

# Transport Operations (Marine Safety) Transitional Regulation 2016

Explanatory notes for SL 2016 No. 155

made under the

*Transport Operations (Marine Safety) Act 1994*

## General Outline

### Short title

*Transport Operations (Marine Safety) Transitional Regulation 2016*

### Authorising law

Section 256 of the *Transport Operations (Marine Safety) Act 1994*.

## Policy objectives and the reasons for them

The Commonwealth's *Marine Safety (Domestic Commercial Vessel) National Law* (the National Law) commenced on 1 July 2013 and introduced a national system for regulating *domestic commercial vessels* (DCVs). These are vessels that are used in connection with a commercial, governmental or research activity.

On the commencement of the National Law, the majority of ships that were previously regulated as *commercial ships* or *fishing ships* under Queensland legislation became DCVs and were regulated under the National Law in relation to general safety duties, vessel construction requirements, vessel operation and crew competency.

Queensland law continues to regulate ships that are used solely for private recreation and certain lower-risk ships that are expressly excluded from the National Law (including, for example, vessels owned by schools or surf-lifesaving organisations). These vessels are known as *Queensland regulated ships*.

Given the shared responsibility between the Commonwealth and the states for maritime regulation, it is essential to ensure that no vessels are left unregulated.

## Achievement of policy objectives

The *Transport Operations (Marine Safety—Transitional) Regulation 2016* (the Regulation) will be made under a transitional regulation-making power in *Transport Operations (Marine Safety) Act 1994* (TOMSA). The Regulation will provide that all ships which would previously

have been regulated under TOMSA as either commercial ships or fishing ships but which are not DCVs are to be regulated as *other Queensland regulated ships* under TOMSA. In accordance with the transitional regulation-making power, this transitional provision will have effect for one year.

## **Consistency with policy objectives of authorising laws**

The objectives of the Regulation are consistent with the objectives of TOMSA.

## **Benefits and costs of implementation**

Costs associated with the changes will be minimal and these will be met by existing budget allocations.

## **Consistency with fundamental legislative principles**

The Regulation will expand what are *other Queensland regulated ships* under TOMSA. This may be considered to not have sufficient regard to the institution of Parliament.

The Regulation is made under a transitional regulation-making power inserted by the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016* (the Marine Safety Amendment Act). This provision expressly allows a regulation to provide for savings or transitional matters to allow or facilitate the change from the operation of TOMSA as it exists immediately prior to the commencement of the amendments to the operation of TOMSA following the commencement of the amendments. The Explanatory Notes for the Marine Safety Amendment Act state that inclusion of this section was considered necessary because of the complexity of the legislative task and to ensure that any additional transitional matters that may arise can be dealt with in a timely matter.

As this is a matter that requires legislative intervention to ensure that all relevant marine safety regulations apply to commercial or fishing ships which are not DCVs, it falls within the intended scope of the provision. It is intended to confirm this position by amending TOMSA prior to the expiry of the Regulation.

## **Consultation**

As the Regulation will confirm the policy objective of the Marine Safety Amendment Act of creating a seamless interaction between Commonwealth and Queensland legislation for the regulation of DCVs, no consultation has been undertaken.