

# Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020

Explanatory notes for SL 2020 No. 92

made under the

*COVID-19 Emergency Response Act 2020*

*Rail Safety National Law (Queensland) Act 2017*

*Transport Infrastructure Act 1994*

*Transport Operations (Marine Safety) Act 1994*

## General Outline

### Short title

*Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020*

### Authorising law

Section 13 of the *COVID-19 Emergency Response Act 2020*

Section 132 of the *Rail Safety National Law (Queensland) Act 2017*

Section 490 of the *Transport Infrastructure Act 1994*

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

### Policy objectives and the reasons for them

On 29 January 2020, the then Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (PHA) due to the outbreak of a virus, known as COVID-19. On 11 March 2020, the Director-General of the World Health Organization declared COVID-19 a global pandemic.

During a public health emergency, under section 362B of the PHA, public health directions can be issued. Public health directions related to COVID-19 have been issued including directions that restrict movement, prohibit large gatherings, restrict border crossings and which can require self-quarantine.

Generally, the public is being asked to undertake *social distancing*, which is to limit physical contact with others wherever possible and, in turn, limit the spread of COVID-19.

The Department of Transport and Main Roads (TMR) administers a broad range of transport services across road, rail and marine environments. With directions that the public undertake social distancing and restrict movement, many legislative requirements which would normally be able to be complied with are difficult or impossible to meet. For instance, an authority to hold an aquatic event that would attract spectators and require close quarters work by support staff would contravene the restrictions on public gatherings under the public health directions.

There are also significant economic impacts associated with COVID-19 affecting individuals and Queensland businesses. For instance, commercial operators and tenants within State-managed boat harbours have reduced capacity to operate their businesses resulting in a significant downturn of revenue due to mandatory shut downs and social distancing requirements.

The policy objectives of the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020* (the Regulation) are to:

- provide financial relief to commercial operators in State-managed boat harbours; and
- provide a framework that will enable exemptions from, or otherwise modify the application of, requirements about certain marine authorities.

The Regulation will also extend the expiry of a transitional regulation that preserves certain Queensland-specific definitions under national rail safety legislation.

The Regulation will expire on 31 December 2020.

## **Achievement of policy objectives**

The Regulation amends the:

- *Transport Infrastructure (Public Marine Facilities) Regulation 2011*;
- *Transport Operations (Marine Safety) Regulation 2016*; and
- *Rail Safety National Law (Queensland) Act 2017* to preserve the operation of the *Rail Safety National Law (Queensland) (Transitional) Regulation 2017*.

### *Transport Infrastructure (Public Marine Facilities) Regulation 2011*

TMR owns and operates eight State-managed boat harbours in Queensland. TMR leases areas of the harbours to tenants who operate businesses such as marinas, clubs, tourist operators, restaurants, seafood processing and seafood retail outlets. Mandatory shut downs and social distancing requirements have reduced the capacity of these tenants to operate their businesses resulting in a significant downturn of revenue. Other commercial operators in the harbours have also been impacted.

Schedule 2 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (Fees in State-managed boat harbours) establishes fees payable for activities within Bowen boat harbour, Mooloolaba Harbour, Rosslyn Bay boat harbour, Snapper Creek boat harbour at Tin Can Bay and Urangan Boat Harbour. Fees cover matters such as moorings, operation of ships and fish receipt purposes. Fees are also payable for each mooring in the leased areas. Section 80 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* sets out when and how such fees are payable to the Chief Executive.

The Regulation will provide the Chief Executive with the ability to waive fees for commercial operators that are payable, or have been paid, under schedule 2 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*. The fees may be waived if the Chief Executive is satisfied that the waiver may alleviate the financial burden on the entity caused by COVID-19. The waiver of fees will apply to fees payable from 1 April 2020 until 30 September 2020. This period can be extended if the Chief Executive is satisfied it is necessary having regard to the impact of COVID-19, but for no longer than a period of six months after the day the COVID-19 emergency ends.

The amendments will expire six months after the day the COVID-19 emergency ends.

#### *Transport Operations (Marine Safety) Regulation 2016*

A range of maritime authorities issued under the *Transport Operations (Marine Safety) Regulation 2016* have been impacted by COVID-19 restrictions. These include aquatic event authorities, buoy mooring approvals, pilot licences, pilotage exemption certificates and marine licences.

The Regulation will provide the Chief Executive of the Department of Transport and Main Roads and the General Manager (Maritime Safety Queensland) with the power to vary or extend the term of a maritime authority and to vary or waive a condition that applies to an existing authority, marine licence or marine licence indicator.

The Chief Executive or the general manger may activate these powers by publishing a notice on the Maritime Safety Queensland website. This can occur where, for example, having regard to the COVID-19 emergency:

- it would not be practicable or reasonable for the holder to comply with, or satisfy, an existing condition on an authority; or
- complying with, or satisfying, an existing condition may risk the spread of COVID-19 within the community.

Any action taken by the Chief Executive or the General Manager under these provisions must not disadvantage the holder of the authority, marine licence or marine licence indicator.

These powers will be exercisable to minimise risks to the health and safety of persons caused by COVID-19 and to ensure the effective and efficient operation and administration of maritime regulation during the COVID-19 emergency and for a period after.

Introducing these powers will allow financial and administrative relief to be provided to the holders of authorities, who may be exempted from having to apply and pay for the renewal of authorities or variations to their existing authorities.

For example, the businesses of BoatSafe Training Organisations accredited by Maritime Safety Queensland to deliver training for marine licences have suffered significant decline, and it may not be practicable to conduct the required renewal audits during the term of their current authorities. The Regulation will empower the administering agency to provide relief by temporarily extending the term of these authorities.

The amendments will expire six months after the day the COVID-19 emergency ends.

### *Rail Safety National Law (Queensland) Act 2017*

The Rail Safety National Law is set out in a schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA). The *Rail Safety National Law (Queensland) Act 2017* (the Application Law) adopts the Rail Safety National Law as a law of Queensland. When the law was adopted in Queensland in 2017, specific Queensland definitions of *level crossing* and *rail or road crossing* were inserted into the Application Law. This was to reflect the different requirements applying to crossings for heavy rail and trams (including light rail) as already provided for in the Queensland Road Rules.

On 1 July 2019, amendments were made by the South Australian Parliament to the Rail Safety National Law to change definitions to cater for these different concepts. However, these amendments impacted upon the legislative mechanism applying in Queensland. Therefore, the *Rail Safety National Law (Queensland) (Transitional) Regulation 2017* (the Transitional Regulation) was made under section 132 of the Application Law to preserve Queensland's definitions until substantive amendments could be made to recognise the new national law definitions.

Section 132 and the Transitional Regulation made under it are due to expire on 30 June 2020. The Regulation will extend the expiry of section 132 and the Transitional Regulation to ensure that the current definitions of *level crossing* and *rail or road crossing* continue to apply in Queensland until amendments can be made to the Application Law, or until 31 December 2020, whichever occurs sooner.

This extension is facilitated by section 13 of the *COVID-19 Emergency Response Act 2020* which allows an extraordinary regulation to be made to expressly modify the period at the end of which the transitional regulation expires.

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

The Regulation is consistent with the policy objectives of the authorising laws. Specifically, it is consistent with:

- the purpose of the *COVID-19 Emergency Response Act 2020* to facilitate the continuance of public administration and other activities disrupted by the COVID-19 emergency;
- the objectives of the *Transport Infrastructure Act 1994* which include providing for the effective and efficient management of public marine facilities;
- the objectives of the *Transport Operations (Marine Safety) Act 1994* which provide that marine safety and related marine operational issues can be effectively planned and efficiently managed, and that influence can be exercised over marine safety and related marine operational issues in a way that contributes to overall transport efficiency; and
- the purpose of the *Rail Safety National Law (Queensland) Act 2017* to apply the Rail Safety National Law as a law of Queensland with the modifications set out in the *Rail Safety National Law (Queensland) Act 2017*.

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

The Regulation is not inconsistent with the policy objectives of other legislation.

## Benefits and costs of implementation

The Regulation will provide financial relief and lessen the impact of the regulatory burden on individuals and businesses impacted by COVID-19. Such measures are essential to ensure that transport legislation does not place undue requirements on individuals or businesses during the COVID-19 emergency and for a period after the emergency ends.

Waiving fees for commercial operators in State-managed boat harbours is anticipated to show a reduction in revenue of approximately \$52,000.00 per month.

Any costs incurred by the Regulation will be absorbed by Government.

## Consistency with fundamental legislative principles

The Regulation may raise fundamental legislative principle considerations under section 4(2)(b) of the *Legislative Standards Act 1992* relating to the Institution of Parliament.

Provisions of the Regulation allowing the Chief Executive to waive fees payable under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* may be considered a breach of section 4(4)(b) of the *Legislative Standards Act 1992*, which requires legislation to sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

However, any potential breach is considered justified as the Chief Executive's power to waive fees is limited:

- to circumstances arising from the current COVID-19 emergency;
- to circumstances where waiving the fee may alleviate financial burden on commercial entities caused by the COVID-19 emergency; and
- to a specified time period, starting on 1 April 2020 and ending on 30 September 2020 and, if the Chief Executive exercises further discretion to extend this period, the extended period is limited to no later than six months after the day the COVID-19 emergency ends.

Provisions of the Regulation allowing the Chief Executive or General Manager (Maritime Safety Queensland) to publish a notice that activates waivers and variations from conditions and extensions of authorities granted under transport regulations may also be considered a breach of section 4(4)(b) of the *Legislative Standards Act 1992*.

However, any potential breach is considered justified as the power of the Chief Executive and the General Manager (Maritime Safety Queensland) to modify the application of the specified legislative requirements is limited:

- to circumstances arising from the current COVID-19 emergency;
- to circumstances generally where requiring compliance with the condition would not be practicable or reasonable due to the COVID-19 emergency or may risk the spread of COVID-19 within the community;
- by the modification powers only applying in a way that does not disadvantage the holder of the authority, marine licence or marine licence indicator; and

- to the period up until six months after the day the COVID-19 emergency ends.

Provisions of the Regulation extending the expiry of section 132 of the *Rail Safety National Law (Queensland) Act 2017* and of the *Rail Safety National Law (Queensland) (Transitional) Regulation 2017* may be considered a breach of section 4(4)(c) of the *Legislative Standards Act 1992*, which requires that an Act is amended only by another Act.

However, any potential breach is considered justified because:

- the amendments are made in accordance with section 13 of the *COVID-19 Emergency Response Act 2020* for the purpose of the continuance of public administration and other activities disrupted by the COVID-19 emergency;
- the amendments are time limited to provide for an extension until the earlier of 31 December 2020 or until substantive amendments to the *Rail Safety National Law (Queensland) Act 2017* can be made; and
- the amendments preserve current definitions to maintain current provisions and do not constitute a policy change.

## Consultation

The Regulation provides for the waiver of fees, the relaxation of certain requirements, the continuation of existing policy and an administrative extension of expiry, and is beneficial to Queenslanders. For these reasons, and due to the urgent nature of the Regulation, public consultation has not been undertaken.

The Office of Best Practice Regulation in the Queensland Productivity Commission has advised that it is reasonably clear there will be no adverse impacts, and no further regulatory impact analysis is required under the Queensland Government Guide to Better Regulation.