

# Transport Legislation Amendment Regulation 2017

Explanatory notes for SL 2017 No. 20

made under the

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport Legislation Amendment Regulation (No.1) 2017*

### Authorising laws

Sections 71 and 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

*Amrun compulsory pilotage area*

One of the key policy objectives of the regulation is to provide for the establishment of a compulsory pilotage area for coastal waters surrounding a proposed bauxite export facility on the eastern coast of the Gulf of Carpentaria. Upon declaration of a compulsory pilotage area all ships 50 metres or over in length operating within that area will be required to be under the conduct of a qualified marine pilot. The role of a pilot is to assist a ship's master and navigators to make a safe passage through a pilotage area. Queensland's major trading ports are subject to compulsory pilotage.

As such, the amendments are designed to help ensure the safety of vessels during the construction and operation of the Amrun export facility near Weipa.

Following Queensland and Commonwealth Government approvals, in November 2015 Rio Tinto announced that it would proceed with a major bauxite mining operation in the Amrun area south of Weipa. Bauxite will be shipped from Boyd Point to Australian and overseas refiners from a new purpose-built facility.

The changes to the *Transport Operations (Marine Safety Regulation) 2016* (Marine Safety Regulation) are consequential to amendments made to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* (Comalco Act), which now benefits Rio Tinto and provides for the establishment of a bauxite export facility in the Boyd Point area.

The Agreement under the Comalco Act provides that a compulsory pilotage area will be created and gives RTA Weipa Pty Ltd (RTA Weipa), a subsidiary of Rio Tinto, the right to provide pilotage services.

Conservancy dues offset the cost to the State of providing aids to navigation, but all such aids for the Amrun pilotage area will be installed and maintained by Rio Tinto at no cost to the State. As such, the amendment regulation provides an exemption from conservancy dues and, in addition, no pilotage fees will be set.

The amendments will not remove the ability of the government's regional harbour master to deal with marine pollution incidents, dangerous goods, extreme weather events, hazards and other marine safety issues. However under the Agreement, before exercising any powers the harbour master must consult with RTA Weipa if the exercise of a power would affect the company's rights. This is similar to a statutory arrangement that applies in Queensland's other ports.

Taken together the Agreement and the changes to the Marine Safety Regulation will help ensure the safety of vessels using the waters around the Boyd Point export facility during its construction and operation.

#### *Approved forms*

The Department of Transport and Main Roads has approved a large number of forms for use by customers to make applications to the department. This includes applications for a driver licence and applications for registration of a vehicle. Transport legislation requires that any application for these products must be made by completion of an approved form.

The amending regulation introduces flexibility into the application process for certain transport products. This will be done by removing the requirement that all administrative applications under the *Transport Operations (Road Use Management—Driver Licensing Regulation) 2010* must only be made using an approved form. This requirement will also be removed for applications for registration as well as transfer and cancellation of registration under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*.

## **Achievement of policy objectives**

#### *Amrun compulsory pilotage area*

The amendment regulation achieves the policy objective of helping to ensure the safety of vessels during the construction and operation of the Amrun export facility near Weipa by amending the Marine Safety Regulation as follows—

- Create the Amrun pilotage area and designate the entire area as a compulsory pilotage area. As a result any ship within the area that is 50 metres or more in length will be required to have a qualified marine pilot, supplied by the responsible pilotage entity for the area on board.

- Prescribe RTA Weipa Pty Ltd as the responsible pilotage entity for the area. RTA Weipa Pty Ltd will be responsible for arranging for the provision of pilotage services for its private export facility.
- Exempt ships using the compulsory pilotage area from the payment to the State of conservancy dues.

#### *Approved forms*

The amendment regulation achieves the policy objective by amending the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* to remove from all sections dealing with an administrative application process, the requirement that the application be made using an ‘approved form’.

The amendment regulation also inserts a new part 16A that will instead regulate how applications are to be made.

This new part provides that if there is an approved form for a particular transaction, that form may be used to make the application. The amendments will however allow the chief executive to approve alternative ways for a person to make an application. Information about the alternative way to apply including what supporting information is required must be included on the department’s website (see new section 129B). Supporting information could include evidence of identity and any relevant medical condition declarations.

However the amendments also ensure that the chief executive may only require information that is reasonably necessary for deciding the application for another purpose relating to the application. This reflects the safeguard contained in section 49 of the *Acts Interpretation Act 1954* regarding the type of information that may be required to be given in an approved form.

Similar amendments to the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* will ensure that the chief executive can approve an alternative way for a person to apply for initial registration, transfer of registration and the cancellation of registration of a vehicle (see new section 109B).

The amendments mean that the department will be able to make available to customers more convenient ways of making an application in appropriate circumstances. This could include for example allowing a customer to verbally request the renewal of a driver licence provided the customer produces the relevant supporting information.

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

### *Amrun compulsory pilotage area*

The amendments are consistent with the objectives of the Marine Safety Act to regulate the maritime industry to ensure marine safety and to manage the operations and activities of ships.

### *Approved forms*

The amendments are consistent with the objectives of the *Transport Operations (Road Use Management) Act 1995*, including in particular, the objective of providing for the effective and efficient management of road use in the State.

## **Inconsistency with policy objectives of other legislation**

The amendments are not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

### *Amrun compulsory pilotage area*

The amendments to the *Transport Operations (Marine Safety) Regulation 2016* will require the operator of a private export facility to arrange for the provision of pilotage services for shipping movements associated with the export of bauxite. There is a benefit in ensuring that vessel movements associated with the export facility are conducted safely to minimise the risk of marine incidents.

As the government will not be involved in engaging marine pilots or collecting fees for this compulsory pilotage area there will be no direct costs of these activities to the government. There will be no significant impact on the government or other stakeholders.

### *Approved forms*

The changes will enhance a customer's experience by not requiring the completion of a form where there is an appropriate and more convenient alternative that the department has made available. Other benefits may include a reduction in transaction times as well as reduced costs of printing, distributing, filing and manually checking paper forms.

The amendments are minor in nature and will not have a significant cost impact on government or other stakeholders.

## **Consistency with fundamental legislative principles**

### *Amrun compulsory pilotage area*

The amendments do not raise any issues relating to the fundamental legislative principles.

### *Approved forms*

The amendments are consistent with fundamental legislative principles as they require that information about any alternative ways to apply for transport products must be included on the department's website. The website must describe the way that is approved for making the application and also state any requirements with which an applicant must comply for making the application. Also, the amendments expressly provide that the chief executive cannot require information to be given other than that which is relevant to the application process.

## **Consultation**

### *Government consultation*

Consultation on the amending regulation was undertaken with the Department of the Premier and Cabinet, the Department of Justice and Attorney-General, Queensland Treasury and the Queensland Police Service. All agencies supported the amendments.

The Office of Best Practice Regulation (OBPR), Queensland Productivity Commission, was also consulted in relation to the approved form amendments.

OBPR advised that the proposed amendments were unlikely to result in significant adverse impacts and that no further analysis and assessment was required under the Treasurer's Regulatory Impact Statement system guidelines.

In accordance with The *Queensland Government Guide to Better Regulation*, OBPR was not consulted in relation to the amendments for the Amrun compulsory pilotage area. The Department of Transport and Main Roads applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category A—Regulatory proposals that make consequential amendments).

### *Public consultation*

No public consultation was undertaken given the private nature of the export facility and its remote location, though Maritime Safety Queensland will continue to liaise with RTA Weipa Pty Ltd.

No public consultation was undertaken on the approved form amendments as they are beneficial to transport customers. However, existing communication channels which advise customers how to make applications for driver licensing and vehicle registration products will be updated to inform customers of alternative ways of applying. Principally, this will be done via the department's website.