

# Transport Legislation Amendment Regulation (No. 3) 2021

Explanatory notes for SL 2021 No. 180

made under the

*Transport Infrastructure Act 1994*

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport Legislation Amendment Regulation (No. 3) 2021*

### Authorising laws

Section 490 of the *Transport Infrastructure Act 1994* (Transport Infrastructure Act).

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

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

### Policy objectives and the reasons for them

The policy objectives of the *Transport Legislation Amendment Regulation (No. 3) 2021* (Amendment Regulation) are to:

- amend the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (Public Marine Facilities Regulation) to commence, vary and end the appointment of managers of particular public marine facilities;
- amend the *Transport Operations (Marine Safety) Regulation 2016* (Marine Safety Regulation) to:
  - ensure the definition of *ABP Standard* reflects the updated Australian Builders Plate (ABP) Standard;
  - extend Vessel Traffic Services reporting requirements to additional areas within the Gladstone pilotage area;
  - provide that Cawarral Creek Bar is a designated coastal bar requiring the wearing of lifejackets by persons 12 years and older while crossing the bar;

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- ensure consistency in the safety management system requirements that apply to an *other Queensland regulated ship* and similar nationally-regulated ships; and
  - ensure that Queensland Parks and Wildlife Service Officers can carry out their duties in an effective way; and
  - amend the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (Registration Regulation) to clarify when prescribed evidence of an inspection certificate must be provided with a vehicle registration application.

## Achievement of policy objectives

### Commencing, varying and ending the appointments of certain managers of public marine facilities

The Transport Infrastructure Act provides that the Governor in Council may, by regulation, appoint a person to manage a public marine facility and that the appointment may only be made if the person consents to the appointment. Persons who may be appointed as managers include, for example, local councils, port authorities and managers of resorts. The manager is responsible for maintaining the public marine facility in good condition to a standard appropriate to its use.

The Public Marine Facilities Regulation provides that an entity mentioned in schedule 1 is appointed as the manager of a stated public marine facility, and that the appointment of a person mentioned in schedule 1A of the Regulation has ended.

Currently, there are a number of entities that are performing management duties for public marine facilities (such as boat ramps, floating walkways and pontoons) that have not been appointed managers of the facility under the Public Marine Facilities Regulation.

There are also entities currently listed in schedule 1 of the Public Marine Facilities Regulation that are no longer managing a public marine facility. This could be because, for example, the facility has been transferred to another entity, the facility is no longer State-owned or controlled, or the facility has been demolished. In addition, the descriptions for some of the public marine facilities are being changed to reflect updated plans used to identify the location of the facility.

The Amendment Regulation amends schedules 1 and 1A of the Public Marine Facilities Regulation to commence, vary and end the appointment of managers of particular public marine facilities.

### ABP Standard

An ABP is an information plate which is required to be fixed to particular new *Queensland Regulated ships* when they are sold in Queensland. The plate provides essential information to the purchaser of the new ship, such as its maximum loading capacity, maximum engine power and flotation performance in the case of an emergency.

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In the Marine Safety Regulation, the current definition of *ABP Standard* reflects the *National Standard for the Australian Builders Plate for Recreational Boats, Edition 4*. However, on 5 June 2020, the *National Standard for the Australian Builders Plate for Recreational Boats, Edition 5* was endorsed by the former Transport and Infrastructure Council. The revised national standard includes changes to its structure and format to enhance its readability and assist boat builders to comply with the standard. It also includes a small number of technical changes.

The Amendment Regulation updates the definition of *ABP Standard* to ensure that it reflects the revised national standard.

### Vessel Traffic Services reporting requirements within the Gladstone pilotage area

Vessel Traffic Services centres are traffic control centres for shipping in ports and surrounding waterways. They operate 24 hours a day and use systems, including VHF radio, to help identify and monitor vessels, plan vessel movements and give navigational information and advice.

The Marine Safety Regulation requires commercial fishing vessels that are 10 metres or more in length and fitted with a VHF radio to report to Vessel Traffic Services when operating within the stated parts of the Gladstone pilotage area. For example, if a 12-metre long fishing ship is fitted with a VHF radio and is operating in Gatcombe Channel, before the master of the ship enters the Gatcombe Channel, they must report to Vessel Traffic Services to provide the required information about the ship.

Commercial fishing vessels can be slow and have restricted manoeuvrability because of their trawl nets. As such, there is a higher risk of collision or disruption of trade shipping movements, necessitating the requirement for additional reporting measures in these regions. Therefore, it is important that Vessel Traffic Services is aware of each commercial fishing vessel's position so that vessel movements can be monitored, and masters can be given directions. This helps to ensure the safe and efficient management of vessels within the higher risk areas of the Gladstone pilotage area.

The Amendment Regulation provides that the requirement for certain ships to report their movements to Vessel Traffic Services will also apply within the following four additional high-volume traffic areas within the Gladstone pilotage area:

- Jacobs Channel;
- South Trees Anchorages;
- Gatcombe Bypass Channel; and
- South Channel Bypass.

### Cawarral Creek Bar

Under section 44 of the Marine Safety Act, the owner or master of a ship must not operate a ship if it is not equipped with the safety equipment required to be fitted under a regulation. For example, if an open boat is less than 4.8 metres in length and is underway, each individual on board who is between 1 and 11 years (inclusive) must wear the lifejacket required by section 24(2)(a) of the Marine Safety Regulation.

Section 24(2)(b) of the Marine Safety Regulation further provides that if an open boat less than 4.8 metres in length is crossing a coastal bar, each individual on board who is aged 1 year or more must be wearing the lifejacket required by that paragraph. Coastal bars are listed in schedule 1 of the Marine Safety Regulation.

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The Cawarral Creek Bar, which is located near the town of Keppel Sands, is not currently listed in schedule 1 of the Marine Safety Regulation. However, the Cawarral Creek Bar and the waters of the entrance to Cawarral Creek are considered dangerous, even on good weather days. To mitigate the dangers to persons in an open boat that is less than 4.8 metres in length, the Amendment Regulation extends the mandatory wearing of lifejackets to all persons 12 years or older while the boat is crossing Cawarral Creek Bar.

#### National Consistency in applying safety management system requirements

To ensure consistency in the requirements that apply to *other Queensland regulated ships* and similar nationally-regulated ships, the Marine Safety Regulation directly applies certain requirements that are contained in national maritime law. The term *other Queensland regulated ship* means a ship (or tender to a ship) that is not a recreational ship or domestic commercial vessel. This includes, for example, ships that are owned by schools, surf lifesaving groups and community groups and used for purposes other than recreation.

For example, under the Marine Safety Regulation, it is a condition of registration that the owner or master of an *other Queensland regulated ship* must have a safety management system for the ship that either deals with the matters mentioned in the *National Standard for Commercial Vessels, part E (NSCV, part E)* that are relevant to the ship's operation or that has been approved by the registering entity.

The *NSCV, part E* was revoked on 1 July 2018 and safety management systems for nationally-regulated ships are now covered by *Marine Order 504 (Certificates of operation requirements – national law) 2018* (Marine Order 504). The requirements in Marine Order 504 are consistent with those previously contained in the *NSCV, part E*.

The Amendment Regulation amends the Marine Safety Regulation to replace the reference in section 30(1)(a)(i) to the *NSCV, part E* with a reference to Marine Order 504.

#### Queensland Parks and Wildlife Service Officers

Section 96(2) of the Marine Safety Regulation provides that, if reasonably necessary to perform their duties, an *enforcement officer* can undertake certain activities that would otherwise be in contravention of the regulation. This includes, for example, operating a ship at a speed above the applicable speed limit. For the purposes of this section, an *enforcement officer* is defined to mean a police officer, an officer of the Queensland Boating and Fisheries Patrol or an officer of Maritime Safety Queensland who is a shipping inspector.

Queensland Parks and Wildlife Service Officers are appointed as inspectors under the *Marine Parks Act 2004* or the *Great Barrier Reef Marine Park Act 1975 (Cwlth)*, or as conservation officers under the *Nature Conservation Act 1992*. These officers have a number of powers, including the power to stop vessels and carry out enforcement and compliance activities, particularly within marine zones. However, because they are not currently included in the definition of *enforcement officer* for the purposes of section 96(2) of the Marine Safety Regulation, they could be committing an offence under that regulation when they are undertaking an action that is reasonably necessary to perform their duties. For example, to intercept a vessel, Queensland Parks and Wildlife Service Officers may need to increase speed beyond the applicable speed limit.

The Amendment Regulation amends the definition of *enforcement officer* in section 96(4) to include an officer of the Queensland Parks and Wildlife Service.

### Evidence of an inspection certificate for vehicle registration applications

On 1 September 2021, the Registration Regulation commenced operation, replacing an expiring regulation. In the Registration Regulation, the requirement to provide evidence of an inspection certificate with an application for vehicle registration in certain circumstances is unclear.

Inspection certificates are issued by qualified and accredited persons following a safety inspection of a vehicle. Requiring evidence of an inspection certificate with an application to register a vehicle is an important measure for ensuring vehicles being registered are safe. Evidence of an inspection certificate may be the certificate or a copy of the certificate, or the unique number for the certificate which can be verified.

The Registration Regulation is being amended to clarify the circumstances in which prescribed evidence of an inspection certificate must be provided with an application to register a vehicle. The policy intent of the amendment to the Registration Regulation is consistent with the expired regulation.

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

The Amendment Regulation is consistent with:

- the objective of the Transport Infrastructure Act to establish a regime under which public marine facilities are effectively and efficiently managed;
- the objective of the Marine Safety Act of regulating the maritime industry to ensure marine safety; and
- the objective of the Road Use Management Act to provide a scheme for managing the use of the State's roads that will improve road safety and the environmental impact of road use.

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

The amendments are not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The benefits of making the Amendment Regulation include:

- providing certainty as to who is responsible for ensuring public marine facilities are maintained to an appropriate standard;
- updating the definition of *ABP Standard* to ensure it reflects the current national standard;
- increasing the safety of boat users in certain high-volume traffic areas or areas that may be considered dangerous;
- providing consistency in the safety management system requirements that apply to *other Queensland regulated ships* and similar nationally-regulated ships;

- ensuring that Queensland Parks and Wildlife Service Officers, when undertaking their role, do not commit particular offences if their actions are reasonably necessary; and
- ensuring the safety of vehicles seeking registration for use on Queensland roads by clarifying inspection certificate requirements.

There are no costs associated with the implementation of the amendments.

## Consistency with fundamental legislative principles

### Legislation has sufficient regard to the institution of Parliament: Subdelegation of power

Schedule 9 of the Marine Safety Regulation will be amended to update the definition of *ABP Standard* with a reference to the *National Standard for the Australian Builders Plate for Recreational Boats* as in force from time to time. As the national standard can be amended without the scrutiny of the Queensland Parliament, this may breach the fundamental legislative principle that allows the subdelegation of a power only in appropriate cases and to appropriate persons (sections 4(2)(b) and 4(5)(e) of the *Legislative Standards Act 1992*).

The national standard is the responsibility of the Australian Recreational Boating Safety Committee which is comprised of senior boating safety representatives from each Australian jurisdiction. The Committee is under the oversight of the Marine Agencies Forum which reports to the relevant Ministerial Council related to transport.

Prior to the national standard being updated, public consultation is undertaken by the Australian Recreational Boating Safety Committee. For example, when developing the latest national standard (the *National Standard for the Australian Builders Plate for Recreational Boats, Edition 5*), national public consultation was conducted including public forums in Brisbane and across Australia. A reference group of industry and government representatives from across Australia was also formed to assist the process. The revised national standard was endorsed by the former Transport and Infrastructure Council on 5 June 2020.

Due to the level of consultation that is undertaken when updating the national standard and the need for it to be endorsed by the Ministerial Council, and in recognition of the benefits that arise from applying consistent standards across Australia, it is considered that any potential breach is justified.

## Consultation

Entities who, by virtue of the Amendment Regulation, will take on the role of the manager of a public marine facility have been consulted by Maritime Safety Queensland and have consented to the appointment. In addition, all relevant managers of public marine facilities have been consulted on, and consented to, the ending of their appointment.

In the making of the *National Standard for the Australian Builders Plate for Recreational Boats, Edition 5*, public consultation was undertaken by the Australian Recreational Boating Safety Committee. In June 2021, Maritime Safety Queensland provided information about the new national standard to members of Queensland's maritime community through its *Maritime Matters* newsletter.

The amendment relating to Vessel Traffic Services within the Gladstone pilotage area was developed in consultation with the Australian Maritime Safety Authority (AMSA). AMSA will update the masters of the impacted commercial fishing vessels in relation to the changes.

Local residents raised concerns about the safety of Cawarral Creek Bar, resulting in Maritime Safety Queensland installing ten navigational aids to mark the Cawarral Creek entrance. Prior to the amendment commencing, Maritime Safety Queensland will provide information about the new requirement for lifejackets to marine supply stores, the local volunteer marine rescue and coast guard, tackle shops, fishing clubs and boating groups.

During the making of Marine Order 504, public consultation was undertaken by AMSA. Feedback from industry associations, unions, maritime safety agencies and operators, including a number of Queensland stakeholders was considered in developing Marine Order 504.

The amendment in relation to officers of the Queensland Parks and Wildlife Service is machinery in nature and aligns with the powers of similar officers. The amendment to the Registration Regulation clarifies the operation of the legislation and reflects existing policy. As a result, no external consultation has been undertaken on these amendments.

The Office of Best Practice Regulation was consulted on the amendment in relation to the Queensland Parks and Wildlife Service Officers and considers the proposal to be excluded from further regulatory impact analysis on the basis that the proposal will not add to the burden of regulation and is unlikely to result in significant adverse impacts.

In accordance with the Queensland Government Guide to Better Regulation, the Department of Transport and Main Roads applied a self-assessable exclusion from undertaking further regulatory impact analysis on the following amendments based on Category G – Regulatory proposals that are of a machinery nature:

- commencing, varying and ending the appointment of managers of particular public marine facilities;
- ensuring the definition of the *ABP Standard* reflects the current national standard;
- extending Vessel Traffic Services reporting requirements to additional areas within the Gladstone pilotage area;
- providing that Cawarral Creek Bar is a designated coastal bar;
- ensuring consistency in the safety management system requirements that apply to an *other Queensland regulated ship* and similar nationally-regulated ships; and
- clarifying requirements for evidence of an inspection certificate for vehicle registration applications.