

Queensland



Regulatory Impact Statement for SL 1998 No. 19

Transport Operations (Marine Safety) Act 1994

**TRANSPORT OPERATIONS (MARINE
SAFETY—CREWING FOR COMMERCIAL
AND FISHING SHIPS) INTERIM STANDARD
1998**

Statement title

This Regulatory Impact Statement outlines the impact of the proposed standards to be made pursuant to the *Transport Operations (Marine Safety) Act 1994*. The proposed standards are listed hereunder—

Transport Operations (Marine Safety—Qualifications for Accreditation for Ship Designers, Ship Builders and Marine Surveyors) Standard 1997

Transport Operations (Marine Safety—Designing and Building Commercial and Fishing Ships) Standard 1997

Transport Operations (Marine Safety—Commercial and Fishing Ships Miscellaneous Equipment) Standard 1997

Transport Operations (Marine Safety—Recreational Ships Miscellaneous Equipment) Standard 1997

Transport Operations (Marine Safety—Crewing for Commercial and Fishing Ships) Standard 1997

Transport Operations (Marine Safety—Recreational Ship Approvals) Standard 1997.

Necessity for standards

The *Transport Operations (Marine Safety) Act 1994* imposes general safety obligations upon people within the maritime industry. The general safety obligations are generally intended to be performance based rather than prescriptive and to allow these people to find a more cost efficient ways of achieving safety. The above standards are thus necessary to assist the persons within the maritime industry to understand the general safety obligation and provide guidance for these people about matters concerning the general safety obligations.

Authorising law

The proposed standards will be made pursuant to the *Transport Operations (Marine Safety) Act 1997* sections 45 to 50 which provides for the chief executive to make standards and for the Governor in Council to approve the standards.

Policy objectives of the standards

The policy objectives of the proposed standards are to—

- (a) help persons within the maritime industry understand the general safety obligations;
- (b) provide guidance about marine safety matters and issues that are not indicated by regulation;
- (c) to assist in the effectiveness and efficiency of the Queensland maritime industry;
- (d) provide a prescriptive or performance based approach in the way ships are designed, built and operated;
- (e) to assist maritime industry people find cost effective ways of achieving safety;
- (f) to assist in the accreditation of ship designers, ship builders and marine surveyors for their functions in the maritime industry;
- (g) to assist in the approval of applicants for the conducting of training and examinations for recreational ship masters licences.

Achieving policy objectives

Part of the policy objectives are achieved by encouraging persons within the marine industry who are suitably qualified and experienced to become accredited for either of the disciplines of ship designer, ship builder or marine surveyor. These persons thus have the ability to complete the necessary certificates of compliance required for the issue of the certificates of registration and or survey as required by regulation. These persons have the general safety obligation placed on them by the *Transport Operations (Marine Safety) Act 1994*, section 40 and the standards are a means of guidance for these persons in achieving their general safety obligation.

Other parts of the policy objectives are achieved by providing guidance to the owners and masters of ships in the equipping and crewing of these ships. The owners and masters have the general safety obligation placed upon them by the *Transport Operations (Marine Safety) Act 1994*, section 41. The standards outline both prescriptive and performance methods for equipping and crewing ships other than the safety equipment and crew required by regulation.

There is also the provision for the possibility of a person not using the standards. A person may decide not use the standards as a guide which then may establish a noncompliance with the general safety obligation. However the accredited person or owner may satisfy a court that either the ship design, ship building, marine surveying, ship crewing or miscellaneous equipment was satisfactory despite the standard.

Consistency with the authorising law

The proposed *Transport Operations (Marine Safety) Standards 1997* has been drafted with reference to the *Transport Operations (Marine Safety) Act 1994*. In particular section 29 defines “Achieving an appropriate balance between safety and cost” and section 31 defines “What is a standard”.

Section 29

(1) This Act is about marine safety.

(2) Even though it is possible to regulate to achieve the highest level of safety, this would ignore the impact of the regulation on the effectiveness and efficiency on the Queensland maritime industry.

(3) Therefore, this Act establishes a system to achieve an appropriate balance between safety and cost.

Section 31

(1) Standards will help people to understand the general safety obligations.

(2) Standards may deal with most matters about marine safety and issues affecting marine safety that may be dealt with by regulation, including, for example, the building, crewing and operation of ships and cargo handling.

(3) However, a standard may not prescribe offences, fees or charges.

(4) Standards are made by the chief executive and approved by the Governor in council.

(5) The chief executive must go through a consultation process before a standard can be approved including the advice of the Marine Board.

(6) This consultation process allows people in the maritime industry to comment on a standard and make suggestions for changes, including changes that may result in a more effective and efficient maritime industry.

The proposed standards are consistent with these objectives and the provisions of the Act.

Alternatives to the proposed standards

If the Government were not to implement the standards for ship designers, ship builders, marine surveyors, ship owners and masters there would be a lack of guidance for these persons in their ability to meet the general safety obligation. The main standard that would be available to these persons is the uniform shipping code which is prescriptive based and would not provide the flexible approach which is provided for in the performance based section of the proposed standards.

Other Australian or international standards which could be applicable as guidance to these persons may not have the flexibility provided for under the objectives of the *Transport Operations (Marine Safety) Act 1994*.

Persons within the maritime industry may also resort to general industry practice which may vary from region to region and thus introduce inconsistent compliance for the general safety obligation.

The other approach for an alternative to these standards would be for the Government to regulate for the detail contained within the standards. This would introduce a rigid structure for the processes in the standards thus removing the flexibility introduced by the *Transport Operations (Marine Safety) Act 1994*.

It would also be necessary to change sections of this Act. It is also necessary for the proposed *Transport Operations (Marine Safety—Qualifications for Accreditation for Ship Designers, Builders and Marine Surveyors) Standard 1997*, to be implemented as this standard is one of the standards called up by *Transport Operations (Marine Safety) Regulation 1995*. This standard provides the Department with guidelines which are subordinate legislation for the assessment of applicants for accreditation as ship designers, ship builders or marine surveyors. Should the proposed standard not be implemented the Department would be unable to assess applicants for accreditation.

The other standard called up by the *Transport Operations (Marine Safety) Regulation 1995* is *Transport Operations (Marine Safety—Recreational Ship Approvals) Standard 1997*. This standard provides the Department with guidelines for the assessment and approval of applicants for the conducting of training and examinations for recreational ship masters licences. Should the proposed standard not be implemented the Department would be unable to approve applicants for training and examination for recreational ship masters licences.

The proposed standards will provide the necessary guidance and flexibility for the accredited and other maritime persons to meet the general safety obligations in their endeavours within the maritime industry.

Benefits and costs of the proposed standards

The cost benefit analysis has been conducted utilising the methodology developed by the Business Efficiency Unit of the Department of Tourism, Small Business and Industry.

A qualitative assessment only has been completed for the analysis which combined the effects of the six (6) standards. The assessment was made up of the non financial and financial factors impacting upon the stakeholder groups of Government, Business and the Community.

The standards may not prescribe for offences, fees or charges.

Impacts on government

The overall effects on Government as indicated on the summary sheet is a negative effect which is based on the following factors.

- The major impact for the Government is in the health and safety and welfare sector for non financial factors. The standards are for processes for the protection and safety of persons.
- The major cost for the Government is in the development and establishment of the standards with further costs in overseeing their implementation.

Impacts on business

The overall effects on business as indicated on the assessment summary sheet is a positive which is based on the following factors.

- The benefits for business in the non financial factors are in the flexible approach the persons may use in deciding issues of marine safety. The overall effects of the standards in providing guidelines for protection and safety of persons within the maritime industry.
- The financial effects include the processes required to meet the criteria required for the business to meet the general safety obligation.

Impacts on community

The overall effects on the community as indicated on the assessment summary sheet is a positive effect provided by the following factors.

- The standards mainly provide processes and procedures for the safety and protection of persons within the community.
- The standards are to provide safety and protection to the community relating to vessels operating in Queensland waters.

Fundamental legislative principles

The proposed standards does not infringe fundamental legislative principles and is consistent with the *Legislative Standards Act 1992*.

National competition policy

While the *Transport Operations (Marine Safety) Act 1994* and *Transport Operations (Marine Safety) Regulation 1995* have been identified as containing issues requiring assessment under National Competition Policy, the contents of the standards are not related to these matters.

The *Transport Operations (Marine Safety) Standards* are based on international and national codes of practice and are designed to assist and provide guidance to the maritime industry regarding their general safety obligations.

Accordingly, the proposed new standards do not require assessment under National Competition Policy.

Conclusion

The proposed standards have been drafted to assist the maritime industry in meeting their general safety obligation and provide guidelines to maintain this obligation.

The standards also provide guidance to persons within the maritime industry and the Department for the qualifications necessary for application and assessment of their individual suitability for accreditation.

The standards also provide guidance for persons within the maritime industry and the Department for application and assessment for their individual suitability in the conducting of training and examination for recreational ship masters licences.

The standards will assist the system for marine safety established under the *Transport Operations (Marine Safety) Act 1994* which is designed to allow related marine operational issues to be effectively planned and efficiently managed with due consideration marine safety issues which contributes to overall transport efficiency.

Comment

Comment concerning the Regulatory Impact Statement may be made up to 28 days after the publication of the notice and can be forwarded to—
Director (Maritime Safety)

Maritime Division

Queensland Transport

GPO Box 2595

Brisbane Q 4001.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Transport.