

Transport and Other Legislation Amendment Regulation (No. 2) 2023

Explanatory notes for SL 2023 No. 171

made under the

State Penalties Enforcement Act 1999

Transport Infrastructure Act 1994

Transport Operations (Marine Safety) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport and Other Legislation Amendment Regulation (No. 2) 2023

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Section 490 of the *Transport Infrastructure Act 1994*

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

Amendments to the State Penalties Enforcement Regulation 2014

Addition of infringement notice offences for the *Transport Infrastructure (Public Marine Facilities) Regulation 2023*

The *Transport Infrastructure (Public Marine Facilities) Regulation 2023* (the Public Marine Facilities Regulation) aims to ensure the safe and efficient operation of public marine facilities in Queensland. One way this is achieved is through the regulation of behaviours at boat ramps and landings through the issuing of infringement notice fines.

The Public Marine Facilities Regulation was subject to a rewrite process in 2023. There were three infringement notice offences under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*, that were not included as infringement notice offences in the rewrite. This occurred because further consideration of their suitability as an infringement notice offence was required.

A policy objective of the *Transport and Other Legislation Amendment Regulation (No. 2) 2023* (the Amendment Regulation) is to add these three offences back into the *State Penalties Enforcement Regulation 2014* as infringement notice offences. This will facilitate effective enforcement to support the safe and efficient operation of boat ramps and landings.

Amendment to the Traffic Regulation 1962

Data block example

Driving at any speed above the posted speed limit increases the risk of speed-related crashes. The Camera Detected Offence Program utilises digital speed camera systems to detect speeding offences to discourage this dangerous behaviour and thereby improve road safety in Queensland.

A recent amendment to the *Traffic Regulation 1962* added a new photographic detection device and provided an example data block. A data block is the writing made by a photographic detection device associated with an image made by the device. The example was provided to show what each field meant, and it was not taken from an actual speeding offence. The elapsed time field, which is key to calculating the speed, in the example was not realistic.

A policy objective of the Amendment Regulation is amending the example so that it is a more realistic example of a speeding offence.

Amendment to the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

References to an authorised person

The transport of dangerous goods by rail is regulated under the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* (the Dangerous Goods by Rail Regulation). One of the objectives of the Dangerous Goods by Rail Regulation is to reduce as far as possible the risks associated with the transport of dangerous goods by rail. One way this is achieved is through compliance checks conducted by authorised persons. The term 'authorised persons' is used consistently throughout the Dangerous Goods by Rail Regulation, except for one provision which refers to an 'authorised officer'.

A policy objective of the Amendment Regulation is to remove the term 'authorised officer' and replace it with 'authorised person' to ensure consistency throughout the Dangerous Goods by Rail Regulation.

Amendments to the Transport Operations (Marine Safety) Regulation 2016

Lifejackets

The rising popularity of recreational boating in recent years has coincided with a rise in the number of marine incidents reported in Queensland. In 2021 alone, there were 380 marine incidents reported, which is a 12 per cent increase from the previous year. Of the 21 people reported to have fallen overboard, eight of those people lost their life. Of all those people who drowned, or were presumed to have drowned, none were wearing a lifejacket.

In addition, between 2017 and 2021 around half of the reported marine incidents involving a recreational ship that resulted in either serious injury (113 people) or loss of life (31 people) occurred in smooth waters.

A policy objective of the Amendment Regulation is to increase marine safety by removing a specific exception to carrying lifejackets when operating in certain smooth waters.

Update to Marine Standard reference

The *Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017* (the Standard) details how the general safety obligations for Queensland regulated ships can be met.

The Standard is referred to in the *Transport Operations (Marine Safety) Regulation 2016* (the Marine Safety Regulation), however, it refers to a previous version.

A policy objective of the Amendment Regulation is to amend the Marine Safety Regulation to refer to the current version of the Standard.

Amendments to the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Mareeba Shire inspection certificate exemption

An owner of a registered vehicle must have an inspection certificate in effect before they can dispose of a vehicle to another person. An inspection certificate includes a Certificate of Inspection (COI) or a safety certificate. A COI is required by vehicles that are a COI vehicle under section 70, which includes certain heavy vehicles and commercial vehicles. There are several exemptions to this requirement which are found in Schedule 2 of the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (the Vehicle Standards Regulation). Of relevance, for vehicles that are not COI vehicles, certain remote areas in Queensland are exempt from the requirement to have a safety certificate if the vehicle is not garaged within 50km of an authorised inspection station for the vehicle type.

Mareeba Shire was previously part of the Tablelands Region and was included as an exempt area. Mareeba Shire chose to leave the Tablelands Region and re-establish as its own shire. This de-amalgamation resulted in the need for Mareeba Shire to be added to the list of exempt areas.

A policy objective of the Amendment Regulation is to include Mareeba Shire as an exempt area.

Modification approvals for motorbikes

Most modifications for motorbikes require chief executive approval. Under section 23 of the Vehicle Standards Regulation, in order to approve a motorbike modification, the chief executive must be satisfied that the modification is either reasonably needed or likely to benefit the community and the modification must not make the vehicle unsafe to drive or park on a road. For motorbikes, meeting the criteria that the modification is either reasonably needed or likely to benefit the community is more onerous than for other light vehicles.

The original intent of this provision was to provide some flexibility for complex or unusual modifications and emerging technologies. However, in practice, most motorbike modifications need to meet the higher threshold of being reasonably needed or likely to benefit the community.

A policy objective of the Amendment Regulation is to simplify the approval criteria for motorbike modifications by removing the requirement that the modification is reasonably needed or likely to benefit the community.

Achievement of policy objectives

Amendments to the State Penalties Enforcement Regulation 2014

Addition of infringement notice offences for the *Transport Infrastructure (Public Marine Facilities) Regulation 2023*

The Amendment Regulation prescribes the following offences as infringement notice offences:

- Section 15 Launching or retrieving ships at boat ramps
- Section 16 Obstructing person's use of boat ramps or landings
- Section 17 Anchoring, mooring or placing ships near boat ramps or landings

Each of these offences have a maximum penalty of 20 penalty units and an infringement notice amount of two penalty units.

Amendment to the Traffic Regulation 1962

Data block example

The Amendment Regulation amends the data block example in Schedule 13, Part 1 by updating the elapsed time to make the example more realistic.

Amendment to the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

References to an authorised person

The Amendment Regulation replaces the term 'authorised officer' from section 126(3)(b) with the term 'authorised person'. It also removes the definition of 'authorised person' from the Dangerous Goods by Rail Regulation as it is already defined in the *Transport Infrastructure Act 1994*.

Amendments to the Transport Operations (Marine Safety) Regulation 2016

Lifejackets

Section 44 of the *Transport Operations (Marine Safety) Act 1994* provides that the owner and master of a ship must not operate the ship unless the ship is fitted with safety equipment required by regulation.

Section 13(1)(a) of the Marine Safety Regulation requires that a ship, other than a personal watercraft or tender, operating in smooth waters must be equipped with a required lifejacket for each individual on board who is 1 year or more. Section 13(2) provides an exception from the lifejacket requirement if the ship operates in a river, creek, stream or waters within breakwaters or revetments; is equipped with a way that a person on board can keep secure hold of the ship; and has a statement in the approved form for the ship that it has level floatation.

The Amendment Regulation removes the exception to the lifejacket requirement in section 13(2) so that the lifejacket requirement will apply in all smooth waters.

Update to Marine Standard reference

The Amendment Regulation amends a note in section 7 of the Marine Safety Regulation to refer to the current version of the Standard.

Amendments to the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Mareeba Shire inspection certificate exemption

The Amendment Regulation adds Mareeba Shire as an exempt area in Schedule 2, item 5. This achieves the policy objective of exempting vehicles that are not COI vehicles from inspection certificate requirements if there is no authorised inspection station for the vehicle type within 50km of the vehicle's garaged address.

Modification approvals for motorbikes

The Amendment Regulation amends section 23 of the Vehicle Standards Regulation so that in deciding on an application for a modification to a motorbike, the chief executive only needs to consider whether the modification would not make the vehicle unsafe to drive or park on a road.

The Amendment Regulation also removes a requirement under section 21 that applications to the chief executive for modifications are only required if the modification may adversely affect the safety of the vehicle. This is a redundant provision as any modification not covered by the Modification Guide has the potential to adversely impact safety. Removal of this requirement makes it clear that if a modification is not in the Modification Guide and does not fall within one of the other categories then it must be approved by the chief executive.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of:

- The *Transport Infrastructure Act 1994* to establish a regime that provides for the safety of railways and persons at, on or near railways.
- The *Transport Operations (Marine Safety) Act 1994* to provide a system that achieves an appropriate balance between regulating the maritime industry to ensure marine safety and enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.
- The *Transport Operations (Road Use Management) Act 1995* to provide for the effective and efficient management of road use in the State and provide a scheme for managing the use of the State's roads that will improve road safety in ways that contribute to overall transport effectiveness and efficiency.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Amendments to the State Penalties Enforcement Regulation 2014

Addition of infringement notice offences for the *Transport Infrastructure (Public Marine Facilities) Regulation 2023*

The benefits of the amendments include providing an efficient and effective means of enforcing offences at public marine facilities. The cost of implementing this amendment is minimal and will be met within existing budget allocations.

Amendment to the Traffic Regulation 1962

Data block example

The amendment will benefit road users by making the speed camera data block example more realistic. The cost of implementing this amendment is minimal and will be met within existing budget allocations.

Amendment to the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

References to an authorised person

The benefits of the amendment include maintaining consistent and up-to-date laws for the transportation of dangerous goods. There are no costs associated with implementing this amendment.

Amendments to the Transport Operations (Marine Safety) Regulation 2016

Lifejackets

The benefits of the amendment include increased marine safety and a reduction in the risk of serious injuries and fatal incidents. The costs of implementing this amendment include an advertising campaign to ensure the marine community is aware of the change, these costs will be met within existing budget allocations.

Update to Marine Standard reference

The benefits of the amendment include an increased understanding of the current general safety requirements for Queensland regulated ships, by removing any possible confusion as to what the current standards are. There are no costs associated with implementing this amendment.

Amendments to the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Mareeba Shire inspection certificate exemption

The amendment reflects long-held operational practices and is of benefit to customers that live in Mareeba Shire. There are no costs associated with implementing this amendment.

Modification approvals for motorbikes

The amendment benefits motorbike owners who wish to modify their vehicle by reducing their regulatory burden. The cost of implementing this amendment is minimal and will be met within existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles as required under the *Legislative Standards Act 1992*.

Consultation

Lifejackets

Consultation was undertaken in March 2023 with key stakeholders. Queensland Recreational Boating Council and the Gold Coast Waterways Authority were supportive of the proposal.

Royal Life Saving Society Queensland Inc was supportive of the proposal, but recommended an exception be included for Volunteer Marine Rescue (VMR) vessels. VMR vessels are exempt from this provision as they are a domestic commercial vessel and not a Queensland regulated ship.

Rowing Queensland was supportive of the proposal but did not want it to extend to rowing vessels. This section does not apply to rowing vessels as they are not captured by the application provision found in section 11 of the Marine Safety Regulation.

Australian Sailing, Marina Industries Association, Surf Life Saving Queensland, Volunteer Marine Rescue Queensland, Marine Teachers Association of Queensland, Boating Industry Association, and the Australian Volunteer Coast Guard were also consulted but provided no feedback.

Public consultation also occurred through social media with the public being broadly supportive of the change.

In accordance with the Queensland Government Better Regulation Policy (the Policy), a summary Impact Analysis Statement was undertaken which assessed the proposal as having some impacts of a minor nature. It assessed the benefits of the amendment as outweighing these impacts.

Other Amendments

No public consultation has been undertaken for any of the other amendments as they are all minor and machinery in nature.

In accordance with the policy, the amendments have been assessed as meeting the requirements of the Policy for minor and machinery amendments.