

Transport Operations (Marine Safety) Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 188

made under the

Transport Operations (Marine Safety) Act 1994

General Outline

Short title

Transport Operations (Marine Safety) Legislation Amendment Regulation 2024

Authorising law

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

Policy objectives and the reasons for them

Lifejackets and Personal Flotation Devices

Requiring mariners and their passengers to wear lifejackets when involved in certain heightened-risk boating activities, such as when crossing coastal bars, boating alone, at night or with children, aims to improve marine safety and reduce the loss of lives in marine incidents.

In 2023, there were 14 fatal marine incidents that resulted in 16 lives lost, which is higher than the average of 10.6 lives lost per annum over the previous ten years. Of those 16 people who tragically lost their lives at sea in 2023, 13 were known to not be wearing a lifejacket.

In 2023, 22 people were reported to have fallen overboard, and seven of those people lost their lives. A further 82 were involved in a capsizing incident, and six of those people lost their lives.

Over the three-years from 2021 to 2023, there were 65 reported incidents around coastal bars in Queensland. Of these, 40 (or 61 per cent) were reported as a capsizing, swamping, flooding, or person overboard incident. These resulted in 14 injuries, including two hospital admissions.

Boating at night carries a heightened risk due to lack of visibility of other boats and objects on or below the surface. In 2023 alone, approximately 92 (31 per cent) of the 292 reported marine incidents happened between 6pm and 9am on the following day (data covering exactly sunset to sunrise is unavailable).

Since 2021, 10 people drowned or are presumed to have drowned in Queensland waters who were boating alone in a small open boat, going overboard and not wearing a lifejacket.

A policy objective of the *Transport Operations (Marine Safety) Legislation Amendment Regulation 2024* (the Amendment Regulation) is to increase marine safety by requiring lifejackets to be worn for certain heightened-risk boating activities if a ship is to be taken to be equipped with the lifejacket.

A further policy objective is to phase out a transitional arrangement allowing the use of Personal Floatation Devices (PFDs) which are an older style of lifejacket that do not align with modern Australian Standards.

Lake Wivenhoe Marine Zone

The third policy objective of the Amendment Regulation is to establish a set of rules under the *Transport Operations (Marine Safety) Regulation 2016* (the Marine Safety Regulation) for the operation of ships at Lake Wivenhoe.

Lake Wivenhoe is a dam situated in South East Queensland. It is a popular location for on-water recreational activities. The Queensland Bulk Water Supply Authority (Seqwater) has responsibility for providing access to recreational opportunities at Lake Wivenhoe, and has site rules in place for recreational activities. The site rules are aimed at protecting a range of values, including safety, amenity, water quality and environmental protection. Amendments to the Marine Safety Regulation in the Amendment Regulation are intended to reinforce the site rules relating to the operation of ships and enable enforcement.

Achievement of policy objectives

Requirements to wear lifejackets

Amendments to section 24 of the Marine Safety Regulation expand the circumstances where lifejackets must be worn for a ship to be taken to meet the requirement for a ship to be equipped with a lifejacket to include:

- People boating alone, or only with children under 12 years on an open boat less than 4.8 metres in length whilst underway.
- People boating between sunset and sunrise on an open boat less than 4.8 metres in length whilst underway.
- People crossing a designated coastal bar on an open boat and on an open area (the deck) of a ship of any length.
- Children one year or more and under 12 years on an open boat or an open area (the deck) of a ship of any length whilst underway.

Under the Marine Safety Regulation, ships required to be equipped with lifejackets include Queensland regulated ships that require registration and others listed in section 11, where the requirement to equip a lifejacket is made under Part 3 or Part 4. Not equipping a required lifejacket as prescribed by the regulation is an offence under the general safety equipment obligation in section 44 of the *Transport Operations (Marine Safety) Act 1994* (the Act).

Amendments are also being made to section 20 of the *Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017* (the Standard) which

covers ships mentioned in section 18, including ships that are not powered or are powered by an engine less than 3kW. Amendments provide that a ship is not taken to be equipped with the required lifejacket unless worn by individuals aged 1 year or more when crossing a coastal bar. Not equipping the required lifejacket may be an offence under the general safety obligation about the condition of ships under section 41 of the Act.

Note, the lifejacket requirements do not extend to infants aged under 1 year as Maritime Safety Queensland (MSQ) does not recommend infants travelling on boats due to the increased risk to their safety if there is a marine incident. Most infants are too small to fit into the smallest toddler/child lifejacket available. There are challenges in designing lifejackets for infants and it is considered safer for them to not be onboard or for adults to hold on to them if they must be onboard.

Amendments to the Marine Safety Regulation and the Standard requiring lifejackets to be worn for a ship to be taken to be equipped will commence on 1 December 2024.

Amending transitional provision to expedite the phase out of PFDs

Amendments are being made to transitional provisions in the Marine Safety Regulation and the Standard so that from 1 September 2025 PFDs, a style of lifejacket made to now outdated Australian Standards, will no longer be suitable for meeting lifejacket requirements.

Under current transitional provisions, a Queensland regulated ship that is required to be equipped with a lifejacket can be equipped with PFDs, if they are within their serviceable life. The current Standard for lifejackets is AS 4758, which was originally published in 2008. The PFDs were manufactured to the now outdated standards AS 1512, AS 1499, and AS 2260. Lifejackets manufactured to AS 4758 are the safest in Australia due to a simpler rating system, additional safety features, better design, and increased buoyancy. It has now been over a decade since the outdated PFD standards were superseded.

Lake Wivenhoe Marine Zone

The Amendment Regulation achieves its third policy objective by amending the Marine Safety Regulation to establish a Lake Wivenhoe marine zone. The requirements for the marine zone are that the owner or master of a ship must not, within the marine zone, operate a ship—

- That is a personal watercraft.
- That is powered by an engine that is not an electric engine, a 4-stroke engine or a 2-stroke direct injection engine.
- At a speed of more than six knots.
- Between sunset on a day and sunrise on the next day.
- For towing anything, including a person (e.g. water-skier).
- Within a prohibited area near the dam wall.

The Amendment Regulation provides exemptions from the requirements for Seqwater employees carrying out shipping inspector functions under the Act and Seqwater employees and contractors performing functions under the *South East Queensland Water (Restructuring) Act 2007*. It also provides a speed limit exemption for sailing ships participating in an authorised aquatic event, and ships used for fish stocking activities under a *Fisheries Act 1994* permit. Existing exemptions from marine zone requirements for enforcement officers and emergency, rescue and life saving activities will continue to apply under sections 96(2)(c) and 178(2) of the Marine Safety Regulation.

The existing offence provision for contravening a marine zone requirement, under section 178(1) of the Marine Safety Regulation, will apply to contraventions of the Lake Wivenhoe marine zone requirements. As currently provided for under the *State Penalties Enforcement Regulation 2014*, infringement notices for contravention of a marine zone requirement may be given by shipping inspectors appointed under the Act.

The Amendment Regulation also includes minor clarifying amendments to the Marine Safety Regulation that are of a grammatical nature, including an amendment to, and relocation of, the definition of sailing ship.

Consistency with policy objectives of authorising laws

The Amendment Regulation is consistent with the policy objectives of the Act 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.
- Establish a system under which marine safety and related marine operational issues can be effectively planned and efficiently managed.
- Manage the operation and activities of ships.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

There are no feasible alternative ways to achieve the objectives other than through regulatory amendments.

Benefits and costs of implementation

Lifejackets and PFDs

The benefits of the Amendment Regulation include increased marine safety and a reduction in the risk of serious injuries and fatal incidents.

The expanded requirements for lifejackets to be worn will not impose any costs on the public as the requirements will only apply in certain circumstances and in relation to ships that are already required to be equipped with lifejackets. Prior to commencement of the new requirements on 1 December 2024 a communications campaign will inform the public of the new requirements.

Expediting the phase out of PFDs will mean that where PFDs are still in use, they will need to be replaced with AS 4758 compliant lifejackets. This cost will range between \$20 and \$200 depending on the style and type of lifejacket chosen. These potential costs should in reality be minimised as non-compliant lifejackets designed to superseded standards are now more than 10 years old and should have already been replaced according to manufacturers' standards. A communications campaign to inform the public will be delivered in late 2024 and in the lead up to 1 September 2025 when the PFDs will need to be replaced.

The cost of communications campaigns and other implementation costs will be met from the existing budget of the Department of Transport and Main Roads (TMR).

Lake Wivenhoe Marine Zone

The introduction of a marine zone at Lake Wivenhoe provides safety benefits to Lake Wivenhoe users. Ancillary benefits include protection of the water supply and protection of the natural environment, amenity, and shoreline.

The introduction of the marine zone does not impose costs on the compliant community, local businesses or the Queensland government. As the rules already exist as site rules imposed by Seqwater, the only regulatory impact is potential exposure to penalty for non-compliance.

Seqwater, the proposing entity for the marine zone, will deliver communications about the marine zone requirements, including signage. Seqwater will also monitor compliance with the marine zone requirements.

Consistency with fundamental legislative principles

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

Consultation

Requirements to wear lifejackets

Consultation was undertaken in 2022 with the key industry stakeholders and the public. Public consultation occurred through a Queensland Government Get Involved survey which was promoted online through TMR's social media channels and the MSQ website.

Key industry stakeholders were invited to respond to the Get Involved survey including the Boating Industry Association, Queensland Recreational Boating Council, Volunteer Marine Rescue Queensland, Surf Life Saving Queensland, Royal Life Saving Queensland, Rowing Queensland, Marina Industries Association, BoatSafe Queensland, and Australian Sailing. The Gold Coast Waterways Authority was also asked to respond to the survey.

Some industry stakeholders also corresponded with TMR directly, providing specific feedback beyond the survey. Some industry stakeholders provided suggestions to extend all of the proposed requirements to ships longer than 4.8 metres. However, the proposed amendments are targeted at the identified heightened-risk behaviours and expanding all changes to cover ships of any length would require further evidence and consultation.

Survey outcomes, which were anonymous, showed varied responses from the public. The public predominantly supported proposed reforms, and when reforms were unsupported, some suggestions for changes were provided. For boating alone requirements, the public feedback received was largely unresponsive. Those who were unresponsive indicated they were also the members of the public who boated alone and never wore a lifejacket while doing so. The counter to this is that recreational boating industry stakeholders such as the Queensland Recreational Boating Council and Boating Industry Association provide strong support for the proposed reforms. Further, Queensland's proposed rules will now closely align with other jurisdictions such as New South Wales, Victoria, Tasmania, South Australia and Western Australia. Boating alone is considered a heightened risk activity, supported by very strong evidence over many years that in nearly all fatal accidents that resulted in drowning the deceased persons were not wearing a lifejacket. It is therefore anticipated that requiring lifejackets when boating alone while underway will save lives.

Nearly half of respondents supported the wearing of lifejackets at night. Some respondents suggested changes to proposed laws, such as only requiring wearing lifejackets at night while underway. This resulted in changes to the proposal so that the requirement to wear lifejackets at night will only apply whilst underway.

Most respondents were very supportive of children wearing lifejackets in broader circumstances. Further, most respondents were very supportive of mandating the wearing of lifejackets while crossing a coastal bar.

Amending transitional provision to expedite phase out of old-style PFDs

Consultation was undertaken in 2022 with the key industry stakeholders and the public.

Key industry stakeholders were directly engaged including the Boating Industry Association, Queensland Recreational Boating Council, Volunteer Marine Rescue Queensland, Surf Life Saving Queensland, Royal Life Saving Queensland, Rowing Queensland, Marina Industries Association, BoatSafe Queensland, and Australian Sailing. The Gold Coast Waterways Authority was also consulted.

Industry stakeholders consulted either supported or did not provide feedback. Royal Life Saving Queensland recommended a community communication program in advance of implementation of the PFD changes, and this is being undertaken.

In preparing its community communication program for all amendments, MSQ will undertake external education and communications to ensure the public understands the changes. This will be undertaken through stakeholder and industry engagement, social media and other communication channels, for example notification on the MSQ website and in maritime newsletters.

For all amendments, in accordance with the *Queensland Government Better Regulation Policy* a summary Impact Analysis Statement was undertaken which assessed the proposals as having some impacts, but not significant impacts. It assessed the benefits of the amendment as outweighing these impacts.

Lake Wivenhoe Marine Zone

As required under the Marine Safety Regulation for a government entity proposing a marine zone, Seqwater consulted with the Brisbane Harbour Master and the Somerset Regional Council, and published details of the proposal and invited written submissions in a local newspaper. Direct engagement, signage, website and social media platforms were also used to provide information about the proposal and the submission period to the community.

No concerns were raised by the Brisbane Harbour Master or the Somerset Regional Council. The majority of respondents to public consultation supported the introduction of the marine zone, however recreational sailing stakeholders considered the six-knot speed limit to be inappropriate for sail boats. This has been addressed through an exemption from the speed limit for sail boats participating in aquatic events.

In accordance with the Queensland Government Better Regulation Policy, a summary Impact Analysis Statement was prepared, as the proposal was assessed as having impacts that are not significant.