

Impact Analysis Statement

Minor and Mechanical Impact Analysis Statement

Details

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| Lead department | Department of Transport and Main Roads |
| Name of the proposal | Multiple minor and machinery proposals described below. |
| Submission type | Minor and Machinery |
| Title of related legislative or regulatory instrument | <i>Traffic Regulation 1962</i> <i>Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018</i> <i>Transport Infrastructure (Public Marine Facilities) Regulation 2023</i> <i>Transport Operations (Marine Safety) Regulation 2016</i> <i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021</i> |
| Date of issue | 8 September 2023 |

| Proposal type | Details |
|-------------------------------|---|
| Minor and machinery in nature | <p>The following proposals are machinery in nature and do not result in a substantive change to regulatory policy or new impacts on business, government or the community.</p> <p><i>Traffic Regulation 1962</i></p> <ul style="list-style-type: none"> Amendment of Schedule 13, part 1 of the <i>Traffic Regulation 1962</i> updating an example in relation to data block displays to maintain consistency with other examples. <p><i>Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018</i></p> <ul style="list-style-type: none"> Amendment to section 126 of the <i>Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018</i> to correct a reference from 'authorised person' to 'authorised officer'. <p><i>Transport Infrastructure (Public Marine Facilities) Regulation 2023</i></p> <ul style="list-style-type: none"> Amendment to the <i>Transport Infrastructure (Public Marine Facilities) Regulation 2023</i> (Public Marine Facilities Regulation) to insert penalty infringement notices (PIN) for offences under sections 15, 16 and 17. These PINs were contained in the expired <i>Transport Infrastructure (Public Marine Facilities) Regulation 2011</i> and were contained in the Sunset Review of the expired regulation. Due to time constraints the PINs could not be included in the drafting of the re-made Public Marine Facilities Regulation requiring this amendment to continue the same policy intent in the Public Marine Facilities Regulation. <p><i>Transport Operations (Marine Safety) Regulation 2016</i></p> <ul style="list-style-type: none"> Amendment to section 7(a) of the <i>Transport Operations (Marine Safety) Regulation 2016</i> to update a reference from the <i>Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2006</i> to the <i>Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017</i>. |

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| | <p><i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021</i></p> <ul style="list-style-type: none"> Amendment of Schedule 2, Item 5 of the <i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021</i> to include Mareeba, previously included in the Tablelands Regional Council, as an exempt area following the de-amalgamation of the Tablelands Regional Council. Amendment of sections 21 and 23 of the <i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021</i> to clarify that applications for modifications to motorbikes and motor trikes may be approved if the chief executive is satisfied that the modification would not make the vehicle unsafe to drive or park on a road. |
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Summary Impact Analysis Statement

Details

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| Lead department | Department of Transport and Main Roads |
| Name of the proposal | Amendments to the <i>Transport Operations (Marine Safety) Regulation 2016</i> to remove the exceptions for carrying lifejackets on ships operating in smooth waters |
| Submission type | Summary IAS |
| Title of related legislative or regulatory instrument | <i>Transport Operations (Marine Safety) Regulation 2016</i> |
| Date of issue | 25 August 2023 |

| Proposal type | Details |
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| Regulatory proposals where no RIA is required | <p><i>This proposal relates to regulatory proposals to prevent injury or death to persons in Queensland waterways. No RIA is required under the Better Regulation Policy.</i></p> <p><i>NB: this is a retrospective IAS, already considered by the Office Best Practice Regulation as Cat K and provided an exclusion.</i></p> |

What is the nature, size and scope of the problem? What are the objectives of government action?

The *Transport Operations (Marine Safety) Act 1994* (TOMSA) provides that the owner and master of a ship must not operate the ship unless the ship is safe. This general safety obligation extends to the carriage of safety equipment specified in a regulation.

Section 13 of the *Transport Operations (Marine Safety) Regulation 2016* (TOMSR) requires an owner or master of a ship (other than a personal watercraft or tender) operating in smooth waters to be equipped with required lifejackets for each person (1 year or older) on board. Smooth waters include certain waters outlined in Schedule 8 of TOMSR, as well as rivers, creeks, streams and lakes, waters within breakwaters or revetments and within half a nautical mile from land within partially smooth water limits.

However, section 13(2) provides an exception to this rule, stating that the ship does not need to be equipped with lifejackets if it:

- Is operating in a river, creek, stream or waters within breakwaters or revetments.
- Has grab lines, grab rails, or another permanent means of giving each person on board a way of keeping a secure hold to the ship.
- Has a statement of level flotation.

Maritime Safety Queensland (MSQ) sees the rising popularity of recreational boating in recent years coinciding with a rise in the number of marine incidents being 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, statistics show that between 2017 to 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 those smooth waters listed in s13(2)(a) of TOMSR.

While an exception to carry lifejackets for those on board a ship operating in smooth waters has been in place since at least 1996, MSQ has grown increasingly concerned with how it is impacting on marine safety. Statistics show that over the last 20 years there were 128 drownings, or presumed drowning, of which only seven people are known to have been wearing a lifejacket.

MSQ has a role to protect Queensland's waterways and the people who use them. This is achieved through regulation on the maritime industry to ensure marine safety. The general safety obligations to operate ships safely, encompasses ensuring adequate levels of safety equipment, such as lifejackets, are carried on board. It is universally accepted that lifejackets can prevent drownings and lives being lost at sea. In the event of an emergency at sea (such as capsizing, flooding or swamping) people on board cannot wear a lifejacket if the ship is permitted to not be equipped with them.

In an effort to further improve marine safety in Queensland, MSQ has identified the need to amend TOMSR to remove this exception.

What options were considered?

1. Maintain status quo and retain the exception endangering lives.
2. Make recommendations through education campaigns. While MSQ continues to educate boat users on the effectiveness of safety equipment carriage and use, particularly for lifejackets, people continue to operate their boats without using lifejackets, some of whom end up in a situation that requires rescue or recovery.
3. Make regulatory amendments. The proposal empowers the original intention of TOMSA and encouraging safe boating culture which will improve by normalising carriage of lifejackets, with a potential positive impact on other safety equipment carriage as well.

What are the impacts?

The proposed amendments require lifejackets to be equipped in situations that, according to the department's analysis, are a significant contributor to recreational boating deaths.

Further, most ships are expected to already comply with the new requirements, especially if they also operate in areas where the current lifejacket exceptions do not apply.

Lifejacket:

- Some customers will need to purchase lifejackets if they currently only ever travel in the areas set out by s13 of TOMSR and therefore do not currently carry lifejackets. MSQ considers the number of people required to buy life jackets to be extremely low, if not nil, as most ships expected to comply with these requirements already carry lifejackets.
- The department's scan of retailers indicates a price range of \$20 to \$200 per lifejacket, depending on style choice.
- Analysis of recent marine incidents indicates that a significant proportion of fatalities occurred in smooth waters where victims were not wearing lifejackets.
- The obligation to wear a lifejacket and, in few circumstances to buy a lifejacket, are reasonable requirements when considering the that not wearing or carrying lifejackets is a significant contributor to deaths.

Grab rails:

- Whether or not ships have grab rails the risk of drowning relating to lifejacket use remains.
- Incidents in which someone has passed away indicate the ships have grab rails.
- No cost impact is associated with this amendment.

Level flotation:

- The provision for statements of level flotation is difficult to monitor or enforce on-water because older ships do not necessarily possess such documentation, and the level flotation status can be verified only through professional examination.
- MSQ now measures flotation by reading a ship's Australian Builders Plate (for vessels manufactured after 2006) and this provision is no longer relevant.
- No cost impact is associated with this amendment.

Conclusion:

After taking into account all the impacts, this amendment both addresses the immediate issues, contributing substantially to saving lives, and providing the capacity to ensure safer boating.

- There is no cost to government.
- There is no cost to people who already own lifejackets.
- There is minimal cost to people who do not currently own lifejackets.
- It provides greater confidence that the MSQ is providing an appropriate level of regulation ensuring Queenslanders' safety.

While the proposal will result in costs to boat owners, the expected costs should not have a large impact on the sector. The costs are further mitigated by a reduction in drownings in smooth waters which are current at significant levels.

Who was consulted?

Queensland Recreational Boating Council
Royal Life Saving Queensland
Rowing Queensland
Queensland Police Service
Gold Coast Waterways Authority
Department of Education

What is the recommended option and why?

The amendment to remove section 13(2) of TOMSR supports the general safety obligations imposed on the owner and master of a ship to provide adequate levels of safety. It also fundamentally improves MSQ's effectiveness in achieving its objectives under TOMSA, including its management of marine safety and related marine operational issues, while also still maintaining an appropriate balance between safety and cost.

Statistics, as well as observations made by MSQ's marine officers during operational activities, indicate that removing section 13(2) of TOMSR will help reduce operational safety issues in future and better ensure marine safety in Queensland. The current application of the exception presents compliance and enforcement challenges for MSQ effectively dealing with people who breach the provision. In addition, many of the terms contained within the exception are open to interpretation because they are not defined in maritime legislation, which is cause for concern and confusion in our boating communities.

Level flotation refers to the amount of flotation a ship has in its floor or seats. Level flotation allows a ship to remain afloat even if it is flooded and has crew and equipment on board. Modern ships are provided with an Australian Builders Plate that states the type of flotation a ship has. The requirement to have a statement of level flotation is outdated. It is difficult for people to establish evidence that an older ship has level flotation if there is no Australian Builders Plate that states the boat as level flotation. This cannot be established by MSQ at intercept as it requires an examination from a marine industry professional of the fitting of foam or airtight buoyant compartments of the ship.

Grab lines and rails are a permanent means of giving each person on board a way of keeping secure hold of the ship. Regardless of the presence of lines and rails, people can still fall overboard and have no means of staying afloat. The risk of drowning related to lifejacket use remains regardless of the presence of lines and rails.

MSQ estimates that the percentage of ships in Queensland currently and lawfully operating under this exception to be low, based on those observations made by MSQ marine officers during operational activities. Most ships that operate in smooth waters already comply with the rule, rather than the exception, and carry adequate levels of lifejackets on board. MSQ is not aware of any court proceedings relating to an offence for which the exemption has been relied on as a defence.

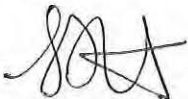
MSQ also considers that the perceived benefits to marine safety in removing section 13(2) of TOMSR justify, and are balanced with, the costs imposed on those few ship owners or masters who may be required to purchase lifejackets to ensure that their ship is adequately equipped for those on board.

Impact assessment

Qualitative discussion of the scale of cost impact is shown above.

There are no government costs associated with this proposal.

Signed



Sally Stannard
Acting Director-General

Date: 9/11/23



Mark Bailey MP
Minister for Transport and Main Roads
Minister for Digital Services

Date: 20/11/23