



Queensland

# **Transport Operations (Marine Pollution) Regulation 2008**

**Regulatory Impact Statement for SL 2008 No. 254**

made under the

*Transport Operations (Marine Pollution) Act 1995*

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**Regulatory Impact Statement for the remake of the  
*Transport Operations (Marine Pollution)  
Regulation 1995***

*The proposals identified in this Regulatory Impact Statement are for discussion purposes only. They do not represent a formal proposal or position of the Queensland Government.*

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## TITLE

Remake of the *Transport Operations (Marine Pollution) Regulation 1995*.

## 1.0 INTRODUCTION

The information set out in this discussion paper will be available for at least 28 days of public consultation.

This regulatory impact statement can also be accessed online at [www.msg.qld.gov.au](http://www.msg.qld.gov.au). Copies of the *Transport Operations (Marine Pollution) Act 1995* and *Transport Operations (Marine Pollution) Regulation 1995* can be accessed at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

The amendments proposed in this discussion paper, if carried, will result in a remake of the *Transport Operations (Marine Pollution) Regulation 1995*.

Further enquiries can be made by calling Kimberly Foster, Senior Policy Advisor on telephone 07 3120 7428.

## 1.2 How to respond to this regulatory impact statement

All members of the community are invited to comment on the information presented in this regulatory impact statement.

The closing date for providing comment on this regulatory impact statement is Friday 23 February 2007. Written submissions can be made to:

Mail: GPO Box 2595 Brisbane Qld 4001  
Marked "Attention: Remake of TOMP Regulation"  
Fax: 07 3120 7440  
Marked "Attention: Remake of TOMP Regulation"  
Email: [msgmail@msg.qld.gov.au](mailto:msgmail@msg.qld.gov.au)  
Marked "Attention: Remake of TOMP Regulation"

## 1.3 Public access to submissions

Stakeholders should be aware of the provisions of the *Freedom of Information Act 1992*. If a person seeks access to a particular submission, the *Freedom of Information Act 1992* requires Maritime Safety Queensland to grant access to the submission, unless certain exemptions apply.

If stakeholders want their submissions to be treated confidentially, this should be clearly indicated on the written submission to Maritime Safety Queensland.

## 2.0 BACKGROUND

Following an extensive review of existing legislation in 1992, the then Marine and Ports Division of Queensland Transport (now Maritime Safety Queensland) identified that reforms were needed to achieve improved protection for Queensland's marine and coastal environment.

The *Transport Operations (Marine Pollution) Act 1995* (TOMPA) and its subordinate legislation, the *Transport Operations (Marine Pollution) Regulation 1995* (TOMPR), commenced in 1995 to provide a legislative framework for these reforms.

There have been significant changes and growth in the maritime industry and boating community over the 10 years since 1995, in the way that ships are operated, the numbers of ships using Queensland's waterways and heightened community awareness of the importance of protecting the marine environment.

In addition there have been a number of incidents that have reinforced the importance of Queensland's marine pollution legislation.

Most recently in January 2006, the tug "Tom Tough" had an engine failure and punctured the hull of the bulk carrier "Global Peace" during berthing operations in Gladstone Harbour. As a result of the collision, approximately 25 tonnes of heavy fuel oil were discharged into Gladstone harbour. Under Queensland's marine pollution legislation, the Government responded to the incident. The legislation allows the Government to respond quickly and appropriately to these incidents and then recover the costs of responding and cleaning up the oil spilt from the ship, placing financial responsibility on the polluter.

In 2005, some 6,300 trading ships visited Queensland ports and approximately 10,000 trading ships transited through Queensland coastal waters. In March 2006 Queensland Transport reached 200,000 recreational boating registrations. As a result of the continually increasing usage of our coastal waters there is a compelling need and community expectation for the shipping industry and boating fraternity to share the responsibility of protecting Queensland's coastal waters from ship sourced pollution. The Regulation seeks to prevent deliberate and negligent discharges of pollution from ships and makes polluters accountable for their actions or inaction.

Since July 1997 Maritime Safety Queensland and its predecessor Queensland Transport's Maritime Division has mounted 27 successful prosecutions for oil spill offences under the TOMPR. In each case information about the prosecutions has been promulgated widely within the commercial, fishing and recreational boating communities to help encourage compliance with the legislation.

The discharge of sewage from ships contributes to reduced water quality, poses a human health risk, and decreases visual aesthetics of waterways. When sewage is pumped or discharged directly into the water, disease-carrying micro-organisms are released. Swimmers, water skiers and others who come in contact with water contaminated with human wastes can become ill. People who eat contaminated seafood, particularly oysters also risk contracting illnesses.

It was against this backdrop that amendments to the TOMPR were introduced in 2002 for improved ship sourced sewage management. These amendments allowed for the stipulation of a range of specific sewage management provisions in the Regulation.

The current Regulation supports the Act and specifies requirements to be adopted to minimise environmental and human health impacts from ship-sourced sewage.

The current sewage provisions in the Regulation are the product of extensive public consultation and reflect a considerable degree of compromise that reflects the intent of the legislation and the needs of a diverse range of stakeholders. Stakeholders felt the original TOMPR provisions were impractical and were too difficult to implement. As a result compliance with the legislation was low.

Both industry and the community expect the Government to take a lead role in providing a framework for the protection of the marine environment. Therefore it is vital that legislation keeps pace with and supports best practice for the prevention and control of ship sourced pollution.

The *Statutory Instruments Act 1992* provides that all subordinate legislation automatically expires unless otherwise determined. Maritime Safety Queensland is therefore conducting this review to ensure that the Regulation remains relevant and the Government's priorities for the protection of the marine and coastal environment can be achieved in balance with ensuring the efficiency and effectiveness of Queensland's marine industry.

This review will result in a remade TOMPR which considers the results of this consultation process.

### **3.0 ENGAGING THE COMMUNITY**

Maritime Safety Queensland values community participation, consultation and feedback as an essential tool for sound decision-making. We actively seek to collaborate with key stakeholders in shaping transport planning and policy development to improve the efficiency and effectiveness of the maritime industry in Queensland.

As part of the Regulation review process, Maritime Safety Queensland is extending an invitation to all stakeholders to comment on this Regulatory Impact Statement for the proposed remake of the Regulation.

### **4.0 AUTHORISING LAW**

Section 133 of TOMPA provides the head of power for the making of a Regulation.

### **5.0 POLICY OBJECTIVES**

TOMPA and the associated TOMPR are intended to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

The objectives of TOMPA include providing an approach to protecting Queensland's marine and coastal environment from ship-sourced pollutants (including oil, noxious liquid substances, sewage and garbage) that:

- Complements international standards and the approach of the Commonwealth and the other States; and
- Establishes Regulations to prevent and control the discharge of ship sourced pollutants in order to protect and preserve the Queensland marine environment; and
- Imposes obligations on all ship owners and masters to exercise responsibility for the marine environment by ensuring the containment of all specified pollutants onboard and their appropriate disposal.

The TOMPR provides the practical application of these and other objectives to allow the maritime industry and boating community to meet their obligations.

The Regulation currently has provisions for such matters as oil, noxious liquid substances, packaged harmful substances, sewage management, garbage, transfer operations, reporting requirements and samples. In addition the Regulation provides a number of schedules to support the provisions including the current English text of the International Convention for the Prevention of Pollution from Ships, 1973 (commonly known as MARPOL 73/78) and schedules covering nil discharge waters for sewage, treated or untreated. The Regulation also includes schedules for such things as designated areas, treatment system standards and a dictionary of terms used throughout the Regulation.

The provisions and schedules work together to provide guidance to the maritime industry and boating community.

To ensure that these matters are current, efficient and provide an appropriate balance between regulatory obligations and the operational realities for industry and the community, the TOMPR has been fully reviewed by Maritime Safety Queensland.

The review includes consideration of the feedback received from the industry and boating community over the past 10 years as to the effectiveness and applicability of the Regulation.

Some parts of the Regulation will not see any changes as the review has deemed them to be effective, efficient and providing the best possible outcomes for government, the maritime industry, boating community and the marine environment.

However, the review did identify a number of desirable changes to the TOMPR to improve useability, meet current drafting practices or to amend provisions to improve outcomes and continue to support the objectives of TOMPA.

## **5.1 Review of the Regulation**

The following is a brief summary of the review outcomes.

### **Part 1 – Preliminary**

This section deals with minor administrative matters that set out the application of the Regulation and certain definitions. The only change to this section will be the short title which will change to reflect the date the Regulation is remade. This has no impact on users and continues the effect of the Regulation without interruption.

### **Part 2 – Oil**

While this part will remain largely unchanged, the Office of Queensland Parliamentary Counsel (OQPC) did identify a number of minor administrative matters required to improve the language and readability of the part. This part mostly applies to larger ships rather than the average recreational ship.

### **Part 3 – Noxious liquid substances in bulk**

This part remains largely unchanged. It applies only to those large ships that carry noxious liquid substances as cargo, such as acid. This part does not apply to recreational ships, fishing ships or the majority of commercial ships registered and operating in Queensland, such as reef tourism ships. Minor changes to this part have been made to improve readability and are in line with current drafting practices. Extracts from the International Bulk Chemicals Code and the International Maritime Dangerous Goods Code will be included in the new Regulation to support provisions in this part. As with MARPOL 73/78, none of this information is subject to local variation as they are international conventions.

### **Part 4 – Packaged harmful substances**

This part is unchanged. It applies only to those large ships that carry packaged harmful substance as cargo. An example of a packaged harmful substance is ammonium nitrate and xanthates. This part does not apply to recreational ships, fishing ships or the majority of commercial ships registered and operating in Queensland, such as reef tourism ships.

### **Part 4A – Sewage management**

The existing sewage provisions of the Regulation commenced on 1 January 2004 and stipulate the waters where discharges of ship sourced sewage are prohibited.

The legislation gave ship owners and operators a number of choices in how they achieve compliance. These options have also established loopholes and allowed ships to avoid complying with the intent of the Regulation.

The review identified a number of desirable amendments to ensure compliance with the original intent of the sewage provisions. Currently ships are required to have the appropriate equipment onboard to meet the discharge requirements under the legislation. Ships generally have purchased the right equipment but Maritime Safety Queensland has found that a number of ships do not have the equipment in the appropriate working order. As a result, we are aware of people who still discharge through their fixed toilet in contravention to the legislation, but to take action Maritime Safety Queensland has to catch them discharging before an offence is committed.

Many people continue to have fixed toilets but have not changed the configuration to meet the requirements under the legislation. Also, many people have purchased a portable toilet, but anecdotal evidence shows that some of them do not use the portable toilet and continue to use the fixed toilet and unlawfully discharge through the fixed toilet.

The proposed amendments will require ship owners and masters to not only comply with discharge standards contained within the Regulation, but to also ensure that the equipment onboard to manage sewage complies with the intent of the legislation. For example, it is proposed that all fixed toilets will require macerators to be fitted and that the macerators cannot be bypassed. The offence will be that there is no macerator attached to the fixed toilet or that the macerator is being bypassed.

Another proposed amendment will ensure that manufacturers are provided with clearer instructions for determining the performance specifications of sewage treatment systems. This will provide those operators who choose to fit sewage treatment systems to their ships as their preferred sewage management option, with greater confidence that the various systems meet and/or exceed the designated level of sewage quality characteristics for the respective grade of system (i.e. Grade A treated sewage, Grade B treated sewage or Grade C treated sewage).

Amendments have been made to require all ship owners and masters to maintain and assess their sewage treatment systems. There is no change to the current requirement on declared ships, but the amendment will provide that all other ships must now ensure that their onboard treatment system is assessed at least once in the first 5 years and at least every two years afterwards. It is inevitable that treatment systems (not unlike most, if not all, manufactured items) will deteriorate and degrade over time with a subsequent decrease in performance which will invariably result in a lower level of sewage quality characteristics in the treated sewage being discharged.

Treatment systems require ongoing routine maintenance and assessment. This amendment will ensure that such maintenance and assessment is carried out so that the system may continue to perform/operate in the manner that the manufacturer intended, as outlined in the system documentation provided by the manufacturer/distributor.

This will impose a cost of approximately \$500.00 on ships each time they have their systems assessed (that is, the cost to individual ship owners is \$100 per annum for the first five years and then \$250 per annum for the remaining life of the system). There are approximately 22,000 recreational ships over 6m with a fixed toilet, but only a small number of these ships are expected have an onboard treatment system. However, by ensuring that treatment systems continue to perform/operate in the manner prescribed by the manufacturer, this cost will be greatly outweighed by the overall/net benefit to human health and the environment.

There are a number of options available for ships with fixed toilets to comply with the legislation including:

- Upgrade the fixed toilet arrangements to comply with the legislation; or
- Install a macerator and holding tank; or
- Remove the fixed toilet and use a portable toilet ensuring that the sewage is disposed of appropriately; or
- Install a treatment system which provides the greatest amount of flexibility for the discharge of sewage.

#### **Part 5 – Garbage**

A number of minor administrative changes are being made to improve the drafting of the legislation however these will have no impact on users.

#### **Part 6 – Transfer operations**

This part is unchanged.

#### **Part 7 – Reporting requirements**

This part remains largely unchanged. A reference has been corrected in the part to ensure accuracy.

#### **Part 8 – Devolution to port authority**

This part has been deleted. The devolution of response to port authorities for oil spill response within port limits has been removed and this part is no longer relevant. Removing this part will necessitate a re-numbering of the subsequent Parts and provisions.

#### **Part 9 – Samples**

This part generally, applies to Maritime Safety Queensland and Port Authorities who appoint authorised officers to undertake sampling under the Regulation. The current Regulation requires Authorised Officers to deliver samples to an approved chemist. However, this is not always practical as it is often difficult for Authorised Officers to travel with samples on an aircraft because of restrictions about what can be taken onboard. It is also very costly to Maritime Safety Queensland to deliver samples in this manner. There are a number of courier companies that provide secure services that would be suitable for the delivery of samples and still maintain the chain of continuity required. The Regulation has been amended to allow a courier company, approved by the General Manager to deliver samples securely to an approved chemist.

#### **Part 10 – General**

This part has been amended with respect to the appointment of authorised officers. Section 72(1) (c) of TOMPA provides for the appointment of "other persons prescribed under the Regulations" as authorised officers. Section 52 of the TOMP Reg prescribes persons who may be appointed as authorised officers.

Some of the functions of authorised officers, namely those described under sections 68 (c) – (e) of TOMPA, may be more effectively carried out by other persons who are not currently mentioned in the Regulation.

#### **Part 11 – Repeal and transitional provisions**

This part allows for provisions under the current Regulation to continue to apply as necessary until provisions of the new Regulation come into effect. Some matters require continuity to allow normal operational practices of the industry or boating community to continue without interruption. New transitional provisions will be included to ensure the smooth progression from the current Regulation to the remade Regulation.

#### **Schedule 1 – MARPOL**

The International Convention for the Prevention of Pollution from Ships, 1973 (commonly known as MARPOL 73/78) is not subject to the Regulatory Impact Statement process. This is because MARPOL 73/78 is an international convention and cannot be amended by the State. Therefore, MARPOL 73/78 has not been included in this document for review. The most current version of MARPOL 73/78 will be included in the final remade Regulation.

#### **Schedule 2 – Recordable operations and events**

A number of minor administrative changes are being made to improve the drafting of the legislation however these will have no impact on users.

#### **Schedule 3 – Oil-like substances**

This schedule is derived from MARPOL 73/78 and defines what oil-like substances are. It applies to all ships for the purpose of this Regulation. This part is simply being amended to reflect the current version of MARPOL 73/78.

#### **Schedule 3A – Devolution to port authority**

This schedule has been deleted. The devolution of response to port authorities for oil spill response within port limits has been removed and this schedule is no longer relevant.

#### **Schedule 4 – Nil discharge waters for untreated sewage**

This schedule has been renumbered. There are a number of minor administrative changes which will have no impact on users. These changes will help clarify the intent of the Regulation by removing outdated parts from the original Regulation that are no longer relevant.

#### **Schedule 5 – Nil discharge waters for treated sewage**

This schedule has been renumbered. There are a number of minor administrative changes which will have no impact on users. These changes help clarify the intent of the Regulation by removing outdated parts from the original Regulation that are no longer relevant.

#### **Schedule 6 – Nil discharge waters for treated sewage or untreated sewage from a declared ship**

This schedule has been renumbered. There are a number of minor administrative changes which will have no impact on users. These changes help clarify the intent of the Regulation by removing outdated parts from the original Regulation that are no longer relevant.

#### **Schedule 7 – Levels of sewage quality characteristics for treated sewage**

Schedule 7 includes Part 2 (4) which describes the level of suspended solids content of treated sewage taken from ships with a Grade A sewage treatment system. This description has been amended to be consistent with the current description for suspended solids content of Grade B sewage treatment systems. There is minimal impact on ships as current Grade A sewage treatment systems are capable of complying with this amended requirement. This amendment may result in improved water quality and helps support the intent of the legislation.

Schedule 7 also includes Part 2(3), Part 3(6) and Part 4(8) which currently use the term "faecal" coliforms. This is now commonly referred to by the water microbiology industry as "thermotolerant" coliforms. Therefore, all references to "faecal" coliforms have been replaced with "thermotolerant" coliforms to be more consistent with current terminology. There is no impact on ships as there is no change to the requirements for ship operators.

New terminology "relevant level" has also been added to this part to provide clearer guidance on calculating the levels of sewage quality characteristics remaining in sewage after it has been treated in a sewage treatment system. The modified terminology enables both the initial determination and the ongoing assessment of these levels to be encompassed within a single requirement.

This simplifies the requirement as the actual respective levels for the various grades of treated sewage remain the same for both processes (i.e. initial determination and ongoing assessment). However, the number of samples required to calculate the levels differs, i.e. the initial determination must be the geometric mean of at least 5 samples and ongoing system assessment must be the result of at least 1 sample. As such, "relevant level" replaces all former reference to "geometric mean" in the descriptions of the levels for Grade A, Grade B and Grade C treated sewage in this schedule of the Regulation.

This gives clearer guidance to system manufacturers/distributors when having their systems tested initially. Additionally, ships with treatment systems onboard will have clear instructions for when their systems are required to be tested to ensure that they still discharge treated sewage to the required level.

#### **Schedule 8 – Designated areas**

This schedule has been renumbered. No other changes were identified for this part.

#### **Schedule 9 – Treatment system standard**

This schedule has been renumbered. There are a number of minor administrative changes which will have no impact on users. These changes will help clarify the intent of the Regulation.

#### **Schedule 10 – Dictionary**

The Dictionary will be amended to reflect some new definitions and correct old references.

## **6.0 LEGISLATIVE INTENT**

The purpose of TOMPA and the TOMPR is to protect Queensland's marine and coastal environment from the adverse effects of ship-sourced pollution. The legislation gives effect to pollution prevention and control provisions of MARPOL 73/78.

This protocol covers accidental and operational ship sourced oil pollution as well as pollution by chemicals, goods in packaged form, sewage, garbage and air pollution. MARPOL is an internationally accepted convention to which Australia is a signatory.

The current and new Regulation will place obligations on ship owners and masters to:

- meet standards for the discharge of ship sourced pollutants including oil, garbage, noxious liquid substances and sewage;
- report all marine pollution incidents;
- develop and maintain emergency response procedures and plans; and
- keep records for the containment and appropriate disposal of ship sourced pollutants.

The legislation is considered appropriate and relevant to achieving the policy objectives while having regard to Queensland's obligations under the relevant Commonwealth legislation and international conventions concerning marine pollution. Without this legislation, the high level of marine environmental protection provided in Queensland may be at risk.

## **7.0 CONSISTENCY WITH THE AUTHORISING LAW**

The current and new Regulations are consistent with the overall objectives of TOMPA. The legislation contributes to the protection of the marine environment whilst enabling the effectiveness and efficiency of the industry to be further developed.

## **8.0 CONSISTENCY WITH OTHER LEGISLATION**

### **8.1 In general**

The new Regulation is generally consistent with other Queensland legislation. It must also be noted that large portions of Queensland coastal waters are located within the Great Barrier Reef Marine Park and it was in the interests of Queensland's marine industry and boating community to ensure that legislative requirements and boundaries governing the discharge of sewage match the requirements of the Great Barrier Reef Marine Park Authority. Both pieces of legislation are complementary and the boundaries are similar or identical.

### **8.2 Interstate comparisons**

In 1981, the Marine and Ports Council of Australia (later to become the Australian Transport Council) agreed that Australia should adopt Annex I (oil) and Annex II (chemicals) of MARPOL 73/78. The Council agreed that MARPOL 73/78 would be implemented by Commonwealth, State and Northern Territory legislation. To enable prompt Australian ratification of the Convention, all jurisdictions agreed that the Commonwealth legislation would initially be expressed to apply to both Commonwealth

and State/NT (i.e. 3 nautical miles) waters, and that the Commonwealth legislation would include a provision whereby the Commonwealth legislation would “roll back” as the States/NT progressively implemented legislation covering their own jurisdictions.

In 1986, the Australian Transport Advisory Council made the same decision with respect to MARPOL Annexes III (packaged substances), IV (sewage) and V (garbage). As a result All State/NT governments and the Commonwealth government have either fully or partially enacted legislation to implement MARPOL 73/78 within their jurisdictions.

In January 2006 the Australian Maritime Safety Authority conducted an audit of the implementation of MARPOL 73/78 into state legislation. Queensland is one of three states (Tasmania and the Northern Territory are the other two) that have implemented the majority of the MARPOL Annexes (I – V) that are in force in Australia. Generally, the MARPOL 73/78 Annexes I – III & V have been implemented into the Regulation as they exist under MARPOL 73/78. This is consistent with the approach of all other states that have implemented these annexes. Annex IV (sewage) will be included as part of the new Regulation.

Queensland is at the forefront of all Australian States with respect to the introduction of ship sourced sewage legislation. In general MARPOL 73/78 has been written for ships of 400 gross registered tonnage (grt) or greater. Queensland’s sewage provisions have taken this a step further so that the provisions also apply to recreational and commercial ships less than 400grt. Considering the extent of our sensitive areas (such as the Great Barrier Marine Reef Park) and the growth in the number of registered ships (at an average of 5% per annum for recreational ships) it was essential that Queensland take a strong stance on the discharge of ship sourced sewage. Discussions between jurisdictions indicates all jurisdictions, whether they have adopted legislation or not, are supportive of the intent of Queensland’s legislation. In Tasmania and the Northern Territory there are provisions within state legislation to cover the onboard management of sewage, however these provisions have not yet been implemented and generally rely on people voluntarily complying.

The state that has adopted the closest stance to Queensland is New South Wales and while there are no specific requirements for recreational ships, all ship operators must ensure that they do not pollute. New South Wales legislation places requirements on passenger carrying and hire and drive ships to be fitted with toilets, waste holding tanks or to have an approved management plan for the disposal of waste. There are also requirements for certain commercial ships (essentially those built after 1 January 2005 and used on the Murray River or Sydney Harbour, or those belonging to either the passenger carrying or hire and drive classes and built after that date) to be fitted with grey water tanks; and finally there are requirements for marinas in the Sydney Harbour locality (regardless of size) to provide adequate and accessible ship waste collection facilities.

The current Queensland Regulation sets a maximum penalty of 350 penalty units (currently \$262,250) for a number of offences relating to oil and sewage pollutants. Maritime Safety Queensland considers this level of penalty appropriate to reinforce the serious nature of ship sourced pollutants and the damage such pollutants can cause to the marine environment.

The table below shows a comparison of penalties for pollution offences in other Australian jurisdictions. Generally speaking, the penalties are similar, with New South Wales having the highest penalties for a pollution offence.

NSW	QLD	VIC	TAS	NT	WA	SA
\$500,000 Individual	\$262,600 Individual	\$200,000 Individual	\$250,000 Individual	\$25,000 Individual	\$50,000 Individual	\$200,000 Individual
\$10 million Corporation	\$1.3 million Corporation	\$1 million Corporation	\$1 million Corporation		\$250,000 Corporation	\$1 million Corporation

Under Commonwealth legislation (predominantly through the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, administered by the Australian Maritime Safety Authority (AMSA)) the same level of penalties apply for unlawful discharges of all pollutant, regardless of whether the pollutant is sewage, garbage, oil, and so on. These are 2000 penalty units for a deliberate offence and 500 penalty units for a strict liability offence for an individual and five (5) times this for a corporation. This equates to maximum penalties of \$220,000 for an individual and \$1.1 million for a corporation for a deliberate offence and \$55,000 for an individual and \$275,000 for a corporation for a strict liability offence.

## 9.0 OPTIONS AND ALTERNATIVES

For the purpose of this Regulatory Impact Statement, three options have been identified in relation to the review of the TOMPR.

### Option 1 – no Regulation

The Regulation of ship sourced pollutants is in the interests of the shipping industry and boating fraternity as well as being necessary for the protection of Queensland's marine and coastal environment. Without the Regulation, the current level of compliance would be at risk resulting in adverse impacts for the maritime industry and boating community.

Additionally, no Regulation would most likely result in a detrimental affect on the marine environment through pollution. In 2004, the gross value of production of the Queensland commercial fishery was \$218 million. The marine park tourism industry alone is reported to contribute \$2 billion to the Queensland economy per annum. Considering that Queensland's fishing and tourism industries contribute significantly to the State's economy and employment, no Regulation would result in negative economic and social implications for the State and government.

The Act establishes that there should be no discharge of pollutants into Queensland coastal waters, but does provide for the Regulation to allow the discharge of pollutants in particular waters and after a ship has met a standard of discharge. For example, the Regulation (section 12) allows a ship with gross tonnage of 400 or more to discharge oil if the conditions outlined in the Regulation are satisfied. Therefore the Regulation is critical in providing guidance and flexibility to the maritime industry and boating community to achieve the objectives of the Act

The Regulation provides more flexibility as it allows for evolving technology and changes in the maritime industry and boating community. Regulations provide specific guidance for users as to how they can achieve compliance in the most cost effective way.

### Option 2 – remake current Regulation (with no changes).

To remake the current Regulation without change would not reflect the changes that have occurred in international marine pollution prevention approaches, technology and within the marine industry in Queensland over the past ten years. The number of ships using

Queensland waterways both recreationally or commercially has grown by approximately 104% over the past 10 years and will continue to grow.

Demands on how the waterways are used mean that Maritime Safety Queensland, the maritime industry and boating community must continually work together to monitor needs and obligations and provide solutions to ensure that an appropriate balance between the effectiveness and efficiency of the marine industry and the sustainability of Queensland waterways is maintained.

The current Regulation, while containing many provisions that remain appropriate and effective, requires amendment to ensure it continues to be relevant and effective in achieving this appropriate balance.

With respect to ship sourced sewage, because of the vast areas that ships traverse and the relatively small amount of compliance resources that are available to the Government, it is clear that individuals that seek to avoid complying with the legislation can do so with a degree of ease. The legislation as it stands requires an enforcement officer to witness the discharge of sewage which is an offence under the sewage provisions. The issue of ensuring compliance with the Regulation is critical to delivering the marine environment protection objectives of the legislation. The Regulation requires amendment to clarify obligations for ship operators and enable effective enforcement of the Regulation.

The current Regulation does not allow Maritime Safety Queensland and port authorities to appoint authorised officers who are not direct employees but who have the specialist skills or knowledge necessary for completing some of the functions of authorised officers as described in section 68 of TOMPA. For example, at the remote port of Abbot Point there is no Maritime Safety Queensland or port authority personnel to undertake first strike response in the event of a pollution incident. There are companies present in Abbot Point that act on behalf of Ports Corporation of Queensland on a daily basis whose employees should be appointed as authorised officers to allow them to take action to respond and minimise marine pollution in the event of an incident. Failure to enable this to occur would limit the Government's ability to monitor and respond to pollution within ports. The general public expects the Government to take a lead role in protecting the marine environment or at the very least in minimising the impacts of ship sourced marine pollution.

Additionally, Maritime Safety Queensland has received feedback from the marine industry and the boating community that the Regulation can be confusing and the structure of the Regulation needs to be reviewed to make it easier to comply with.

To remake the Regulation without amendment would ensure Queensland had a reasonable legislative framework under which to deliver the Government's marine environment protection objectives. However, it would not recognise and accommodate changes to the marine industry or enhance the protection of the marine environment.

### **Option 3 – Proposed Regulation (current Regulation plus changes).**

This option allows the government the opportunity to not only clarify some minor areas of ambiguity but also strengthen areas of the Regulation to deliver improved marine environment protection outcomes.

The specific proposed amendments are detailed in the following table:

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
Part 1	Preliminary	Part 1	Preliminary	
S.1	Short title – <i>Transport Operations (Marine Pollution) Regulation 1995</i>	S.1	Short title <b>Amendment:</b> New title inserted. It is now the " <i>Transport Operations (Marine Pollution) Regulation 2007</i> "	The date of the regulation has changed so the reference to the short title has changed to reflect the new version.
S.2	Commencement – The regulation commences on 15 November 1995.	S.2	Commencement <b>Amendment:</b> A new commencement date will be inserted on final remake.	The commencement date will change to reflect the date the new regulation comes into effect.
<b>Part 2</b>	<b>Oil</b>	<b>Part 2</b>	<b>Oil</b>	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.
S.14	Shipboard oil pollution emergency plan	S.15	Shipboard oil pollution emergency plan <b>Amendment:</b> Change in numbering. Also made the following amendments: 1. Added the requirement for the SOPEP to be in the English Language; 2. Added the requirement for MSQ to approve or refuse a SOPEP within 28 days after the ship's owner has submitted the plan; 3. Added an appeal process allowing the ship's owner to write to the GM	The requirement for the shipboard oil pollution emergency plan to be in the English language provides consistency with the requirements for other reporting records within the regulation (such as sewage management).  The amendments for appeals of decision and timeframe to refuse or approve a plan have been included to provide consistency with other maritime and transport legislation. Currently TOMPA does not carry appeal provisions such as those in the <i>Transport Operations (Marine Safety) Act 1995</i> . MSQ intends to amend TOMPA to include such appeal provisions

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
S.16	Oil record book must be carried on ship or retained	however, until this process can be completed, OQPC recommended the inclusion of these appeal provisions in the new regulation. Once TOMPA is amended, these provisions will be removed.
S.18	Oil record book must be carried on ship or retained <b>Amendment:</b> Change in numbering. Also made the following amendment: 1. Changed the requirement to keep an Oil Record Book onboard from 1 year to 3 years. 2. Removed the requirement to retain an Oil record Book at a registered office or MSQ for 2 years.	The amendments to; keep an Oil Record Book onboard from 1 year to 3 years and to remove the requirement to keep an Oil Record Book at a registered office MSQ for 2 years, provides greater consistency with MARPOL requirements for Oil Record Books.
Part 3	Noxious Liquid substances in bulk	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.  Now includes extracts from the <i>International Bulk Chemicals Code</i> and the <i>International Maritime Dangerous Goods Code</i> to support the provisions of this part.
S.27	Cargo record book must be carried on ship or retained	The changes to this provision reflect current requirements in MARPOL. The application of the provision is unchanged.

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
	<p>year to 3 years.</p> <p>2. Removed the requirement to retain a Cargo Record Book at a registered office or MSQ for 2 years.</p>	
<b>Part 4</b>	<b>Part 4</b> <b>Packaged harmful substances</b>	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.
<b>Part 4A</b>	<b>Part 5</b> <b>Sewage management</b> Amendment: Change in numbering and new title.	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.
S.38A	S.51 Nil discharge waters for untreated sewage – Act, s47 Also made the following amendments: 1. Removed all expired dates from this section. A date will be inserted under (a) on final remake. 2. Added the offence to discharge untreated sewage within half a nautical mile of a jetty or wharf in waters beyond designated smooth waters, rivers and creeks.	In waters beyond designated smooth waters and rivers and creeks, ship operators can discharge untreated sewage while berthed at a jetty or wharf that may be in use by members of the public. While not a breach of the current legislation, for other than class 1 ships (commercial passenger carrying ships) such actions may pose a potential health risk to persons in the vicinity of the discharge, and there is a poor visual amenity aspect in such locations frequented by the public.  The section has been amended to extend nil discharge areas to make it an offence to discharge untreated sewage within half a nautical mile (926 metres) of a jetty or wharf in waters beyond designated smooth waters and rivers and creeks. As discharged sewage must be macerated, under the provisions of the legislation, it is considered that half a

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
S.38B	Nil discharge waters for treated sewage for Act, s48	<p>nautical mile (926 metres) would provide an adequate buffer zone in open waters for dispersion. While declared ships with 16 or more persons on board cannot discharge within a mile of an island or mainland, the amendment to both sections and schedules of the regulation ensures that a declared ship with less than 16 persons on board is not excluded from this requirement.</p>
S.38E	<p>S.52</p> <p>Nil discharge waters for treated sewage – Act, s 48</p> <p>Amendment: Change to numbering and new title. Also made the following amendment:</p> <p>1. Removed all expired dates from this section.</p>	<p>Section updated to removes all expired dates, amended by OQPC.</p>
S.38G	<p>S.54</p> <p>Nil discharge waters for treated sewage or untreated sewage from a declared ship for Act, s49</p> <p>Amendment: Change in numbering and amendment:</p> <p>1. Removed all expired dates from this section. A date will be inserted under (a) on final remake.</p>	<p>Section updated to removes all expired dates, amended by OQPC.</p>
S.56	<p>S.56</p> <p>Minimum requirement for shipboard sewage management plan</p> <p>Amendment: Change in numbering. Also added the following amendment:</p>	<p>The amendment for the sewage record book to be in the English language brings these requirements in line with other record keeping provisions in the regulation.</p>

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
<p>S.38J Sewage discharges in coastal waters, other than nil discharge waters</p>	<p>1. Requirement for the sewage record book to be in the English language.</p> <p>S.61 Ship must be fitted with macerator  <b>Amendments:</b> Change in numbering and new title. Also made the following amendments:                      1. Applies to ships with a fitted toilet, other than a toilet that is a sewage holding device (port-a-potty)                      2. Applies to all coastal waters including nil discharge waters                      3. Excludes declared ships that operate only in nil discharge water and discharge sewage into a disposal facility                      4. Requires all ships with a fitted toilet to also be fitted with a macerator                      5. Requires all ship to ensure that sewage is unable to by-pass the macerator</p>	<p>Presently it is an offence to discharge directly into a waterway from a fixed toilet onboard a ship without the sewage first passing through a macerator. The problem with this section is that there is no offence for not having a macerator onboard. Therefore to establish that an offence has been committed under this section requires that an enforcement officer witness the discharge. The section has been amended to require any ship with a fixed toilet to have a macerator fitted. The benefits of this amendment are twofold in that it will enhance marine environment protection and simplify enforcement by making it an offence not to have a macerator fitted to a fixed toilet. Currently it is not an offence to bypass the macerator. Anecdotal evidence suggests that whilst some people might have the correct equipment they are bypassing it and discharging untreated sewage into coastal waters creating the illusion of compliance. The new provision requires onboard fixed toilet arrangements to be configured to ensure all discharges must first pass through a macerator and cannot be bypassed. This is not new policy but rather a re-working of the existing provision to provide for the original intent of the legislation.</p>
<p>S.38K Assessment and maintenance of treatment system</p>	<p>S.63 Maintenance and assessment of treatment system for ships  <b>Amendments:</b> Change in numbering</p>	<p>The amendments require all ship owners and masters to maintain and assess their sewage treatment systems. There is no change to the current requirement on declared ships, but the amendment</p>

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
<p><b>Part 5</b></p> <p><b>Garbage</b></p>	<p>and new title. Also made the following amendments:</p> <p>1. Added the requirement for all ships, other than a declared ship, fitted with a treatment system and operating in coastal waters to ensure the treatment system is assessed at least once in the first 5 years and afterward at least every 2 years.</p>	<p>will also require all other ships to ensure that their onboard treatment system is also assessed at least once in the first 5 years and at least every 2 years afterwards. There is potential that treatment systems may not continue to perform to the minimum treatment standard after a period of years. This may result in a lower level of sewage quality characteristics in the treated sewage being discharged.</p> <p>This amendment will ensure that treatment systems on ships, other than declared ships, are assessed to ensure that the standard of treatment continues to be within the minimum standard prescribed in the regulation for that grade of treated sewage.</p> <p>This will impose a cost of up to \$500.00 on ships each time they have their systems assessed (that is, the cost to individual ship owners is \$100 per annum for the first five years and then \$250 per annum for the remaining life of the system). There are approximately 20,000 recreational ships over 6m with a fixed toilet, but only a small number of these ships are expected have an onboard treatment system. However, by ensuring that treatment systems continue to perform to the standards in the regulation, this cost will be greatly outweighed by the overall net benefit to human health and the environment.</p>
<p><b>Part 6</b></p> <p><b>Garbage</b></p>	<p><b>Part 6</b></p> <p><b>Garbage</b> <u>Amendments:</u> Change in numbering.</p>	<p>Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.</p>
<p><b>Part 6</b></p> <p><b>Transfer operations</b></p>	<p><b>Part 7</b></p> <p><b>Transfer operations</b></p>	<p>Restructuring and administrative amendments to this</p>

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
			<u>Amendments:</u> Change in numbering.	part of the regulation to improve language, readability and reflects current drafting practices.
<b>Part 7</b>	<b>Reporting requirements</b>	<b>Part 8</b>	<b>Reporting requirements</b> <u>Amendments:</u> Change in numbering.	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.
S.46	Notification of discharges	S.81	Way to notify of reportable incidents <u>Amendments:</u> Change in numbering and new title, correction of references.	Change in drafting practices, amended by OQPC. References to MSQ have been amended to read as references to the proper title of the agency and a reference to Australian Search and Rescue has been amended to reflect the current title of Marine Rescue Coordination Centre.
<b>Part 8</b>	<b>Devolution to port authority</b>	-	<u>Amendment:</u> Part deleted.	In 2002, MSQ assumed legislative responsibility for prevention and response to all ship sourced pollution in Queensland coastal waters, including within ports. It is necessary to remove relevant references contained within the regulation about the devolution of pollution matters to port authorities.
-	-	<b>Part 9</b>	<u>Amendment:</u> <b>New part 9 (Insurance)</b>	In restructuring the regulation a new part 9 (Insurance) has been created. This provision was previously located at section 51A of the 1995 regulation.
<b>Part 9</b>	<b>Samples</b>	<b>Part 10</b>	<b>Investigation, prevention and minimisation, and enforcement</b>	Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.
S.49	Integrity and security of samples	S.87	Taking samples of any pollutant, substance or thing in or on the ship or place	Change in drafting practices, amended by OQPC. The current regulation requires authorised officers to deliver samples to an approved analyst. However,

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
Part 10	<p><b>General</b></p> <p>-</p>	<p>this is not practical as it is often difficult for an authorised officer to travel with samples on an aircraft because of restrictions about what can be taken onboard. This amendment allows a courier company, approved by the General Manager, to deliver samples securely to an approved analyst. The restructure of the regulation has moved this provision to S.87 of the remake.</p>
S.51	<p><b>Labour Costs</b></p> <p>-</p>	<p>Restructuring and administrative amendments to this part of the regulation to improve language, readability and reflects current drafting practices.</p> <p>This has moved the provisions of part 10 to various other parts in the new regulation as detailed below.</p>
S.52	<p><b>Authorised Officers</b></p> <p>S.86</p>	<p>Section 51 "Labour costs" has been deleted as it is redundant. The provision will be replaced by a system where MSQ will provide a schedule of fees by gazette notice. This was established under the <i>Maritime and Other Legislation Amendment Act 2006</i> (Act No. 21 of 2006) which created a new section (112) in TOMPA allowing the General manager to set amounts for costs and expenses relating to definition discharge expenses.</p>
S.86	<p><b>Authorised officers</b></p> <p>Amendments: Change in numbering. Also made the following amendment:</p> <ol style="list-style-type: none"> <li>1. Allows the appointment of an employee of an entity that has entered into an agreement with MSQ or a port</li> </ol>	<p>Currently employees of entities that have entered into an agreement to provide services to MSQ or a port authority cannot be appointed as authorised officers. This means that whilst port authorities are obligated to carry out these functions employees of entities that have entered into an agreement to provide these</p>

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
S.54	Registered office	<p>services on their behalf are unable to be appointed as authorised officers.</p> <p>The amendment will allow employees of an entity that has entered into an agreement with MSQ or a port authority to be appointed as authorised officers for the purposes of the regulation.</p> <p>The existing training and appointment process used by MSQ to appoint authorised officers will be used to appoint this new category of authorised officers. This will ensure that they have the appropriate training to undertake the restricted functions of an authorised officer. These authorised officers will only have the powers under the Act &amp; regulation to carry out the duties required by their job or contract.</p>
S.55	Exemption from pt 7 of the Act	<p>The information about registered office has been relocated to the provision which it applies in the new regulation. This is in accordance with current drafting practice and was amended by OQPC.</p>
S.56	<p>Where register of division 3 undertakings must be kept</p>	<p>S.55 provided for an exemption for discharge of sewage under part 7 of TOMPA until S.50(1) of TOMPA commenced. S.50(1) has now commenced so this section is redundant.</p> <p>Division 3 undertakings are not subject to a RIS. This is confirmed by SPG, the provision will be re-inserted in the final remake.</p>

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
-	-	undertakings.		
-	-	Part 11	General	This part captures information on analyst's reports. This provision was moved from S.50 in the 1995 regulation.
-	-	Part 12	Transitional provisions	In accordance with current drafting practices, OQPC have included a number of transitional provisions to provide for the smooth movement from the regulation to the new regulation in 2007. The transitional provisions provide for matters relating to record keeping requirements under the regulation.
SCH 1	MARPOL	SCH 1	MARPOL	The current text of MARPOL has not been included in the document as it is not subject to the RIS process (section 46(1)(h) of the <i>Statutory Instruments Act 1992</i> ). This is because MARPOL is an international convention. The current text of the convention will be inserted on final remake.
SCH 2	Recordable operations and events	SCH 2	Recordable operation and recordable events	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices.
-	-	SCH 3	Liquid substances that are designated in Annex II, Appendix II	As with MARPOL this schedule is not subject to a RIS as it is an international convention.
SCH 3	Oil-like substances	SCH 4	Oil-like substances	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices.

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
SCH 3A	Devolution to port authority		Amendment: Section removed.	In 2002, MSQ assumed legislative responsibility for prevention and response to all ship sourced pollution in Queensland coastal waters, including within ports. It is necessary to remove relevant references contained within the regulation about the devolution of pollution matters to port authorities.
SCH 4	Nil discharge waters for untreated sewage	SCH 5	Nil discharge waters for untreated sewage	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices. Dates in this schedule that have expired will be removed.
SCH 5	Nil discharge waters for treated sewage	SCH 6	Nil discharge waters for treated sewage	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices. Dates in this schedule that have expired will be removed.
SCH 6	Nil discharge waters for treated sewage or untreated sewage from a declared ship	SCH 7	Nil discharge waters for treated sewage or untreated sewage from a declared ship	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices. Dates in this schedule that have expired will be removed.
SCH 7	Levels of sewage quality characteristics for treated sewage	SCH 8	Levels of sewage quality characteristics for treated sewage	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices.
Part 1	Grade A treated sewage	Part 2	Levels for grade A treated sewage	Currently this schedule describes the level of suspended solids content of treated sewage taken

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
S.1	<p>Faecal coliforms</p> <p>S.3</p> <p>Thermotolerant coliforms</p> <p>Amendment: Change to numbering and new title. Also made the following amendment:</p> <ol style="list-style-type: none"> <li>1. Changed the terminology from "Faecal coliforms" to "Thermotolerant coliforms".</li> </ol>	<p>from a ships' Grade A sewage treatment systems. This description has been amended to be consistent with the current description for suspended solids content of Grade B sewage treatment systems. Ships are required to ensure that their Grade A sewage treatment system complies with the new standard.</p> <p>This schedule currently uses the term 'faecal' coliforms. This is now referred to in industry as 'thermotolerant coliforms'.</p>
S.2	<p>Suspended solids</p> <p>S.4</p> <p>Suspended solids</p> <p>Amendment: Change to numbering. Also made the following amendment:</p> <ol style="list-style-type: none"> <li>1. Removed reference to "on shore" testing in part (a).</li> <li>2. Removed part (b), onboard testing of suspended solids of this section.</li> </ol>	<p>To assess the performance of a sewage treatment system, the treatment system must be installed onboard and samples taken during normal operational use to ensure that the minimum treatment standards required under the regulation are met.</p>
S.3	<p>Biochemical oxygen demand</p> <p>S.5</p> <p>Biochemical oxygen demand</p> <p>Amendment: Change to numbering. Also made the following amendment:</p> <ol style="list-style-type: none"> <li>1. Inserted a new term "relevant level" and definition of "relevant level" in S.1.</li> </ol>	<p>A new term 'relevant level' has been added to provide greater guidance on calculating the levels of sewage quality characteristics remaining in sewage after it has been treated in the sewage treatment system. This will simplify the process for assessing treatment systems.</p>

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
<b>Part 2</b>	<b>Grade B treated sewage</b>	<b>Part 3</b>	<b>Levels for grade B treated sewage</b> <u>Amendment:</u> Change to numbering and new title.	Change in drafting practices, amended by OQPC.
S.4	Faecal coliforms	S.6	Thermotolerant coliforms <u>Amendment:</u> Change to numbering and new title. Also made the following amendment: 1. Changed the terminology from "Faecal coliforms" to "Thermotolerant coliforms".	
S.5	Suspended solids	S.7	Suspended solids <u>Amendment:</u> Change to numbering. Also made the following amendment: 1. Removed reference to "on shore" testing in part (a). 2. Removed part (b), onboard testing of suspended solids of this section.	To assess the performance of a sewage treatment system, the treatment system must be installed onboard and samples taken during normal operational use to ensure that the minimum treatment standards required under the regulation are met.
<b>Part 3</b>	<b>Grade C treated sewage</b>	<b>Part 4</b>	<b>Levels for grade C treated sewage</b> <u>Amendment:</u> Change to numbering and new title.	Change in drafting practices, amended by OQPC.
S.6	Faecal coliforms	S.8	Thermotolerant coliforms <u>Amendment:</u> Change to numbering and new title. Also made the following amendment:	

Relevant section of existing legislation		Amendment and new section of remake		Reason for change/issues
SCH 8	Designated areas	SCH 10	1. Changed the terminology from "Faecal coliforms" to "Thermotolerant coliforms".  <b>Dictionary</b> Amendment: Moved the definition of "designated areas" to the dictionary in schedule 10.	
SCH 8A	Areas within the Great Barrier Coast Marine Park	SCH 9	<b>Areas within the Great Barrier Coast Marine Park that are designated areas</b>	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices.
SCH 9	Treatment System Standards	S.62	Definitions for div 6 <u>Amendment:</u> 1. Moved the definition of "system documentation" (S.1) and "system service manual" (S.2(a)) to S.62 within the new regulation. 2. Moved the standard for which a treatment system must conform (S.2) to S. 66 within the new regulation.	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices.
SCH 10	Dictionary	SCH 10	<b>Dictionary</b> <u>New definitions:</u> Analyses; Annex ; Annex V; Commonwealth Prescribed; Great Barrier Reef Marine Park; GT; Macerator and mothership.	Restructuring and administrative amendments to this schedule of the regulation to improve language, readability and reflects current drafting practices. For example some definitions have been moved to TOMPA whilst other definitions have updated or are no longer relevant and have been removed.

Relevant section of existing legislation	Amendment and new section of remake	Reason for change/issues
	<p><u>Deleted definitions:</u>                      Appropriate Certificate; Australian Fishing Vessel; Fringing Reef; Highest Astronomical Tide; IMDG Code; Partially Smooth Waters; Pleasure Vessel; Queensland ship; Registered Office and Rock 500m Line.</p> <p><u>Amended definitions:</u>                      Canal; Category A, B, C &amp; D Substances; Designated Area; Food Wastes; Grade A, B &amp; C Sewage; Independent Testing Entity; Tonnage Measurement Convention and Trinity Inlet.</p>	

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### **Recommended Option**

Option 3 (Remake existing Regulation with amendments) is recommended as providing the best outcomes in terms of ensuring the objectives of the legislation are met, providing clarity and efficiency for the marine industry and ensuring compliance with the requirements of the Regulation.

### **10.0 COST- BENEFIT ASSESSMENT**

As at 31 March 2006, there were approximately 5,700 registered commercial ships and 201,000 recreational ships in Queensland. Ships most likely to be affected by the Regulation are those ships that generate sewage onboard, in particular those ships with a fixed toilet onboard. Ships with a fixed toilet onboard that are operating in nil discharge waters will need to ensure that the fixed toilet is configured to comply with the legislation. It is estimated that there are 20,000 recreational ships and 3,000 commercial ships registered in Queensland that could be affected.

Maritime Safety Queensland acknowledges that these Regulations may impose appreciable costs on ship owners, port authorities and port operators. However the requirements are not unique to Queensland or Australia. Nor are the requirements new. Most requirements have been in force since 1995, during which time any associated costs have been accepted as a normal part of doing business in Queensland.

An analysis of the costs and benefits of remaking the Regulation with the proposed amendments was undertaken by Maritime Safety Queensland during March 2006.

The following table details sections that may have an appreciable impact on Queensland's maritime industry and on some commercial and recreational ship owners.

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders								
S. 8 Oil tankers - oil other than from machinery space bilges	L	NIL	NIL	NIL	L	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to large trading ships visiting Queensland Ports only. This allows discharge of oil other than from machinery space bilges within specified guidelines outlined in the Regulation. This is an existing requirement.
S. 9, 10 & 13 Discharge of oil and unprocessed oily mixtures	L	NIL	NIL	NIL	L	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to large trading ships visiting Queensland Ports only. This allows the discharge of oil and unprocessed oily mixtures within specified guidelines outlined in the Regulation. This is an existing requirement.
S. 14 Shipboard oil pollution emergency plan	L	NIL	L	NIL	NIL	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to all ships more than 35m length overall or 24m length overall if the ship is carrying oil as cargo or a vehicle that is carrying 400L of oil as cargo. Ships are required to submit a plan for approval. This is an existing requirement.
S. 15 – 18 Oil record book	L	NIL	NIL	NIL	NIL	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to oil tankers of 150 gross tonnage or more or it is not an oil tanker and has a gross tonnage of 400 or more; or has a gross tonnage of 150 or more and carries 400 l or more of oil in a portable tank. Ships are required to carry and retain oil records books onboard and make the appropriate entries. This is an existing requirement.
S. 20 – 25 Noxious liquid substances in bulk	M	NIL	NIL	NIL	NIL	L	M	This is consistent with the intent of MARPOL 73/78. This applies to large trading ships visiting Queensland ports only. This allows the discharge of noxious liquid substances in bulk within the specified guidelines outlined in the Regulation. This is an existing requirement.

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders								
S. 26 – 29 Cargo record book	L	NIL	NIL	NIL	NIL	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to trading ships carrying liquid substances in bulk; and proceeding on an intrastate voyage. Ships are required to carry and retain cargo records books onboard and make the appropriate entries. This is an existing requirement.
S. 30-38 Tank Washing	M	NIL	NIL	NIL	NIL	L	M	This is consistent with the intent of MARPOL 73/78. This applies to large trading ships visiting Queensland ports only. Ships are required to follow a tank washing procedure based on the cargo that has been and will be carried. The General Manager can approve exemption under specific conditions outlined in the Regulation. This is an existing requirement.
S. 38A Nil Discharge for Untreated Sewage	NIL	L	*1. L *2. M	NIL	NIL	L	L	This is consistent with the intent of MARPOL 73/78. This applies to all ships registered in Queensland but the biggest impact is on Class 1, 2 & 3 commercially registered ships. Generally, large trading ships visiting Queensland ports use waste reception facilities provided whilst alongside in port. Ships are not allowed to discharge untreated sewage into coastal waters as outlined in schedule 4 of the Regulation. Ships that have a permanently fixed toilet are required to make changes to their sewage systems to comply. This is an existing requirement.
S. 38B Nil Discharge for Treated Sewage	NIL	L – M	M – H	NIL	NIL	NIL	L	This is consistent with the intent of MARPOL 73/78. This applies to all ships registered in Queensland but the biggest impact is on Class 1, 2 & 3 commercially registered ships. Generally, large trading ships visiting Queensland ports use waste reception facilities provided whilst alongside in port. Ships are allowed to discharge into coastal waters as

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders								outlined in schedule 5 of the Regulation as long as the sewage has been treated. Ships have the option install a treatment system or use a holding tank and not discharge. This is an existing requirement.
S. 38C Treatment System Documents	NIL	NIL	L	NIL	NIL	L	L	This applies to all ships fitted with a sewage treatment system and operating in coastal waters. Ships are required to keep onboard documents associated with the treatment system, for example when it was serviced. This is an existing requirement.
S.38G Ship-Board Sewage Management Plans	NIL	NIL	L	NIL	NIL	L	L	This applies to a declared ship (as defined under s.49 of the Act). Ships fitted with a fixed toilet or holding tank must have a ship board sewage management plan which documents how the master and owner will manage the sewage created on board. This is an existing requirement.
S. 38J Sewage Discharge into coastal waters, other than nil discharge waters	NIL	L	L	NIL	NIL	L	L	This applies to all ships with a fixed toilet onboard and operating in Queensland coastal waters. Ships are required to ensure that all discharges of sewage into coastal waters, other than nil discharge areas, pass through a macerator first. This is an existing requirement.
S. 38K Assessment of Treatment Systems	NIL	NIL	M	NIL	NIL	M	NIL	This applies to a declared ship (as defined under s.49 of the Act) with a treatment system installed onboard. Ships are required to ensure that the treatment system is assessed regularly (defined in the Regulation) to ensure that it continues to perform to the level specified by the manufacturer. This is an existing requirement. <b>PROPOSED AMENDMENT:</b> This section will be amended to apply to all ships with a treatment system onboard. The current requirements for declared ships will remain the same. All other ships must ensure that their sewage

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders								treatment system is assessed once in the first 5 years and at least every 2 years afterwards.
S. 38M Sewage Disposal Records must be Kept Onboard	NIL	NIL	L	NIL	NIL	NIL	NIL	This applies to a declared ship (as defined under s.49 of the Act). Ships are required to record all sewage disposals discharged to a sewage disposal facility in a sewage disposal record book. This must be kept onboard at all times and be available for inspection. This is an existing requirement.
S. 38N Entries in a Sewage Disposal Record Book	NIL	NIL	L	NIL	NIL	NIL	NIL	This applies to a declared ship (as defined under s.49 of the Act). Ships are required to record all sewage disposals discharged to a sewage disposal facility immediately in a sewage disposal record book. This must be kept onboard at all times and be available for inspection. This is an existing requirement.
Part 4A Ships with a toilet onboard must be fitted with a macerator	L	L	M	H	NIL	NIL	NIL	<b>PROPOSED NEW SECTION:</b> This will apply to all ships with a fixed toilet onboard operating in Queensland coastal waters. It will be compulsory for all ship owners with an onboard fixed toilet to have a macerator that cannot be bypassed. This will give effect to the intent of the legislation in that all untreated sewage discharge should be macerated before release and to remove avenues for people to avoid complying.
S. 45 Transfer operations & reporting Requirements	L	L	L	N/A	N/A	N/A	N/A	This is consistent with the intent of MARPOL 73/78 and the Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983. This applies to large trading ships visiting Queensland ports only. Ships are required to get approval for transfer operations and keep records. On average Maritime Safety Queensland receives reports of 85 pollution incidents each year. Approximately half of these occur during transfer operations.

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders								The vast majority of these incidents are minor and do not cause any significant environmental harm. This is an existing requirement.
S. 46 and 47 Notification of discharges and reporting of incidents	L	L	L	L	L	L	L	This is consistent with the intent of MARPOL 73/78 and the Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983. This applies to all ships that operate in Queensland waters. Early reporting of pollution incidents can greatly affect the outcomes of response and cleanup operations. A recent example was the spill from the bulk coal carrier Global Peace in Gladstone Harbour. Because the incident was reported almost immediately to Maritime Safety Queensland was able to initiate prompt and effective response action to mitigate the effects of the spill. This is an existing requirement.
S. 51 A Insurance Limit	L	M	NIL	NIL	NIL	L	NIL	This is consistent with the "Polluter Pays" principles of Australia's National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances (National Plan), the Inter-Governmental Agreement on Australia's National Plan and the compulsory insurance provisions of the Commonwealth, Protection of the Seas (Civil Liability) Act 1981. Ships over 35metres in length are required to have compulsory insurance to cover the cost of cleanup of a discharge of a pollutant. Most of these, aside from approximately 200 ships, are required to have insurance under Commonwealth legislation. This helps to protect Queensland's marine and coastal environment by ensuring that adequate mechanisms are in place to pay for costs associated with pollution. This is an existing requirement.

Remake of the *Transport Operations (Marine Pollution) Regulation 1995*

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							Comments
	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	
Areas of the Regulation that may have an appreciable impact on stakeholders	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	Comments
S. 52 Appointment of Authorised Officers	L	N/A	N/A	N/A	N/A	L	L	This is consistent with the intent of MARPOL 73/78 the intent of the Transport Operations (Marine Pollution) Act 1995. This section provides for the appointment of Authorised Officers under the Regulation. This is an existing requirement. PROPOSED AMENDMENT: Some of the functions of Authorised Officers, namely those described under sections 68 (c, d and e) of Transport Operations (Marine Pollution) Act 1995, may be more effectively carried out by other persons who are not mentioned in the Regulation. The proposed change will allow Maritime Safety Queensland and port authorities to also appoint employees of entities that have we have an agreement with, ie. Contractors.
Schedule 2 Recordable operations and events	L	NIL	NIL	NIL	NIL	L	NIL	This is consistent with the intent of MARPOL 73/78. This applies to large trading ships visiting Queensland ports only. Ships are required to record operations and events that occur onboard. This is an existing requirement.
Schedule 7 Levels of sewage quality characteristics for treated sewage	L	L	L	L	M	L	L	PROPOSED AMENDMENT: Currently this schedule describes the level of suspended solids content of treated sewage taken from a ships grade A sewage treatment system. This description has been amended to be consistent with the current description for suspended solids content of grade B sewage treatment systems. Ships are required to ensure that their grade A sewage treatment system complies with the new standard. This schedule currently uses the term 'faecal' coliforms. This is now referred to in industry as 'thermotolerant' coliforms. These references have been updated accordingly. A new term 'relevant level' has

Legend	"L" : Low – Few ships/organisations impacted and/or low costs "M" : Medium – Some ships/organisations impacted and/or moderate costs "H" : High – Many ships/organisations impacted and/or high costs							
Areas of the Regulation that may have an appreciable impact on stakeholders	Ships > 35m	Declared Ships	Ships < 35m	Recreational Ships	General Community	QLD Government	Other Government	Comments
								been added to provide clearer guidance on calculating the levels of sewage quality characteristics remaining in sewage after it has been treated in the sewage treatment system. This will simplify the process for assessing treatment systems.

## 10.1 Impact on Maritime Industry

### Shipping

All of the measures listed in section 10 are aimed at protecting Queensland's coastal and marine environment from the adverse effects of ship sourced pollution. In doing so, they impose low costs on the shipping industry. For example, the requirement to utilise waste reception facilities to discharge wastes incurs a cost to the ship based on the type and quantity of the waste to be received at the port facility.

These are existing costs that have been accepted by the shipping industry worldwide for many years as part of MARPOL 73/78 and the Regulations have been in place and accepted in Queensland since 1995. Most ships now include these requirements as part of their standard operational procedures for the operation of the ship.

In return the Regulations provide a reasonable benefit (low) to the shipping industry as it demonstrates that they are also committed to protecting the marine environment as good "corporate citizens".

### Fishing and commercial ship owners

Some of the Regulations will impose some costs (low) on fishing and commercial ship owners. The main costs are associated with complying with the sewage provisions and maintaining records of the discharge of pollutants. The majority of these costs have been in place since the introduction of the Regulation in 1995 and have generally been accepted by the industry. A number of provisions target the owners and operators of large trading ships and therefore do not impact upon the owners of fishing and commercial ships.

The actual costs of complying with the sewage legislation will vary from ship to ship, dependent upon the area the ship is operating in and the options chosen by the owners to comply with the Regulation. Approximately 90% of all ships do not have a fixed toilet, therefore there are no costs. If a recreational ship has a fixed toilet but does not presently have a macerator, then the ship owner will incur a cost of approximately \$200 for the installation of a macerator. It is estimated that 3,000 commercial ships over 6m would have a fixed toilet onboard, however some of these ships would already be fitted with macerators and holding tanks.

Additionally, the owners of ships operating in nil discharge waters will need to consider whether they retain their fixed toilet onboard or install a holding tank (which costs from \$200). For some ships to comply with the legislation, they may need to utilise shore based sewage reception facilities to remove the contents of holding tanks. It is recognised that there is a cost to using some of these facilities (they range from a free service to a fee based on volume of discharge), which is considered reasonable. Maritime Safety Queensland has constructed the legislation in a way that allows operators to make the choice of alternatives that best meet their circumstances.

In return the costs return some benefit (low) to the industry because it reduces the likelihood of pollution occurring and as a result reduces the impact on the livelihoods of those who earn a living from the maritime sector. In 2004, the gross value of the Queensland commercial fishery was \$218 million. The marine park tourism industry alone is reported to contribute \$2 billion to the Queensland economy per annum.

The Regulation guarantees the future viability of these industries by improving the amenity of our waterways which allows tourism to thrive and ensures that fishing operators have confidence that the quality of their catch is not compromised by contamination from pollutants. No Regulation could have an economic and social impact on Queensland's fishing and tourism industries.

### **Marina Operators**

One of the impacts of the proposed changes relating to onboard sewage configurations will be to create greater levels of demand for shore based sewage reception facilities in marinas and boat harbours. This is particularly the case for waterways where a ship would not operate beyond nil discharge waters. An example is the Gold Coast waterways.

While there has been a gradual increase in the availability of sewage reception facilities, there are many marina operator who do not provide sewage reception facilities. These operators should consider providing pump-out facilities on a commercial basis with a shore based connection to the local authority's sewage network. In areas where a local authority connection is not available, marina operators can install onshore tankage to collect and store ship sewage and organise contents removal by waste pumping contractors.

Waste reception facilities are considered an important linkage in the overall provision of services to ship owners by marina operators.

## **10.2 Impact on the General community**

### **Recreational ship owners**

Most of the oil and chemical Regulations do not apply to recreational ships. However there are less than 50 Queensland registered ships greater than 35 metres that have some costs imposed upon them in the form of regulatory charges and record keeping. For example, these ships are required to maintain a Shipboard Oil Pollution Emergency Plan. There are costs associated with purchasing the plan; submitting it for approval and maintaining it but these costs are considered low.

The garbage and reporting provisions impose low costs on most, if not all, recreational ship owners.

In all of the above circumstances the Regulations have been in place since 1995 and have been accepted by the recreational boating community. The costs are outweighed by the

benefit they have in protecting the marine environment by controlling the discharge of pollutants to ensure that there is no impact or minimal impact on the marine environment.

The provisions that will have the highest impact upon recreational ship owners are those related to ship sourced sewage. The costs of complying with the sewage legislation will vary from ship to ship, dependent upon the area the ship is operating in and the options chosen by the owner(s) to comply with the Regulation. If a ship does not have a fixed toilet then there are no costs. If a recreational ship has a fixed toilet but does not presently have a macerator, then the ship owner will incur a cost of approximately \$200 for the installation of a macerator. It is estimated that 20,000 recreational ships are over 6m and would have a fixed toilet onboard, however some of these ships would already be fitted with macerators and holding tanks.

Additionally, the owners of ships operating in nil discharge waters will need to consider whether they retain their fixed toilet onboard and install a holding tank (which costs from \$200), if it is not fitted already. For some ships to comply with the legislation, they may need to utilise shore based sewage reception facilities to remove the contents of holding tanks. It is recognised that there is a cost to using these facilities (they range from a free service to a fee based on volume of discharge), which is considered reasonable. For example, the Mooloolaba Yacht Club Marina charges \$20 for a marina resident or berth holder and \$50 for all visitors to utilise sewage reception facilities. Maritime Safety Queensland has constructed the legislation in a way that allows operators to make the choice of alternatives that best meet their circumstances.

The proposed Regulation provides for a six month transitional arrangement to allow ship operators time to acquire the necessary equipment.

The sewage provisions are a defining change for non-declared ships with a fixed toilet onboard to comply with the intent of the Regulation – to minimise the impact of ship sourced sewage. The changes specify actions that must be taken by ship owners and allow Maritime Safety Queensland and the Queensland Boating & Fisheries Patrol to clearly identify where an offence has been committed.

Additionally, section 51A (Insurance limit) requires ships over 35 metres to have insurance to cover the cost of cleanup of a discharge of a pollutant. Most of these, aside from approximately 200 ships, are required to have insurance under Commonwealth legislation. This helps to protect Queensland's marine and coastal environment by ensuring that adequate mechanisms are in place to pay for costs associated with pollution. This is an existing requirement. There may be some impact on ship owners who do not currently have appropriate insurance cover for pollutant clean up or salvage costs.

### **General community**

There is little or no appreciable cost (low) to the general community. Most costs are to be borne by the owners and operators of trading and commercial ships. Some larger recreational ships may also be subject to minor costs.

Whilst the Regulation does allow some discharges the environmental impacts are controlled to ensure they have a minimal affect on the marine environment. Considering that Queensland's fishing and marine park tourism industries contribute over \$2.2 billion annually to the State's economy and employ a large proportion of the Queensland workforce, no Regulation would result in negative economic and social implications for the community. The Regulation also enhances the protection of sensitive areas such as the Great Barrier Reef Marine Park by minimising the amount of ship sourced pollution entering our coastal waters.

### **10.3 Impact on Government**

#### **Maritime Safety Queensland**

Maritime Safety Queensland allocates over \$7million annually for marine pollution prevention strategies including training of response personnel and authorised officers, acquisition of response equipment and storage, emergency planning and exercises and incident investigation training. This does not include the cost of responding to pollution incidents or high risk marine incidents that have the potential to pollute.

Some costs are also incurred by the Australian Maritime Safety Authority in administering certain provisions of the Regulation as these provisions also apply under Commonwealth legislation but generally only to trading ships visiting Queensland and ships under Commonwealth jurisdiction. For example, section 16 requires that oil record books be carried and retained on trading ships. Generally, these ships fall under Commonwealth jurisdiction and Australian Maritime Safety Authority surveyors are responsible for checking a ship's oil record book as part of the Port State Control scheme.

The sections of the Regulation related to cost recovery and compulsory insurance, have a low cost that is, they return funds to Maritime Safety Queensland. For example in 2000 the container ship 'Bunga Teratai Satu' grounded on Sudbury Reef off Cairns. Whilst there was no pollution discharged under Queensland legislation, Maritime Safety Queensland incurred costs to manage the incident to prevent the discharge of pollutants. The response took 14 days and cost over \$500,000. Under the Regulation Maritime Safety Queensland was able to recover the costs of responding through the ships Protection & Indemnity Club (similar to an insurer). Since 1995, there have been 36 marine incidents where Maritime Safety Queensland has undertaken action under TOMPA. Of these 11 have resulted in the discharge of pollutants into coastal waters.

There is a significant cost to Maritime Safety Queensland in providing resources devoted to detecting non-compliance and inspecting ships to ensure that they comply with the Regulation. Maritime Safety Queensland currently employs 25 Marine Safety Officers and 4 Marine Compliance Unit Officers to monitor compliance with the Regulation.

With regard to commercial ships there is no change to enforcement resources as these ships are already part of an existing inspection regime by Maritime Safety Queensland.

With regard to recreational ships the proposed changes to the sewage provisions are going to enhance enforcement where the focus will not be on whether a discharge has occurred, but more specifically whether the ship is configured to comply with the requirements for the waters the ship is being operated in. This may require a redirection of enforcement resources from the existing pool.

#### **Other Queensland Government agencies and corporations**

The provision of reception facilities in ports to accept tank washings from oil and chemical tankers will place moderate costs on some port authorities and port operators. Generally, this cost is recovered by receiving a service charge from the ship. All other activities (sections of the Regulation) required under this Regulation will have a low negative cost.

However the benefits to Queensland's marine and coastal environment from these activities, which include the compulsory use of waste reception facilities and the monitoring of transfer operations, are at least equal to the costs of providing these services.

Maritime Safety Queensland relies predominately on the Queensland Boating and Fishing Patrol to provide the bulk of on water enforcement of the Regulation with respect to

recreational and commercial ships. The impost on resources of the Queensland Boating and Fisheries Patrol is limited by combining marine pollution prevention enforcement activities with the general work of the patrol.

A more detailed assessment of the costs and benefits of the Regulation are available in appendix A (Appreciable Costs Analysis)

## 11.0 FUNDAMENTAL LEGISLATIVE PRINCIPLES (FLPs)

The Office of Queensland Parliamentary Counsel (OQPC), in drafting the proposed regulation, identified certain provisions which may be in breach of the Fundamental Legislative Principles (FLPs). These are the principles applied to all legislation that underlie a parliamentary democracy based on the rule of law.

Queensland legislation is subject to review of FLPs under Part 2 of the *Legislative Standards Act 1992*.

The table below identifies the provisions and provides an explanation.

Provision	Issue
Section 14(2) "The ship's owner must submit the plan and an approval fee of \$54.40 to the general manager for approval".	OQPC identified that this may breach section 4(3)(a) of the <i>Legislative Standards Act 1992</i> with regard to whether this provision makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. Currently TOMPA does not carry specific appeal provisions against decisions. Maritime Safety Queensland will be amending the Act to carry similar appeal provisions to those currently in the TOMSA. This will resolve this issue and remove any potential breach of section 4(3)(a) of the <i>Legislative Standards Act 1992</i> .
Sections 21(a) and 22(a) Category B and C substances "An authorised officer has approved procedures and arrangements for the discharge that ensure the concentration and rate of discharge of the Category B (or C) substance in the effluent in the wake astern of the ship is not more than 1 part in 1000000 parts; and"	OQPC identified that this may breach section 4(3)(a) of the <i>Legislative Standards Act 1992</i> with regard to whether this provision makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The regulation does not specify what the procedures and arrangements may be. This requirement reflects MARPOL which requires, at Regulation 5(2)(b) that the procedures and arrangements shall be based upon standards developed by the International Maritime Organisation (IMO). TOMPA

	<p>has a specific head of power for MARPOL which means that by including MARPOL within the Regulation, the reference to procedures and arrangements in these circumstances is supported. Additionally, it should be noted that the number of ships operating in Queensland coastal waters to which this provision applies is very small and are generally subject to the requirements of the <i>Navigation Act 1912</i> (Cwth).</p>
<p>Section 38(1) "Procedures for washing leakages overboard – For section 43(b) of the Act, the procedures prescribed are the appropriate procedures provided under the International Maritime Dangerous Goods Code" (IMDG Code).</p>	<p>OQPC identified that this provision may breach section 4(3)(b) of the <i>Legislative Standards Act 1992</i> with regard to being consistent with the principles of natural justice in that this reference may not be supported by the Act, which places the Regulation as going beyond the power of TOMPA.</p> <p>This issue can be resolved by specifying a reference to the IMDG Code so that a person may know clearly what version of the Code is reference. This avenue is proposed for the final regulation.</p> <p>Maritime Safety Queensland notes however, that the Code is published by the IMO and is available both from the IMO and maritime reference book retailers in Queensland. Additionally it should be noted that this requirement applies exclusively to international trading ships that carry dangerous goods. Such ships are a minority of ships operating in Queensland waters so the application of the IMDG Code is extremely limited. Such ships are required under Commonwealth law to carry the Code, and so will already have the Code onboard.</p>
<p>Penalty provisions 16(2), (3), (4), 18(1), (2), (3), 27(2), (3), (4), 29(1), (2), (3), 38J(2), 38K(2), 38M, (3), (4), 38N(1), (3)</p> <p>Appropriateness of delegation of legislative power – offences and penalties in subordinate legislation.</p>	<p>Currently all penalty provisions in the Regulation are set at a maximum penalty of 350 penalty units (PU) (currently \$262,250). This amount is provided for by TOMPA.</p> <p>It is generally not the practice in Queensland to set such high penalty levels in regulations. However, Maritime Safety Queensland believes that the high</p>

	<p>penalty levels that are in the regulation are justifiable given the level of harm that can be caused to the marine environment or the high level of loss or damage to property that can be caused by pollutants. The penalties clearly demonstrate the importance of protecting and preserving our coastal waters from pollutants and serve as a deterrent.</p> <p>These offences relate to important record keeping requirements. In many instances, the substantive discharge offences are impossible to prove, leaving documentary offences as an important means of achieving the objectives of the Act.</p>
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## 12.0 CONCLUSIONS

The proposed amended Regulation (Option 3) has been drafted to ensure that it represents best practice in minimising ship sourced marine pollution for Queensland coastal waters.

Option 3 provides the most appropriate means of achieving the policy objectives of TOMPA. The required outcomes cannot be satisfactorily achieved by alternative legislative or non-legislative means.

The draft amended Regulation is being released for public comment to enable further assessment of issues affecting the marine industry and the wider community arising from the remaking of this Regulation. All individuals and organisations with an interest in the marine environment in Queensland are encouraged to provide feedback on the proposals contained in this Regulatory Impact Statement.

## **Appendix A – Appreciable Costs Analysis**

### **1. The Existing Regulation**

Existing provisions that are to be remade without change and which may have an "appreciable cost" are listed below:

#### **Section 8 (Oil tankers - oil other than from machinery space bilges)**

This section only applies to oil tankers, which are international ships visiting Queensland's trading ports. The Regulation allows oil tankers to discharge oil from cargo tanks and other areas on board the ship when they are operating more than 50 nautical miles from the nearest land. Ships have to travel outside Queensland coastal waters to legally discharge, or they must utilise waste reception facilities within port. Generally, ships choose to use waste reception facilities within port and accept the costs associated with this as part of their normal operational costs.

Under MARPOL 73/78, which Australia has ratified, signatories are required to provide adequate waste reception facilities for all wastes generated by shipping. As a result trading ports, such as the Port of Brisbane, provide shore based waste reception facilities to assist ship operators to comply with MARPOL 73/78. Therefore ships visiting Queensland are not obligated to travel more than 50 nautical miles from the nearest land to discharge tank washings because reception facilities are available in port where most tankers berth. These facilities are available at all 14 trading ports in Queensland.

There are approximately 400 visits by oil tankers to the port of Brisbane each year. Approximately 50% of these visits are by crude oil tankers, all of which discharge their tank washings ashore at the oil refineries. It is also normal practice for product tankers to discharge their tank washings at the refineries.

#### **Section 14 (Shipboard Oil Pollution Emergency Plan)**

This section places a requirement on the owners and operators of all ships that are over 35 metres in length overall, and all ships that are over 24 metres in length overall if the ship is carrying oil as cargo or is carrying a vehicle with more than 400 litres of oil as cargo, to have an approved Shipboard Oil Pollution Emergency Plan (SOPEP).

SOPEPs describe the action to be taken by the crew of ships to minimise environmental and other damage in the event of an oil spill.

Under the Regulation SOPEPs must be approved by Maritime Safety Queensland. SOPEPs are only required to be approved once and it currently costs \$54.40 to submit a SOPEP for approval. There are also costs to ship owners and operators associated with development and testing of SOPEPs. It is also the ship owner and operator's responsibility to ensure the SOPEP is kept current and to exercise emergency procedures. This requirement has been in place since 1995 and is recognised as part of daily routines for the operation of the ship.

Approximately 200 Queensland registered ships are impacted by this requirement. Most of these ships have already submitted a SOPEP for approval.

#### **Sections 20 – 25 (Noxious Liquid Substances in Bulk)**

This section generally applies to trading ships visiting Queensland. Sections 20 – 25 place conditions on the washing of ships' tanks and the discharge of water containing residues of

noxious liquid substances from ships. Ships are required to discharge the bulk of their tank washing to a waste reception facility. The remaining residue is diluted to an accepted international level and can be discharged under particular conditions set out in the Regulation.

Under MARPOL 73/78, which Australia has ratified, signatories are required to provide adequate waste reception facilities for all wastes generated by shipping. As a result trading ports, such as the Port of Brisbane, provide shore based waste reception facilities to assist ship operators to comply with MARPOL 73/78. These facilities are available at most trading ports in Queensland. Where these facilities are not provided, the relevant port authority can facilitate the collection of ship sourced wastes. Generally ships accept the costs associated with using these facilities as part of their normal operational costs.

The purpose of these sections is to help prevent pollution of Queensland's marine and coastal environment by noxious liquid substances. It controls the discharge of noxious liquid substances so there are little or no environmental costs.

### **Sections 30 – 38 (Tank Washing)**

This section generally applies to trading ships visiting Queensland. These sections require the washing of ships' tanks that have contained noxious and hazardous substances. Under these sections ships may discharge providing established pumping procedures are observed and discharge of tank washings which contain cargo residues are done at shore based reception facilities.

Under MARPOL 73/78, which Australia has ratified, signatories are required to provide adequate waste reception facilities for all wastes generated by shipping. As a result trading ports, such as the Port of Brisbane, provide shore based waste reception facilities to assist ship operators to comply with MARPOL 73/78. These facilities are available at most trading ports in Queensland. Where these facilities are not provided, the relevant port authority can facilitate the collection of ship sourced wastes. Generally, ships accept the costs associated with using these facilities as part of their normal operational costs.

The purpose of these sections is to help prevent pollution of Queensland's marine and coastal environment by noxious and hazardous substances. It controls the discharge of noxious and hazardous substances so there are little or no environmental costs.

### **38A Nil Discharge for Untreated Sewage**

In the past, it was lawful to discharge untreated 'raw' sewage from ships wherever a ship operator wished. However, the amendments to the TOMPR that were introduced on 1 January 2004 and the more widespread limitations on discharge from 1 July 2004 meant that this practice was no longer lawful.

Maritime Safety Queensland has constructed the legislation in a way that allows operators to make the choice of alternatives that best meet their circumstances. The cost to ships depends on where the ships are operating and which option they choose to comply with the Regulation. The most popular options are holding tanks (which are available from \$200) and macerators (which are also available for \$200) and sold widely through marine product distributors.

This section applies to all ships that have the capacity to generate sewage, but particularly those ships with a fixed toilet. It is estimated that approximately 23,000 recreational and commercial ships greater than 6 metres have a fixed toilet. However some of these ships may have already taken steps that would meet the requirements of the Regulation.

Essentially if you don't have a toilet onboard your ship, which is approximately 90% of all ships registered in Queensland, then you are not affected.

### **38B Nil Discharge for Treated Sewage**

This section specifies the waters where treated sewage can be discharged. Whilst treatment systems provide the best output, precautionary distances off sensitive areas such as oyster leases, reefs, marine parks and people in the water have been implemented to ensure the highest level of protection.

Recreational ships owners do not have to install treatment systems but if they do their discharge options will be increased. Commercial operators may also choose to install a treatment system as a means of providing the most cost effective solution for their operational requirements.

There is no change to this section.

### **38C Treatment System Documents**

This section applies to all ships fitted with a treatment system. It requires these ships to ensure that the system documentation and service manual for the treatment system are kept onboard.

Additional requirements are placed on the owners of declared ships, which are defined under the Act as Class 1 ships with a fixed toilet. Generally, this would be commercial ships that have a treatment system onboard. The owners of these ships must also keep written service records for the treatment system.

There are approximately 1,000 declared ships registered in Queensland, not all of these ships would have a treatment system onboard.

There is almost no cost to recreational ships as the documentation would be provided at the time of purchase. Declared ships need to allocate time to ensure that service documentation is kept and up-to-date at all times.

### **38M Sewage Disposal Records must be kept onboard**

All declared ships (which are defined under the Act as Class 1 ships with a fixed toilet - generally, these would be commercial ships). These are required to carry a current sewage disposal record book that is readily available for inspection at all reasonable times. There are approximately 1,000 declared ships registered in Queensland.

Sewage disposals discharged to a sewage disposal facility must be recorded in an appropriate sewage disposal record book. For example, information collected must include the date, time, place and volume (in litres) of each discharge.

Similar to section 38C (above), this should not incur any great additional costs to declared ships as this practice should form part of the already ongoing onboard record keeping. Most declared ships would already comply with this requirement.

### **38K Assessment of Treatment Systems**

Currently if the owner of a declared ship has a treatment system installed onboard, they will also have to make a commitment to ongoing performance assessment to ensure that the system is able to perform to the level specified by the manufacturer.

It is inevitable that equipment will break down or the performance levels (that is, its treatment capabilities) will deteriorate over a period of time. This will invariably result in a lower level of sewage quality characteristics in the treated sewage being discharged.

We need to ensure that owners of declared ships have a system that continues to perform in the manner intended by the manufacturer. It is estimated that it would cost \$500 each time they have their systems assessed.

It is proposed that all ships with treatment systems will be required to maintain and assess their sewage treatment systems. There is no change to the current requirements for declared ships, but the amendment will provide that the owners of all other ships must now ensure that their onboard treatment systems are also assessed at least once in the first 5 years and at least every two years for the remaining life of the system. The cost to individual ship owners would be \$100 per annum for the first five years and then \$250 per annum for every five years for the life of the system. There are approximately 22,000 recreational ships over 6m with a fixed toilet, however only a small number of these ships are expected have an onboard treatment system.

Treatment systems require ongoing routine maintenance and assessment. This amendment will ensure that such maintenance and assessment is carried out so that the system may continue to perform/operate in the manner that the manufacturer intended, i.e. as outlined in the system documentation provided by the manufacturer/distributor.

However, by ensuring that treatment systems continue to perform/operate in the manner prescribed by the manufacturer, costs will be greatly outweighed by the overall/net benefit to human health and the environment.

### **38G Ship-Board Sewage Management Plans**

This is a requirement under the Act. A declared ship must have a ship board sewage management plan which documents how the master and owner will manage the sewage created on board. The Regulation outlines the minimum requirements of the sewage management plan.

The financial costs associated with this requirement are minimal. However ship owners can hire a 'consultant' to prepare this documentation on their behalf which would incur a cost. The significant cost is the time required to develop a sewage management plan and ensure that staff or, in the case of the bare boat industry, the ship hirer are aware of the ship discharge requirements and sewage management plan.

There are currently examples of management plans on the Maritime Safety Queensland website to minimise the impact on ship owners and operators. These examples are available to copy and use as a template to assist ship owners and operators to create their own sewage management plan.

### **38J Sewage Released outside of Nil Discharge Waters must first pass through a Macerator**

This is a proposed amendment to section 38J. It will require ship owners with a fixed toilet installed onboard their ship, to fit a macerator if they wish to discharge in lawful discharge areas of Queensland waters. Macerators are available for approximately \$200 from marine equipment distributors Queensland wide.

It is estimated that 20,000 recreational ships are over 6m and 3,000 commercial ships would have a fixed toilet onboard, however some of these ships would already be fitted with macerators and holding tanks.

### **Section 45 (Transfer Operations)**

Section 45 places a requirement on people to keep records of transfer operations. Whilst there may be some minor costs associated with the purchase of appropriate log books and some minor time imposts associated with keeping records these are seen by Maritime Safety Queensland as being minor and a normal part of a ship's operations.

The obligation to keep records of transfer operations helps to maintain vigilance and accountability by the crews of ships involved in these types of operations.

### **Section 51 (Labour Costs)**

Since the early 1970s the "polluter pays" principle has been a dominant concept in international environmental law. The principle can be implemented by various means requiring producers or resource users to meet the cost of implementing environmental standards, or by introducing liability regimes making polluters liable for pollution cleanup and environmental damage. It is a fundamental tenet of Australia's National Plan.

Response to marine pollution incidents can incur significant costs, including labour. This section of the Regulation allows Maritime Safety Queensland to claim back from the polluter labour costs incurred during the response to a marine pollution incident. The Regulation sets the rate claimable at 133% of the gross salary for an officer of the public service or the cost charged to Maritime Safety Queensland for someone external to Maritime Safety Queensland.

The cost recovery elements in the Regulation are consistent with Polluter Pays principle adopted by Australia's National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances and under other international conventions.

The principle has recently been applied to an incident involving the bulk coal carrier *Global Peace* which spilled 25 tonnes of fuel into Gladstone Harbour on 24 January 2006. Costs associated with recovery of oil from the harbour's waters and shorelines and the cleanup of soiled boats and infrastructure in Gladstone marina will be met by the polluter's insurance company.

### **Section 51A (Insurance Limit)**

There have been a number of cases of uninsured ships that have gone aground or sunk while containing pollutants and have posed a significant threat to Queensland's marine and coastal environment.

The current Regulation requires the owners of ships over 35 metres in length overall to have an insurance policy to a limit of at least 10 million dollars to cover the cost of cleanup of a discharge of a pollutant into Queensland Coastal waters, and salvage or removal of a ship from Queensland Coastal waters.

This helps to protect Queensland's marine and coastal environment by ensuring that adequate mechanisms are in place to pay for costs associated with pollution.

This is an existing requirement. There may be some impact on ship owners who do not currently have appropriate insurance cover for pollutant clean up or salvage costs.

## **2. Proposed Amendments to the Regulation**

### **Section 52 – Authorised Officers**

Section 72(1)(c) of TOMPA provides for the appointment of "other persons prescribed under the Regulations" as authorised officers. Section 52 of the Regulation prescribes persons who may be appointed as authorised officers.

In 2004, Maritime Safety Queensland assumed legislative responsibility for the prevention and response to all ship sourced pollution in Queensland coastal waters, including within ports. Port Authorities have maintained a key role in providing pollution response capability within ports and these arrangements are subject to formalised deeds of agreement. In remote ports such as Abbot Point, the port authority does not have any staff. The functions of the port are conducted by a contractor under agreement with the port authority.

Currently employees of entities that have entered into an agreement with Maritime Safety Queensland or a port authority (like in Abbot Point) cannot be appointed as authorised officers. This means that whilst port authorities are obligated to carry out these functions, employees of entities that have entered into an agreement with them are unable to be appointed as authorised officers.

To ensure that these people can take action to legally respond and minimise marine pollution they need to be able to be appointed as authorised officers under TOMPA.

The costs associated with training and issuing of appointments is the responsibility of Maritime Safety Queensland. There will also be a commercial cost to the companies and/or port authorities for the time contractors will be required to attend a two day authorised officer training course and, possibly for travel and accommodation to the training venue.

The benefit to the employees and their company is that they will be covered by Maritime Safety Queensland's legislation to legally carry out their duties whilst the benefit to the community is that the people on the spot at the time of an incident are appropriately trained and authorised to respond immediately.

### **S38A – Nil discharge waters for untreated sewage**

Prohibit the discharge of untreated sewage within the vicinity of jetties and wharves.

This change is sought to address an anomaly whereby in waters beyond designated smooth waters, rivers and creeks, ship operators can discharge untreated sewage while berthed at a jetty or wharf that may be in use by members of the public. Usually such structures are in nil discharge waters however in some isolated areas there are jetties that are used by communities located in waters not covered by the discharge provisions.

There may be a financial impost on ship owners, in instances where they do not presently have a sewage holding device to contain sewage on board, and they will have to install holding devices so that they can contain their sewage until they have reached the proposed minimum discharge distance (which is 1 nautical mile) from a jetty or wharf structure.

### **Part 4A – ship sourced sewage provisions**

- Establish an offence for ships with fixed toilets that are not fitted with a macerator: The proposed amendment will make it compulsory for all ship owners with an onboard fixed

toilet to have a macerator onboard (macerators are available for approximately \$200), regardless of ship type or whether or not a discharge has occurred.

- Establish an offence to bypass the macerator or holding device: It is also proposed that changes will be made to the Regulation to modify macerator requirements to make it unlawful for plumbing arrangements to be configured to allow a sewage discharge to bypass the macerator.

Currently, anecdotal evidence shows that there is minimal compliance with these sections of the sewage provisions. It is extremely difficult to enforce as it is necessary to catch someone in the act of discharging (and prove that such a discharge has occurred) for these provisions to be enacted. Ship operators are unlawfully discharging into coastal waters because they know it is difficult to catch them discharging.

There are approximately 20,000 recreational ships and 3,000 commercial ships over 6m with a fixed toilet. However some of these ships may already have a macerator installed and/or do not have a bypass valve.

Both these amendments are designed to remove ambiguity and give full effect to the intent of the legislation in that all untreated sewage discharge should be macerated before release and to remove avenues for people to avoid complying with the legislation.

#### **Schedule 7 – Levels of sewage quality characteristics for treated sewage**

This amendment clarifies that geometric means is calculated using at least 5 samples.

This provision will only impact upon manufactures and agents when they are seeking to get documentation from a testing agency to prove that the system preforms to the level that they claim. The analysis is determined on sample analysis. It is proposed that a mean of samples will be defined as the result of at least 5 samples. It would appear that manufacturers may currently assert that a mean could be the result of a single sample.

Maritime Safety Queensland is anxious that when consumers buy a product owners will have confidence that their system will meet the requirements of the Regulation and perform to the stated level. A result derived on the analysis of one sample is not regarded as prudent scientific practice.

Generally, most manufacturers that provide treatment systems would already conduct a number of tests to ensure that their system performs to a standard. Those that do not conduct sufficient samples will incur costs to demonstrate that the system they are selling/distributing meets the requirements of the Regulation.

**Appendix B – Response to Regulatory Impact Statement for amendments to the *Transport Operations (Marine Pollution) Regulation 1995*.**

**Name** \_\_\_\_\_  
**Organisation** \_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Email** \_\_\_\_\_

- 
1. Do you require your submission to be confidential?  Yes  No
2. Please indicate if you are:
- An owner of a recreational ship  Yes  No
- An owner of a commercial/fishing ship  Yes  No
- A member of boating club or marine industry organisation  Yes  No
- A member of a community or conservation organisation  Yes  No
3. Would you pay to have your ship to be pumped out by a commercial operator?  
 Yes  No
4. Do you currently have a holding tank or a treatment system onboard your ship?  
 Yes  No
5. Do you anchor in nil and prohibited discharge areas?  Yes  No
6. How could we communicate more effectively with you on these matters?

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7. Are additional comments included on separate pages?  Yes  No  
(if yes, please attach these additional comments)

**Do you agree that the nil discharge waters should be extended to prohibit the discharge of sewage within half a nautical mile of a jetty or wharf in waters beyond smooth waters, rivers & creeks?**

Yes       No       Somewhat       See Comments

**Do you support the introduction of a requirement for all ships with a fixed toilet to also have a macerator installed?**

Yes       No       Somewhat       See Comments

**Do you support the introduction of a requirement for all ships with a fixed toilet to ensure that the toilet is configured so that all discharges into coastal waters must first pass through a macerator?**

Yes       No       Somewhat       See Comments

**Do you support the introduction of a requirement for all ships with a fixed toilet to ensure that the toilet is configured to comply with nil discharge requirements whilst operating in nil discharge areas?**

Yes       No       Somewhat       See Comments

**Do you agree with the amendment to the definition of an independent testing entity?**

Yes       No       Somewhat       See Comments

**Do you agree with the amendment to the definition of a geometric mean?**

Yes       No       Somewhat       See Comments

**Do you agree with the amendment to the description of Grade A treated sewage?**

Yes       No       Somewhat       See Comments

**Do you agree that contractor and agents should be appointed as authorised officers with limited functions and responsibilities?**

Yes       No       Somewhat       See Comments



ENDNOTES

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

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