)(viii) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*). There will be no change to the general requirement that a person involved with the operation of a ship must comply with the International Regulations for Preventing Collisions at Sea published by the International Maritime Organization (see section 126 of the TOMS Regulation 2004).

The requirement for particular high speed ships (such as CityCats) to use flashing yellow all-round lights while the ship is underway which was in section 13(4) of the TOMS Regulation 2004 will be retained in this Division (section 80). This requirement will be reclassified from being a safety equipment requirement to an operational matter. In light of this, it is appropriate to reduce the penalty to align with the penalties for other operational offences, such as speeding.

Chapter 5, Part 3 provides for speed limits that apply to ships operating in Queensland waters. There will be no change to these requirements (see Part 5 Division 9 of the TOMS Regulation 2004). These provisions also apply to DCVs as speed limits are a matter for which the State retains regulatory power (see section 6(2)(viii) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*).

Chapter 5, Part 4 regarding dangerous cargo will continue to apply to all ships under the Act as this is a matter for which the State retains regulatory power (see section 6(2)(iv) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*). The Part provides for matters

including duties of persons sending dangerous cargo by ship and of the owner or master of the ship. There will be no changes to this Part, however the obligation on the owner or master of a combination carrier in relation to loading the carrier with bulk solid cargo in a pilotage area will be clarified to provide that the master cannot load the carrier unless a certificate has been provided by an approved chemist.

Chapter 5, Part 5 provides for a number of other matters relating to ship operations, including a number of matters which will apply to DCVs as matters for which the State retains regulatory power (see section 6(2)(v), (vi) and (xii) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*). There will be no changes to the operation of these provisions.

Chapter 6 Authorities, marine licences and marine licence indicators

Chapter 6 provides for procedural matters for a number of authorities issued under the TOMS Regulation 2016, including registration of Queensland regulated ships, licensing of masters and pilots and pilotage exemption certificates. The matters dealt with in the Chapter include how to apply for the grant, renewal or amendment of an authority and the procedure for suspending or cancelling an authority.

A number of minor amendments will be made to this Chapter to clarify the following matters:

- Not all applications relating to authorities must be made in the approved form. If there is no approved form, a person must generally apply in writing (see sections 101, 109, 111 and 124).
- However, the renewal of registration of a Queensland regulated ship need not be made in the approved form or in writing (see section 109).
- If a person does not provide sufficient information to allow the decision maker to decide the application, a new provision will clarify that the decision maker may request further information (see section 102).
- If the administering agency decides to amend an authority, the agency must provide reasons and review information to the holder (see section 112(5)).
- The types of authorities which may be amended or suspended by the general manager after a marine incident will be clarified (see section 117).
- The process for extending a term of suspension or amendment after a marine incident will be updated to reflect changes made to section 126 of the Act by the Marine Safety Amendment Act (see section 118).
- The responsibility for paying the relevant fee for transfer of a Queensland regulated ship's registration lies with the new owner (see section 158(4)).
- The administering agency may amend existing conditions or impose new conditions on transfer of a Queensland regulated ship's registration if necessary for marine safety (see section 158(6)).

Procedural provisions regarding marine licences and marine licence indicators are located in Schedule 4A in the TOMS Regulation 2004. These will be relocated to a separate Part in Chapter 6 (Part 3).

Chapter 7 Pilotage areas, compulsory pilotage areas and pilots

This Chapter provides for various matters in relation to pilotage, including prescribing the ships which require a pilot to have conduct of the ship while they are in a compulsory pilotage area

under Part 8 of the Act and for the process for deciding how a pilot should be transferred to and from a ship.

Pilotage is not a matter which is covered by the National Law so will continue to be regulated under the Act (see section 6(2)(iii) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*). There are no policy changes to pilotage matters included in the TOMS Regulation 2016.

However, a minor change will be made to remove the exemption from pilotage for a ship not more than 80m where the master holds a licence which is endorsed for the pilotage area (see section 176(2)(b) of the TOMS Regulation 2004) as there is no longer a process for endorsing licences for pilotage areas.

Also, the power for the general manager to issue a pilotage exemption to a foreign registered ship that is less than 100m and operating in the Karumba pilotage area will not be retained. This power is no longer required as visiting masters are conducting insufficient trips to qualify for, and maintain, a Pilotage Exemption Certificate and thus must use the services of a qualified pilot (see section 179(3)(b) of the TOMS Regulation 2004).

The references to Marine Orders relating to the transfer of pilots to and from ships will be updated to reflect new Marine Orders made in 2016.

Chapter 8 Marine zones

Chapter 8 provides for the prescribing of marine zones. A marine zone may be established to assist with the management of waterways to balance the needs of maritime users with local community concerns about amenity. Within marine zones particular activities may be restricted (for example, the operation of a personal watercraft may be prohibited). No changes will be made to provisions regarding marine zones.

The National Law provides that the designation of waters and regulation or prohibition of operation of specified vessels or classes of vessels in specified areas are not matters regulated under the National Law (see section 6(2)(v) and (vi) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*).

Currently there are only two marine zones – Tallebudgera Creek and Noosa River. These zones will be retained in Schedule 5.

Chapter 9 Other matters about marine safety

Chapter 9 provides for a number of matters including approval of harbour masters to exercise particular powers, establishment, approval and management of buoy moorings, and approval of aquatic events. There are no policy changes to any of the matters in Chapter 9, however, powers of harbour masters for marine incidents outside pilotage areas in section 205, 216 and 217 of the TOMS Regulation 2004 will not be retained as these are dealt with in the Act (see sections 86A, 87B, 89, 93 and 94 of the Act).

The matters in Chapter 9 are matters for which the State retains regulatory power (see section 6(2) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*).

Chapter 10 Miscellaneous

Chapter 10, Part 1 provides for matters relating to the payment of fees and charges under the Act, including concessions, exemptions and refunds of fees.

Section 201 provides an exemption from registration fees for ships owned or operated by accredited surf lifesaving clubs for rescue purposes and for all ships used by schools. Currently, in relation to school ships the exemption only applies to ships used exclusively in a marine education course by a school (see schedule 10 section 6 TOMS Regulation 2004). The expansion of the exemption is designed to encourage schools which currently register their ships as recreational ships to register them as other Queensland regulated ships under the new regulation. It will also increase regulatory consistency and provide for a more equitable treatment for schools.

In the TOMS Regulation 2004, a fee exemption also applies for ships owned by the emergency services department and volunteer marine rescue associations (see schedule 10 section 6). These ships are now DCVs so this exemption will not be included in the TOMS Regulation 2016, however an equivalent exemption will be provided for in the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Regulation 2016* which will prescribe fees charged by TMR for issuing a certificate of operation under the National Law as delegate of the National Marine Safety Regulator.

Chapter 10, Part 2 also provides for the payment of pilotage fees and conservancy dues.

Chapter 10, Part 3 provides for a number of miscellaneous matters including interference with signs and appointment of shipping inspectors. There are no policy changes to any of the matters in Chapter 10, Part 3.

Chapter 11 Repeals and transitional provisions

Chapter 11, Part 1 repeals a number of Standards made under the Act. These Standards are no longer required as they deal with matters now regulated under the National Law, or, for the *Transport Operations (Marine Safety—Examining and Training Program Approvals (Recreational Ships and Personal Watercraft)) Standard 2005*, the relevant provisions will be relocated into the TOMS Regulation 2016.

Chapter 11, Part 2 provides for the transition from the TOMS Regulation 2004 to the TOMS Regulation 2016, including continuation of authorities granted under the TOMS Regulation 2004 and for deciding applications made but not decided before the commencement of the TOMS Regulation 2016.

Chapter 12 Amendment of other legislation

Chapter 12, Part 1 updates the *State Penalties Enforcement Regulation 2014* (SPER) to reflect changes made by the Amendment Act and the TOMS Regulation 2016. There will be no new offences prescribed for SPER and no increased penalties.

Chapter 12, Part 2 makes necessary amendments to the *Transport Operations (Marine Safety—Recreational Ships Miscellaneous Equipment) Standard 2006*. The purpose of this standard is to help people understand the general safety obligation under section 41 of the Act. It will be amended to apply to all Queensland regulated ships, rather than only recreational ships and updated to reflect changes included in the TOMS Regulation 2016.

Chapter 12, Part 3 provides that schedule 10 amends the legislation mentioned in it. These are other minor consequential amendments.

Schedule 1 Coastal bars; Schedule 2 Pilotage areas; Schedule 3 Compulsory pilotage areas; Schedule 4 Responsible pilotage areas; Schedule 5 Marine Zones; Schedule 7 Partially smooth waters; Schedule 8 Smooth waters.

These schedules set out particular matters necessary for marine safety. There are no policy changes to these schedules contained in the TOMS Regulation 2016. Schedules from the TOMS Regulation 2004 which deal with matters now covered by the National Law will not be retained (schedules 2 – 4 and 11 of the TOMS Regulation 2004).

Schedule 6 Fees, charges and dues

This schedule prescribes fees, charges and dues payable under the TOMS Regulation 2016.

Schedule 9 Dictionary

Schedule 9 defines various terms for the TOMS Regulation 2016.

Schedule 10 Consequential amendments

Schedule 10 makes consequential amendments to other regulations necessary as a result of the National Law, amendments to the Act to be made by the Amendment Act and the remake of the TOMS Regulation 2004.

Consistency with policy objectives of authorising laws

The objectives of the Regulation are consistent with the objectives of the Act.

Benefits and costs of implementation

The benefit of remaking the TOMS Regulation to be consistent with the National Law will be to provide a seamless and co-ordinated national system for the regulation of marine safety covering all ships operating in Queensland waters. The costs of implementation will be met from existing budget allocations.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(2)(a)*

Reasons for decisions and information about review rights

Under the TOMS Regulation 2004, a decision-maker is not required to provide reasons for decisions to impose a condition on an authority or to amend an authority on their own initiative. Under the TOMS Regulation 2016, a decision-maker will be required to provide reasons and information about review processes for a decision to amend an authority (section 112).

However, the reasons and information will not be provided for a decision to impose a condition on an authority or a marine licence (sections 105 and 128).

The former Scrutiny of Legislation Committee considered that to provide practical rights of review, and consistent with having sufficient regard to the rights and liberties of individuals, a decision-maker should be required to give reasons for the decision together with information about review or appeal rights.

The imposition of conditions on authorities such as registration of Queensland regulated ships and on marine licences is extremely common and it would be administratively burdensome for the decision-maker to have to provide reasons and review information in every instance. The conditions are imposed to ensure marine safety, for example to restrict the area of operation of a particular ship.

The decision to impose conditions on an authority or marine licence is a reviewable decision under the Act Part 16. A person's review and appeal rights under the Act and the *Transport Planning and Coordination Act 1994* will not be affected by the non-inclusion of a requirement to provide reasons and review information.

Appropriate penalties

The TOMS Regulation 2016 will contain fewer offence provisions than the TOMS Regulation 2004 as a result of the removal of provisions now provided for in the National Law.

In addition, a number of offences will have lower penalties than apply under the TOMS Regulation 2004 (see comments above in relation to section 59, 60 and section 80). These lower penalties are considered appropriate because of the relatively lower risk associated with the operation of other Queensland regulated ships or to align with the penalties for similar offences in the Regulation.

Consultation

The guiding principles in the TOMS Regulation 2016 are to make the necessary consequential amendments to ensure consistency with the National Law, and to provide that those ships excluded from National Law coverage are regulated at the recreational standard. Consultation was undertaken with key stakeholders in this group such as the Department of Education and Training and Surf Lifesaving Queensland regarding the proposed amendments during drafting of the Act amendments. The regulation will not increase obligations or impose costs on any ships or ship operators.

A public information campaign will be conducted once the regulation is made and before commencement, but given the precedence accorded to the National Law under the Australian Constitution and consultation previously undertaken, no specific consultation was undertaken prior to the remake.