

Appendix 3 – Queensland legislation

Maritime Safety Queensland Act 2002

8 Functions and powers of MSQ

(1) MSQ has the following functions—

(a) for the *Transport Operations (Marine Safety) Act 1994*—

(i) to develop strategies for marine safety, including on advice received from the Marine Board established under that Act; and

Example —

education campaign for the safe use of recreational ships

(ii) to make standards for designing, building and operating commercial ships for approval by the Governor in Council, and to monitor and audit the implementation of the standards; and

(iii) to accredit ship designers, ship builders or marine surveyors; and

(iv) to approve an entity to conduct training programs for the operation of ships or to conduct examinations for issuing licences under that Act; and

(v) to licence masters, other than recreational masters, crew members and pilots; and

(vi) to set up and maintain aids to navigation; and

(vii) to handle the investigation process into marine incidents; and

(viii) to monitor and manage the movement of ships in Queensland waters; and

(ix) to monitor and manage the operation and activities of ships in Queensland waters; and

(x) to monitor and manage unseaworthy ships or abandoned, stranded, sunk or wrecked ships;

(b) ...

Transport Operations (Marine Safety) Act 1994

3 Objectives of this Act

(1) The overall primary objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a system that achieves an appropriate balance between —

(a) regulating the maritime industry to ensure marine safety; and

(b) enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.

(2) In particular, the objectives of this Act are —

- (a) to allow the Government to have a strategic overview of marine safety and related marine operational issues; and
- (b) to establish a system under which —
 - (i) marine safety and related marine operational issues can be effectively planned and efficiently managed; and
 - (ii) influence can be exercised over marine safety and related marine operational issues in a way that contributes to overall transport efficiency; and
 - (iii) account is taken of the need to provide adequate levels of safety with an appropriate balance between safety and cost.
- (3) These objectives are to be achieved mainly by imposing general safety obligations to ensure seaworthiness and other aspects of marine safety, and allowing a general safety obligation to be discharged by complying with relevant standards or in other appropriate ways chosen by the person on whom the obligation is imposed.
- (4) In particular, a ship may be taken to sufficiently comply with the general safety obligation even though a certificate of survey has not been issued for the ship.
- (4A) A further objective of this Act is to manage the operation and activities of ships.
- (5) The objectives of the Act are also achieved by establishing the Marine Board as a representative body to advise the Minister.
- (6) The objectives of the Act, and how they are achieved, are further explained in part 3 (How to understand this Act).

10 Meaning of ship

- (1) A ship is any kind of boat or other vessel used, or intended to be used, in navigation by water or for any other purpose on water.
- (2) Without limiting subsection (1), a ship includes a boat or other vessel —
 - (a) whatever its size; and
 - (b) however it is propelled or moved; and
 - (c) whether it is on land or in water.
- (3) A ship includes, for example —
 - (a) a barge, lighter or other floating vessel; and
 - (b) a hovercraft or other surface effect craft.
- (4) A ship does not include a vessel declared by regulation not to be a ship.
- (5) A regulation may provide that a ship includes an aircraft when it is on water or is taking off, or landing on, water.
- (6) Except as provided by a regulation under subsection (5), a ship does not include an aircraft.

(7) A reference to a ship includes the ship's equipment.

10A Meaning of commercial ship, fishing ship and recreational ship, and related provision

(1) A commercial ship is —

(a) a ship other than a fishing ship or recreational ship; or

(b) a tender to a ship other than a fishing ship or recreational ship.

(2) A fishing ship is —

(a) a ship authorised, under an authority under the *Fisheries Act 1994*, for fishing purposes; or

(b) a ship authorised, under a development permit under the *Integrated Planning Act 1997*, for aquaculture purposes; or

(c) a ship that is a boat for which a licence has been granted under the *Fisheries Management Act 1991* (Cwlth) or the *Torres Strait Fisheries Act 1984* (Cwlth); or

(d) a tender to a ship mentioned in paragraph (a), (b) or (c).

(3) A recreational ship is —

(a) a ship used only for private recreation; or

(b) a tender to a ship used only for private recreation.

(4) For subsection (3), a regulation may provide for deciding if a ship is used only for private recreation.

43 General obligation on persons involved with operations of a ship to operate it safely

(1) A person involved with a ship's operation (including the owner, master, pilot and crew members) must not cause the ship to be operated unsafely.

Maximum penalty — 500 penalty units or imprisonment for 1 year.

(2) Without limiting subsection (1), a person causes a ship to be operated unsafely if the person causes the ship to be operated in a way that —

(a) causes a marine incident; or

(b) contravenes —

(i) conditions of the ship's registration about safety; or

(ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner, master, pilot, crew member or other person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(4) A person does not contravene this section because of subsection (2) (a) if the only basis for holding that a marine incident has been caused is lawful damage to, or danger of lawful damage to, property of which the person is the sole owner.

(5) In this section —

lawful damage means damage that is not unlawful under the *Criminal Code*, section 469.

Part 9 Aids to navigation

104 Meaning of aid to navigation

(1) An aid to navigation is a device designed to be used for navigation or the guidance of mariners, including a device to help in —

- (a) fixing a ship's position; or
- (b) deciding a safe course for a ship; or
- (c) warning a ship of dangers or obstructions.

Examples —

beacon, buoy, light, lighthouse, marine mark, radio aid or signal

(2) An aid to navigation includes any structure or equipment ancillary to the aid to navigation.

Examples —

1 the battery house providing a lighthouse with power

2 lifesaving equipment that is part of an aid to navigation

(3) However, an aid to navigation does not include a device on board a ship.

105 General manager may set up an aid to navigation

(1) The general manager may set up an aid to navigation —

- (a) in or near a pilotage area; and
- (b) in any other place where the general manager considers the aid to navigation is desirable to ensure the safety of people or ships or other property.

(2) The general manager may enter into agreements for setting up an aid to navigation.

(3) This section does not limit other powers that the general manager has to set up aids to navigation.

106 Unlawful interference with an aid to navigation

(1) A person must not unlawfully interfere with an aid to navigation.

Maximum penalty — 500 penalty units or imprisonment for 1 year.

(2) However, if —

- (a) the interference with the aid causes a marine incident; and
- (b) the marine incident involves the death of, or grievous bodily harm to, a person;

the person commits an indictable offence and is liable to a maximum penalty of 5,000 penalty units or imprisonment for 2 years.

(3) A person unlawfully interferes with an aid to navigation if the person wilfully, and without authority, justification or excuse, detrimentally interferes with the effective or efficient operation of the aid.

Examples of detrimental interference —

1 A person removes, alters, damages or disturbs the aid.

2 A person obstructs the operation of the aid.

107 Trespassing on an aid to navigation

A person must not —

(a) moor a ship to an aid to navigation or climb the aid, unless the person has a reasonable excuse for mooring the ship or climbing the aid; or

(b) if the aid to navigation is a lighthouse — enter the lighthouse or any enclosed area around the lighthouse, unless the person has a reasonable excuse for entering the lighthouse or area.

Maximum penalty — 40 penalty units.

107A Damage to an aid to navigation

(1) This section applies if a ship damages or destroys an aid to navigation.

(2) The master and the owner of the ship are jointly and severally liable for the expense of repairing or reinstating the aid to navigation.

(3) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the master and the owner of the ship.

123 What is a marine incident

(1) A **marine incident** is an event causing or involving —

(a) the loss of a person from a ship; or

(b) the death of, or grievous bodily harm to, a person caused by a ship's operations; or

(c) the loss or presumed loss or abandonment of a ship; or

(d) a collision with a ship; or

(e) the stranding of a ship; or

(f) material damage to a ship; or

(g) material damage caused by a ship's operations; or

(h) danger to a person caused by a ship's operations; or

(i) danger of serious damage to a ship; or

(j) danger of serious damage to a structure caused by a ship's operations.

(2) A marine incident also includes another event prescribed by regulation.

(3) However, a marine incident does not include an event declared by regulation not to be a marine incident.

206A General manager's power to fix speed limits for ships

(1) The general manager may fix speed limits for ships by gazette notice.

(2) The gazette notice is not subordinate legislation.

(3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty — 200 penalty units.

(4) The general manager may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a speed sign) stating the speed limit for the waters.

(5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.

(6) This section does not prevent a regulation making provision about speed limits.

(7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.

(8) It is declared that a gazette notice under this section is taken never to have been subordinate legislation.

211 Regulation may give effect to treaties, conventions or international agreements or documents

(1) A regulation may give effect (with or without changes and whether in whole or part) to a treaty, convention or international agreement or document about ships.

Examples —

1 The Prevention of Collisions Convention (within the meaning of the Commonwealth Navigation Act, part IV).

2 The Safety Convention (also within the meaning of the Commonwealth Navigation Act, part IV).

3 Resolutions, codes, recommendations and other documents issued by the International Maritime Organisation.

(2) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

Maximum penalty — 500 penalty units or imprisonment for 1 year.

International Regulations for Preventing Collisions at Sea 1972

Rule 2 Responsibility

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the

neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

Rule 6 Safe speed

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

(a) By all vessels:

(i) the state of visibility;

(ii) the traffic density including concentrations of fishing vessels or any other vessels;

(iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;

(iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;

(v) the state of wind, sea and current, and the proximity of navigational hazards;

(vi) the draught in relation to the available depth of water.

(b) Additionally, by vessels with operational radar:

(i) the characteristics, efficiency and limitations of the radar equipment;

(ii) any constraints imposed by the radar range scale in use;

(iii) the effect on radar detection of the sea state, weather and other sources of interference;

(iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;

(v) the number, location and movement of vessels detected by radar;

(vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

Rule 8 Action to avoid collision

(a) Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f) (i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.

Rule 9 Narrow channels

(a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

(b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.

(c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.

(d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34 (d) if in doubt as to the intention of the crossing vessel.

(e) (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34 (c) (i). The vessel to be overtaken shall, if in agreement,

sound the appropriate signal prescribed in Rule 34 (c) (ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34 (d).

(ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.

(f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34 (e).

(g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

Transport Operations (Marine Safety) Regulation 2004

127 Speed limit for ship, other than personal watercraft, operating in particular places

(1) This section applies to a ship other than a personal watercraft.

(2) A person must not operate a ship in waters at a speed of more than 6 knots if the ship is within 30 metres of any of the following —

- (a) a person in the waters;
- (b) a ship at anchor, moored or made fast to the shore or aground;
- (c) a jetty, wharf, boat ramp or pontoon in or on the waters.

Maximum penalty — 200 penalty units.

(3) Subsection (2) does not apply to a ship if the ship is in waters for which a speed limit of 6 knots or less has been fixed under section 206A of the Act.

127A Speed limit for personal watercraft operating in particular places

(1) A person must not operate a personal watercraft in waters at a speed of more than 6 knots if the personal watercraft is within 60 metres of any of the following —

- (a) a person in the waters;
- (b) a ship at anchor, moored or made fast to the shore or aground;
- (c) a jetty, wharf, boat ramp or pontoon in or on the waters;
- (d) the boundary of a bathing reserve;
- (e) the shore.

Maximum penalty — 200 penalty units.

(2) Despite subsection (1) (e), a person may operate a personal watercraft in waters within 60 metres of the shore at a speed of more than 6 knots but no more than the speed limit for the waters if —

- (a) the personal watercraft is being operated for the purpose of water skiing; or
- (b) each of the following apply —
 - (i) the waters are less than 120 metres wide;

- (ii) the person is operating the personal watercraft along or near the centre of the waters, or within a marked channel;
 - (iii) the person uses the personal watercraft to move through the waters in a straight line or in the most appropriate or direct route taking into account the circumstances of the waters; or
- (c) complying with subsection (1) (e) would endanger the person or another person.
- (3) Subsections (1) and (2) do not apply to a personal watercraft if the personal watercraft is in waters for which a speed limit of 6 knots or less has been fixed under section 206A of the Act.
- (4) In this section —

bathing reserve means a bathing reserve established under the *Local Government Act 1993*, section 935.

127B Other restrictions for personal watercraft operating in particular places

- (1) A person must not while operating a personal watercraft freestyle, surf or wave jump within 200m of the shore if —
- (a) the personal watercraft is being operated in coastal waters; and
 - (b) 1 or more dwellings are within 100m of the shore and are visible from, and in the vicinity of, where the personal watercraft is being operated.

Maximum penalty — 200 penalty units.

- (2) In this section —

coastal waters means the coastal waters of the State, and includes other waters within the limits of the State that are subject to the ebb and flow of the tide.

128 Speed limit for ship if wash can cause marine incident or shoreline damage

- (1) A person must not operate a ship at a speed at which the ship's wash is reasonably capable of causing —

- (a) a marine incident; or
- (b) damage to the shoreline.

Maximum penalty — 200 penalty units.

- (2) Subsection (1) applies even if a speed limit is fixed under section 206A of the Act.

130 Interfering with speed sign

- (1) A person must not interfere with a speed sign erected or marked by the general manager under section 206A (4) of the Act unless the person has a reasonable excuse.

Maximum penalty — 200 penalty units.

- (2) In this section —

interfere with includes damage, destroy, mark and remove.

221 Unlawful operations if endangering marine safety

(1) A person who is the owner or master of a ship must not anchor, berth, moor or operate the ship in waters if doing so endangers marine safety.

Maximum penalty — 100 penalty units.

(2) For subsection (1), the general manager, by gazette notice, may state the waters where the anchoring, berthing, mooring or operating of a ship, or type of ship, endangers marine safety.

Example —

The general manager may publish a gazette notice stating that the operating of a ship within 60 m either side of the boundaries of a flagged swimming area endangers marine safety.

(3) A person must not conduct an activity in waters if doing so in the waters endangers marine safety.

Maximum penalty — 100 penalty units.

*Examples of an activity —
water skiing or tobogganing*

(4) For subsection (3), the general manager, by gazette notice, may state the waters where the conducting of a stated activity endangers marine safety.

(5) A person who is the owner or master of a ship must not operate the ship within 30 metres of a diver in the water if a code A flag is displayed in the vicinity of the diver.

Maximum penalty — 100 penalty units.

(6) However, subsection (5) does not apply to the ship attending the diver.

222 Water skiing

(1) A skier must wear a PFD type 2 or 3.

Maximum penalty — 100 penalty units.

(2) A skier does not commit an offence against subsection (1) if —

(a) the skier is participating in a skiing event; and

(b) it is impractical or unsafe for the skier to wear a personal flotation device.

(3) A person (an **operator**) must not operate a ship towing a skier unless —

(a) if the skier is required to wear a PFD type 2 or 3 under subsection (1) — the skier is wearing the PFD; and

(b) there is another person (an **observer**) on the ship, who is more than 12 years, and is competent to act under subsection (5), watching the skier at all times.

Maximum penalty — 100 penalty units.

(4) Subsection (3) (a) does not apply if —

- (a) the operator is towing a skier; and
- (b) the skier is participating in a skiing event; and
- (c) it is impractical or unsafe for the skier to wear a personal flotation device.

(5) The observer must immediately tell the operator if —

- (a) there is a danger, or potential for danger, to the skier; or
- (b) the skier signals the observer; or
- (c) the skier has a mishap.

(6) In this section —

skier means a person who is water skiing.

skiing event means any of the following —

- (a) a commercial display;
- (b) a trick or novelty skiing event in a program of events organised by a genuine water sports entity;
- (c) a genuine practice session for a display or event mentioned in paragraph (a) or (b).

Part 9A Marine zones

222A Marine zones

(1) An area listed in schedule 14A, column 1 is a marine zone.

(2) A person who is the owner or master of a ship must not operate the ship in a marine zone in contravention of a requirement listed in schedule 14A, column 2 for the marine zone.

Maximum penalty — 200 penalty units.

222B Proposal for marine zone

(1) A government entity or a local government (a **proposing entity**) may give the general manager a proposal for an area (a **proposed area**) to be a marine zone under section 222A.

(2) The proposal must be in the approved form.

(3) The approved form may require the proposing entity to include any of the following information in the proposal —

- (a) a description of the proposed area, including details of the boundaries of the proposed area and a map or chart showing its locality;
- (b) the requirements to be placed on the operation of a ship in the proposed area;
- (c) why the proposed marine area should be a marine zone;
- (d) who the proposing entity has consulted, the nature of the consultation and the results of the consultation.

222C Consultation for marine zone

(1) Before a proposing entity gives the general manager a proposal under section 222B in relation to a proposed area, the proposing entity must —

(a) consult about the proposal with —

(i) the harbour master for the proposed area; and

(ii) each person carrying on an established business in the proposed area; and

(iii) if the proposing entity is a government entity — the local government for the proposed area; and

(b) publish, at least once in a newspaper circulating generally in the proposed area, a notice stating —

(i) a description of the proposed area, including details of the boundaries of the area and a map or chart showing its locality; and

(ii) the requirements to be placed on the operation of a ship in the proposed area; and

(iii) why the proposed area should be a marine zone; and

(iv) that any person may make written submissions about the proposal; and

(v) the period during which submissions may be made; and

(vi) the requirements for properly making a submission; and

(vii) a contact telephone number for information about the proposal or making a submission.

(2) The consultation period must be for at least 28 days after notice is first published under subsection (1) (b).

226A Interfering with sign

(1) This section applies if a government entity or a local government erects a sign in or near —

(a) waters to which section 221 applies; or

(b) a marine zone listed in schedule 14A.

(2) A person must not interfere with the sign unless the person has a reasonable excuse.

Maximum penalty — 200 penalty units.