

Transport Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 20

made under the

Transport Operations (Marine Safety) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport Legislation Amendment Regulation 2022

Authorising laws

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 objectives of the *Transport Legislation Amendment Regulation 2022* (the Amendment Regulation) are to allow for self-servicing of inflatable lifejackets in accordance with manufacturers' requirements, prescribe the Bribie Island Bar, clarify lifejacket labelling requirements and remove annual vehicle inspection requirements for particular vehicles.

Lifejacket servicing

Inflatable lifejackets require routine servicing to ensure the bladder, reflective tapes, buckles and straps are in working order and the inflation system and oral inflation tube are operating correctly. Currently, under the *Transport Operations (Marine Safety) Regulation 2016* (TOMSR), inflatable lifejackets must be serviced by the manufacturer or their authorised service agent. Manufacturers' requirements for servicing lifejackets mandate professional servicing at key intervals but may also allow for "self-servicing" by a person other than a manufacturer or service agent at other times. Self-servicing requirements are easy to follow and do not need specialist expertise or equipment. As professional servicing is still required at particular times, self-servicing in accordance with manufacturers' requirements will not compromise the safety of the lifejacket. Self-servicing of lifejackets in accordance with manufacturers' requirements is already available in other jurisdictions including New South Wales and Victoria.

It is proposed to amend TOMSR to remove the limitation on who can service inflatable lifejackets in Queensland. Instead, all servicing will need to be in accordance with the manufacturers' requirements.

The amendment will also provide that a person can demonstrate that a lifejacket has been serviced by marking service dates on the lifejacket, or by providing relevant documentation if it has been serviced professionally.

Prescribe the Bribie Island coastal bar

Coastal bars are shallow, shifting sandbanks below the surface of the water at the entrance to coastal channels and passages through which ships can travel. Coastal bars can have the effect of causing strong currents and dangerous waves, even in calm weather.

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

Bribie Island is a 34-kilometre island just off the Queensland coastline approximately 50 kilometres north of Brisbane. On 2 January 2022, ex-tropical cyclone Seth caused a split approximately 1.5 kilometres from the northern tip of the island, resulting in the formation of a new passage and coastal bar between the Pumicestone Passage and the Coral Sea. The dangers of the new coastal bar have been of concern to the local Volunteer Marine Rescue and Coast Guard.

Prior to the new passage forming, ships exiting the Pumicestone Passage for the Coral Sea travelled around the northern tip of the island and across the Caloundra Bar. The Caloundra Bar is currently prescribed in schedule 1 and so the lifejacket requirements under section 24(2)(b) already apply for those journeys.

To enhance maritime safety, the amendment to TOMSR will prescribe the Bribie Island Bar in schedule 1 making it mandatory for persons aged one year or more in open ships less than 4.8 meters to wear lifejackets when crossing the bar.

Clarify lifejacket labelling requirements

Section 22 of TOMSR specifies the *required lifejackets* for Queensland regulated ships based on the nature of the ship and the waters it is operating in. The *required lifejackets* include those of classification levels 100, 50 and 50S, where the levels correlate to performance criteria in the relevant Australian Standard AS4758, the International Convention for the Safety of Life at Sea (SOLAS) or the National Standard for Commercial Vessels (NSCV).

For example, a ship, other than a personal watercraft, operating in partially smooth waters can be equipped with lifejackets of level 100 or level 50. If, however, the ship operates beyond partially smooth waters, a level 50 lifejacket is not appropriate and a level 100 lifejacket is required.

To meet AS4758, SOLAS and NSCV, manufacturers must place symbols (words and numbers) on lifejackets after they have been tested to signify compliance with the classification requirements. The amendments will recognise the symbols that must appear on different level lifejackets. This will assist ship owners and masters to ensure their ship is appropriately equipped for the waters in which it will be used. It will also assist enforcement officers and prosecutors to identify and prove when a lifejacket is not the *required lifejacket* for particular waters.

As the symbols are already required under AS4758, SOLAS and NSCV, all *required lifejackets* are believed to already be marked with the necessary symbols so there should be no adverse impact on ship owners and masters in meeting their safety equipment obligations. However, out of an abundance of caution, these amendments will not commence until 1 September 2022 to allow an opportunity for checking and replacing lifejackets if needed.

Annual vehicle inspection requirements

The *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (VSSR) regulates when light vehicles are required to be inspected to check compliance with vehicle standards and safety requirements. The inspection intervals are determined by the type of vehicle and the nature of its use. Certificate of inspection (COI) vehicles are those that require a certificate of inspection and include heavy vehicles (vehicles over 4.5t gross vehicle mass or aggregate trailer mass (ATM)), tow trucks, vehicles used to provide public passenger services and trailers over 3.5t ATM. COI vehicles must be inspected at regular intervals, generally once a year.

In recent years, the Queensland Ambulance Service (QAS) has started using vehicles that are over 4.5t, including some buses, as ambulances. As heavy vehicles, these ambulances are now also required to be inspected annually. However, QAS vehicles are subject to a regular maintenance regime and systematic renewal to maintain low fleet age. As a result, applying additional annual vehicle inspection requirements to these vehicles does not promote better safety outcomes.

In addition, currently trailers over 3.5t ATM and up to 4.5t ATM are subject to annual inspections, however, these trailers present no greater risk to safety than other light trailers. Similarly, light buses (also called minibuses) have a low road safety risk commensurate with other light vehicles.

The amendments to the VSSR will remove the annual inspection requirements for ambulances, trailers from 3.5t ATM up to 4.5t ATM and light buses that are not used to provide public passenger transport services. These vehicles will only be subject to a vehicle inspection when registration is being transferred to a new owner or if the vehicle is to be re-registered after a period of being unregistered. This is consistent with inspection requirements for other vehicles that do not require a COI. It is also noted there is a public expectation that public passenger transport vehicles generally are subject to periodic inspections to ensure they are properly maintained when providing services to the public.

Minor editorial changes

The Amendment Regulation also makes minor consequential and editorial amendments to TOMSR and VSSR.

Achievement of policy objectives

The Amendment Regulation will achieve the policy objectives by:

- amending TOMSR to allow self-servicing of inflatable lifejackets in accordance with manufacturers' requirements and to clarify how a person can demonstrate a lifejacket has been serviced;
- prescribing the Bribie Island Bar in schedule 1 of TOMSR so that ship owners and masters must ensure anyone one year old or more who is in an open ship that is less than 4.8 meters wears a lifejacket when crossing the bar;
- amending TOMSR to clarify lifejacket labelling requirements; and
- amending the VSSR to remove annual vehicle inspection requirements for ambulances, trailers from 3.5t up to 4.5t and light buses that are not used to provide public passenger transport services.

Consistency with policy objectives of authorising laws

The lifejacket related amendments are consistent with the policy objectives in section 3 of the *Transport Operations (Marine Safety) Act 1994* relating to ensuring marine safety (see section 3(1)(a)) and allowing lifejacket safety obligations and operational issues to be managed efficiently (see section 3(2)(b)(i)).

The vehicle inspection related amendments are consistent with the policy objectives outlined in section 3 of the *Transport Operations (Road Use Management) Act 1995* including, in particular, providing for the effective and efficient management of road use in the State.

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 operational costs of implementing the changes in the Amendment Regulation will be met from within existing budget allocations.

Lifejacket servicing

Allowing self-servicing of lifejackets in accordance with manufacturers' requirements will benefit owners and masters of ships by saving them the costs of professional servicing without compromising maritime safety.

Prescribing Bribie Island coastal bar

Prior to the new Bribie Island passage and bar being formed, the nearest route from Pumicestone Passage to the Coral Sea required crossing of the Caloundra bar (which is already prescribed in schedule 1 and so already requires the wearing of lifejackets). As a result, the amendment imposes no additional impost on ship owners or masters than applied if the bar had never formed.

Clarify lifejacket labelling requirements

The symbols on lifejackets can assist ship owners and masters identify the *required lifejackets* to ensure their ships are properly equipped for their intended journey. As marking of the symbols is already incorporated into the manufacturing standards for the lifejackets, the amendment should not require replacement of *required lifejackets*. However, out of an abundance of caution, these amendments will not commence until 1 September 2022 to allow ship owners and masters to check and replace lifejackets if needed.

The ability to rely on the lack of a symbol to show a lifejacket is not a *required lifejacket* will make court proceedings more efficient by reducing the need for copies of the large AS4758, SOLAS and NSCV documents to be tendered.

Annual vehicle inspections

Removing the requirement for annual vehicle inspections of ambulances, trailers up to 4.5t ATM and light buses that are not used for public passenger services will reduce costs for the owners of these vehicles without compromising safety.

The proposed changes will impact approximately 6000 trailers, 45 ambulances and 250 minibuses used for commercial purposes other than passenger transport services.

Consistency with fundamental legislative principles

Fundamental legislative principles issues raised by the amendments are discussed below. Compatibility with human rights under the *Human Rights Act 2019* is discussed at length in the Human Rights Certificate of Compatibility prepared under part 3 of that Act and tabled with the Amendment Regulation and these explanatory notes.

Rights and liberties of individuals – sufficient regard to the institution of Parliament – section 4(4) Legislative Standards Act 1992

The definitions of lifejacket level 50, lifejacket level 50S and lifejacket level 100 refer to lifejackets classified under AS4758 or complying with SOLAS and NSCV. In effect, these provisions incorporate these external documents into TOMSR by reference and these documents may be amended without the scrutiny of the Queensland Parliament.

SOLAS is generally regarded as the most important of all international treaties concerning the safety of merchant ships. SOLAS and the International Life Saving Appliance Code that sits under SOLAS, specifies the minimum standards for the construction, equipment and operation of ships. Compliance with SOLAS ensures, for example, any lifejackets on ships are compatible with safety requirements for the intended voyage. Since its inception in 1914 (following the Titanic disaster), SOLAS has been updated and improved on an international basis to set maritime safety standards appropriate for all jurisdictions. SOLAS is, by its nature, a lengthy, complex and technical document developed by engineers and mariners and agreed at the international level. Changes are not incorporated lightly, and they reflect the importance of consistency in safety requirements across jurisdictions due to the nature of maritime operations.

Similarly, the NSCV provides a standard for vessel survey, construction, equipment, design, operation and crew competencies for domestic commercial vessels. A technical advisory panel (made up of Australian technical experts from the maritime industry, governments, academic institutions and the community) provides advice and expertise on all aspects of the NSCV, including requirements for safety equipment such as lifejackets. Any changes to the NSCV involve consultation with industry and government partners (including Maritime Safety Queensland (MSQ)).

AS4758 is an Australian Standard that covers all elements of Australian boating, including setting requirements for the testing, construction and performance of lifejackets. The standard is regularly revised and MSQ actively participates in the committee that maintains AS4758. Consultation with industry is undertaken through the maintenance process prior to progressing any changes.

Incorporating these standards by reference into TOMSR allows any developments and improvements to safety standards to be quickly applied in Queensland. The standards or requirements in these documents are well established and adopted by the maritime industry including by lifejacket manufacturers. Due to the length, complexity and technical nature of the documents it would not be appropriate or practical to reproduce SOLAS, NSCV or AS4758 in TOMSR so that it is subject to Parliamentary scrutiny each time it is amended. Relying on these internationally and nationally accepted documents improves consistency across jurisdictions making it easier for people to travel between jurisdictional waters. As a result, any breach of fundamental legislative principles is justified.

Consultation

The amendments to allow for self-servicing of inflatable lifejackets are beneficial to ship owners and masters and self-servicing is already common practice in many jurisdictions. As such, no external consultation was undertaken. However, to ensure industry and recreational ship owners and masters are aware of the change, advice will be provided through the departmental website once the amendments commence.

The Queensland Recreational Boating Council (QRBC) was consulted regarding the ways in which a person can show an inflatable lifejacket has been serviced. The QRBC supported the amendment.

Volunteer Marine Rescue and the QRBC support the amendment to prescribe the Bribie Island Bar due to safety concerns. Ship owners and masters are already being encouraged to wear lifejackets by marine personnel providing information to the boating public in the vicinity of the bar. In addition, the new requirements will be advised on the departmental website and proactively by email through industry customer lists.

In relation to clarifying lifejacket labelling requirements, consultation was undertaken with the Australian Standards for Lifejackets and Safety Equipment for Small Craft Committee, the QRBC and the Boating Industry Association. All parties support the amendments. There is unlikely to be any adverse impact for ship owners and masters because manufacturing requirements (in Australia and internationally) already apply the requisite symbols, however, information about the changes will be provided through the departmental website and Facebook page and proactively by email through industry customer lists.

Consultation on matters relating to annual vehicle inspection requirements for trailers was undertaken with members of the Recreational Motor Vehicle Safety Group, as well as other motoring sector stakeholder groups. Members were contacted directly and were invited to provide feedback on the proposed change. The Australian Automotive Aftermarket Association, Motor Trades Association of Queensland and the Royal Automobile Club of Queensland responded, and all feedback received was positive.

The amendments to light buses will only impact approximately 250 vehicles and will benefit those vehicle owners by removing the need for, and cost of, annual inspections. As a result, no consultation was undertaken. Light bus owners will be advised of the changes through physical mail or email, depending on the communication preferences of the registered operator.

The Office of Best Practice Regulation (OBPR) was consulted on the proposed changes regarding lifejackets labelling. OBPR advised no further regulatory impact analysis is required as the proposal will not add to the regulatory burden and is unlikely to result in significant adverse impacts.

In accordance with the *Queensland Guide to Better Regulation* the Department of Transport and Main Roads applied self-assessable exclusions for the remaining matters based on category G – the regulatory proposals are machinery in nature.