

Transport Infrastructure (Public Marine Facilities) Regulation 2011 remake Consultation Paper

Consultation Paper Not Government Policy

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1. Background

The *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (the Regulation) was made to fulfil the relevant objective of the *Transport Infrastructure Act 1994* (the Act) and provides for the efficient and effective administration and management of State-owned public marine facilities. The Department of Transport and Main Roads (TMR) holds a legislated responsibility to review the relevance, efficiency and effectiveness of its regulations every 10 years. As a branch of TMR, Maritime Safety Queensland (MSQ) has conducted a review of the Regulation, largely based on feedback received from industry stakeholder groups. This document provides detail of the current Regulation and issues raised, as well as some potential amendments and their expected impacts. MSQ is seeking the views of industry, stakeholders and the public on the proposals in this paper to inform government policy.

2. Privacy

TMR is collecting stakeholder feedback in relation to the review of the public marine facilities regulation. TMR abides by the Information Privacy Act when managing personal information. Your responses may be submitted anonymously however, in the event you do provide information that may be considered personal, TMR will manage this securely and will not use or disclose this information for another purpose without consent unless authorised or required to by law.

3. The *Transport Infrastructure Act 1994*

The Act provides a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure. The Act provides for different modes of transport and includes additional objectives and provisions relevant to those modes. In relation to public marine facilities, an objective of the Act is that public marine facilities are effectively and efficiently managed, and includes provisions for:

- the appointment of managers of public marine facilities by regulation;
- a manager's responsibilities in relation to public marine facilities
- conferral of powers of public marine facility managers;
- how fees may be imposed on users of public marine facilities;
- resignation of public marine facility managers; and
- removing improvements made to public marine facilities by managers.

4. The Current Regulation

The Regulation provides a regulatory framework for the effective administration and management of State-owned public marine facilities. The Regulation provides detail around the management of public marine facilities, including the appointment of managers and the conditions of their appointment. The Regulation also provides for the use of and safety at particular public marine facilities, for example at boat ramps and landings.

For State managed boat harbours, the Regulation sets out requirements for activities that can be controlled by regulatory notice or an authorised officer's direction, for example the movement or mooring of ships, movement, handling or storage of goods, movement of passengers, the movement, stopping or parking of vehicles and actions taken if there is noncompliance with the regulatory notice or direction.

The Regulation also addresses other potential issues in State managed boat harbours such as conduct causing public nuisance, prohibitions on anchoring, what it means to securely moor a ship and how to moor a ship in a State managed boat harbour. The Regulation further sets out the requirements for approvals (mooring approval, transport service approval, fuelling service approval and fish receipt service approval), and their related fees.

The Regulation also provides for the appointment and powers of authorised officers and outlines what a regulatory notice is and how it works.

5. The Remake of the Regulation

In accordance with section 54 of the *Statutory Instruments Act 1992*, the Regulation is due to expire. As part of this process, MSQ has assessed the continuing need for the Regulation and considered whether the Regulation remains effective and efficient. Consequently, a review of the Regulation has investigated whether:

- the current Regulation should be allowed to expire, or
- the current Regulation should be re-made with no significant amendments, or
- the current Regulation should be re-made, with changes to existing provisions to reflect changes that have occurred relating to public marine facilities since the Regulation was last remade.

MSQ considers that allowing the Regulation to expire would result in the State having no effective framework for the effective administration and management of State-owned public marine facilities. Further, there would be no ability or power to allow for the appointment of other local entities to manage State-owned facilities and the existing management arrangements for State-owned facilities are unlikely to remain valid.

However, remaking the Regulation without amendment will not result in any improvements or modernisation that addresses technological, regulatory and social changes that have emerged over the previous 10 years. Consequently, the preferred option is to remake the Regulation with amendments.

4.1 Consultation for the Remake

It is important that MSQ seeks feedback from industry, other relevant stakeholders and the public. Throughout this paper, you will be presented with issues and proposed solutions, as well as questions for your consideration. MSQ is seeking your feedback on the Regulation overall, as well as any potential issues associated with its elements. Importantly, MSQ would like to make it clear that the fee structure outlined in Schedule 3 of the Regulation is not mentioned in this consultation paper. While the fees are being reviewed in relation to their associated approvals as part of the remake, their structure will not be considered as part of this process. Instead, MSQ intends to review and conduct a similar consultation on fees in the Regulation in 2023. If you would like to provide feedback in relation to fees you may do so at this stage, or when MSQ consults in 2023.

MSQ considers that the Regulation remains relevant, efficient and needs to remain in place.

Question 1: Do you consider that the Regulation remains relevant, efficient and needs to remain in place? Further questions below relate only to changes proposed to the Regulation. If you have any further feedback about the need for the changes to the Regulation, please write to us at the email provided in section 6.

4.2 Issues and Proposed Solutions

4.2.1 Appropriate reviewable conditions for public marine facility managers

Issues

The current Regulation sets out a requirement that the appointment of a manager is on condition that the manager allow the public marine facility to be used for genuine, private, recreational boating purposes or commercial purposes with their written approval and written consent of the chief executive. However, public marine facility managers noted that this condition was too broad and did not provide enough clear guidance to public marine facility users about the expectation of use and accessibility.

MSQ considers that these are the issues related to conditions on a public marine facility manager's appointment.

Question 2: Do you consider that there are other issues with public marine facility managers' appointments? If so, please tell us what they are at the email provided in section 6.

Proposed solutions

In relation to the conditions of appointments for public marine facility managers, the remake should include the following as the conditions of appointment:

- for genuine, private, recreational boating purpose, including that:
 - (i) boat ramps will be available at all times for use by the public, unless the manager has a reasonable excuse, without charge for launching and retrieving of trailer-borne private recreational vessels (the reasonable excuse could, for example, include a situation of the boat ramp undergoing maintenance);
 - (ii) landings will be available at all times for use by the public, unless the manager has a reasonable excuse, without charge for the embarking and disembarking operations of private recreational vessels.
 - (iii) if a landing provides a queuing facility for an associated boat ramp, it shall be available at all times for use by the public for launching and retrieving trailer-borne private recreational vessels at the associated boat ramp (unless the manager has a reasonable excuse);
- for a commercial purpose with:
 - (i) the manager's written approval; and
 - (ii) the written consent of the chief executive.
(This is the current approach in section 6(b) of TIPMFR)
- Manager's responsibilities for managing public marine facility:
 - (i) replacing buoy moorings, pile moorings and dinghy racks in the facility; and
 - (ii) maintaining roads, parking areas, amenities and gardens in the facility; and
 - (iii) maintenance dredging in the facility other than dredging of channels to landings and boat ramps; and
 - (iv) all other aspects of managing the facility, including the operation, control, supervision, administration and funding of maintenance, unless otherwise agreed to by the chief executive.
 - (v) However, the responsibilities do not include replacing a public marine facility that is:
 - a boat ramp; or
 - a breakwater; or

- a landing; or
- a navigational aid; or
- a revetment wall.

In relation to conditions that are specific to the chief executive, the Gold Coast Waterways Authority and 'another person', the remake should include as conditions that these managers ensure that:

- the maximum staying time at landings will be determined (by the manager) and displayed on or near the landing
- the manager will erect a sign stating the maximum load to be applied to a boat ramp.

MSQ considers that these solutions respond to the issues related to public marine facility managers' responsibilities.

Question 3: Do you consider that these solutions respond effectively to the issues? If not, please email us at the email provided in section 6.

Question 4: Are there other solutions that MSQ could consider? If so, please email us.

Potential impacts

It is expected that there will be some impact if the proposed solutions are introduced into the new Regulation. Positive impacts include the availability of public marine facilities such as boat ramps or landings in most circumstances. Managers will continue to be allowed to approve the use of the public marine facility by commercial operators with the chief executive's consent. Finally, there is greater transparency around the public marine facility manager's responsibilities. Potential negative impacts include a change to the way people typically use the facilities. It is worth noting that public marine facility managers must not, unless they have a reasonable excuse, be in breach of the condition of appointment in relation to the requirement not to impede access and use of the facilities.

MSQ considers that the proposed solution will effectively resolve the issue mentioned above, while also ensuring minimal impact.

Question 5: Has MSQ accurately identified the impacts? If not, please email us at the email provided in section 6.

Question 6: Do you consider that MSQ has accurately identified the level of impact as minimal? If not, please email us.

4.2.2 Clarifying public marine facility managers' responsibilities

Issues

The current Regulation provides limited clarification around public marine facility managers' responsibilities. Public marine facility managers noted that their responsibilities could be set out more clearly in the Regulation.

MSQ considers that these are the issues related to public marine facility manager responsibilities.

Question 7: Do you consider that there are other issues with public marine facility managers' responsibilities, or responsibilities of managers of public marine facilities that are not currently included in the Regulation? If so, please tell us what they are at the email provided in section 6.

Proposed solutions

To address the issues identified above, it is proposed to include the responsibilities of the manager include (in addition to the current responsibilities) the operation, control, supervision and administration of the public marine facility unless otherwise agreed to by the chief executive.

The current section (section 7) of the Regulation relating to public marine facility manager's responsibilities is retained, but that responsibilities are set out more clearly and all public marine facility managers will be further consulted as the conditions of appointment provisions are drafted.

MSQ considers that these solutions respond to the issues related to public marine facility managers' responsibilities.

Question 8: Do you consider that these solutions respond effectively to the issues? If not, please email us at the email provided in section 6.

Question 9: Are there other solutions that MSQ could consider? If so, please email us.

Potential impacts

MSQ considers that the proposed amendment is about clarifying current responsibilities and therefore is expected to have minimal impacts.

MSQ considers that the proposed solution will effectively resolve the issue mentioned above, while also ensuring minimal impact.

Question 10: Has MSQ accurately identified the impacts? If not, please email us at the email provided in section 6.

Question 11: Do you consider that MSQ has accurately identified the level of impact as minimal? If not, please email us.

4.2.3 Authorised officer provisions

Issues

It has been identified that the Authorised Officer provisions need to be reviewed to ensure they remain relevant and current, and that the powers and appointment requirements clear. Issues that have been identified include, for example, that the Regulation:

- does not make it clear which enforcement process an Authorised Officer should use to issue directions, or what the expectations are on the person when issued a direction by an Authorised Officer;
- does not provide for the Authorised Officer's ability to take a copy of certain documents required to be kept under the Regulation;
- does not provide that the Authorised Officer may require a person's address, currently it just provides for their business address;
- does not allow an Authorised Officer to adequately carry out their activities, such as inspections for compliance of undertaking an investigation of a suspected breach, by being able to enter certain places

- and undertaken certain actions, for example, an Authorised Officer should be able to enter a place providing a service requiring approval under the Regulation and search any part of the place; and
- does not ensure that the chief executive is able to revoke an appointment if the person is no longer suitable for the role.

MSQ considers that these are the issues related to public marine facility manager responsibilities.

Question 12: Do you consider that there are other issues with Authorised Officer provisions? If so, please tell us what they are at the email provided in section 6.

Proposed solutions

Following a review of authorised officers provisions, MSQ proposes the following:

- clarifying the process of issuing directions to ensure an authorised officer applies the appropriate enforcement option and that a person clearly understands what is expected of them, they are given time to comply with the direction and they are informed of the potential penalty of not complying;
- to allow the chief executive to revoke the appointment of the authorised officers if the chief executive believes the person is no longer suitable to be an authorised officer;
- to allow the authorised officer to require the person's address, not just their business address;
- to allow an authorised officer to obtain a copy of documents that are required to be kept under the Regulation, such as a fuelling service approval holder keeping a register of operators trained in fuelling operations, and to be able to use them in a proceeding against the person;
- to ensure a person is complying with their approval, the remade Regulation will provide that an authorised officer is allowed to enter the following places in order to exercise powers that are reasonably necessary:
 - a place used to provide a transport service, fuelling service or fish receipt service (when the loading place is open for the carrying on of business or otherwise open for entry); or
 - a public place, and the entry is made when the place is open to the public; or
 - a place where the person consents to the entry; or
 - a place when it is a condition of the approval that an authorised officer be able to enter and inspect the place.
- that an authorised officer who enters the place should be able to:
 - search any part of the place;
 - inspect, examine, photograph or film anything at the place;
 - take samples of or from anything at the place;
 - take extracts from, or make copies of, any document at the place;
 - take equipment and materials into the place, that the authorised officer reasonable requires to help exercise their powers; and
 - require the occupier of the place, to give the inspector reasonable help for the exercise of the powers above.

MSQ considers that these solutions respond to the issues related to Authorised Officer provisions.

Question 13: Do you consider that these solutions respond effectively to the issues? If not, please email us at the email provided in section 6.

Question 14: Are there other solutions that MSQ could consider? If so, please email us.

Potential impacts

It is expected that there will be some impact if the proposed solutions are introduced into the new Regulation. Positive impacts include clarifying what is expected of both an Authorised Officer and the person receiving their direction when one is issued. Further, there is greater clarity for all parties on the enforcement process, with improved compliance and safety. Another potential impact is if the chief executive believes a person is no longer suitable for the role of Authorised Officer and revokes their appointment, this provides additional assurance that only those people suitable will be acting as authorised officers. A potential impact may include allowing Authorised Officers to undertake certain activities to ensure a person is complying with their approval, with improvement to safety as a result. This will ensure that people are abiding by the Regulation and the approval's conditions. Potential negative impacts include the impact on industry when an Authorised Officer can undertake further actions as part of their powers. Authorised Officer's being able to require a personal address instead of just a business address, however, this is considered necessary as a person committing an offence against the Regulation may be an individual and not a business (for example, a person obstructing another person's use of a boat ramp or landing).

MSQ considers that the proposed solution will effectively resolve the issue mentioned above, while also ensuring minimal impact.

Question 15: Has MSQ accurately identified the impacts? If not, please email us at the email provided in section 6.

Question 16: Do you consider that MSQ has accurately identified the level of impact as minimal? If not, please email us.

4.2.4 Use of facilities

Issues

It is important that landings are accessible, as described in 4.2.1. There are several instances in which berthing alongside a landing is problematic, such as allowing equitable access to the landing, or in an emergency situation. Currently, access to agencies requiring the use of the landing may be prevented by ships berthing alongside the landing.

MSQ considers that these are the issues related to the use of facilities.

Question 17: Do you consider that there are other issues with the use of facilities? If so, please tell us what they are at the email provided in section 6.

Proposed solutions

It is proposed to add a section that restricts a person from berthing alongside a landing for a time longer than that permitted by signage at the landing without a reasonable excuse.

MSQ considers that these solutions respond to the issues related to the use of facilities at State managed boat harbours.

Question 18: Do you consider that these solutions respond effectively to the issues? If not, please email us at the email provided in section 6.

Question 19: Are there other solutions that MSQ could consider? If so, please email us.

Potential impacts

MSQ considers that it is unlikely there will be any unexpected or significant impacts as the proposal directly relates to equitable access and safety. However, anyone who routinely berths alongside a landing will be impacted by this proposed amendment.

MSQ considers that the proposed solution will effectively resolve the issue mentioned above, while also ensuring minimal impact.

Question 20: Has MSQ accurately identified the impacts? If not, please detail at the email provided in section 6.

Question 21: Do you consider that MSQ has accurately identified the level of impact as minimal? If not, please email us.

4.2.5 Approvals

Issues

The current Regulation requires approvals for certain activities, including: buoy moorings, transport services, fish receival services and fuelling services. It has been identified that the Regulation requires greater clarification around how to apply for approvals, and there were unprescribed standard conditions that were not reviewable. Further, while the Regulation mentions conditions that must be adhered to by all approval holders, it is not clear what the standard conditions are or whether they are reviewable.

MSQ considers that these are the issues related to approvals.

Question 22: Do you consider that there are other issues with approvals? If so, please tell us what they are at the email provided in section 6.

Proposed solutions

MSQ considers the remake will make it clear how to apply for an approval and also considers it important to make the conditions of approvals clear as part of the remake, and clarify that conditions are reviewable.

MSQ considers that these solutions respond to the issues related to approvals.

Question 23: Do you consider that these solutions respond effectively to the issues? If not, please email us at the email provided in section 6.

Question 24: Are there other solutions that MSQ could consider? If so, please email us.

Potential impacts

The proposed amendment clarifies the application of a transport service approval and allows for reviewable conditions. It is considered that impacts will provide clarity and flexibility transport service approvals.

MSQ considers that the proposed solution will effectively resolve the issue mentioned above, while also ensuring minimal impact.

Question 25: Has MSQ accurately identified the impacts? If not, please detail at the email provided in section 6.

Question 26: Do you consider that MSQ has accurately identified the level of impact as minimal? If not, please email us.

5 Questions

Question
Section 4.1 Consultation for the Remake
Question 1: Do you consider that the Regulation remains relevant, efficient and needs to remain in place?
Section 4.2.1 Appropriate reviewable conditions for public marine facility managers
Question 2: Apart from the issues outlined in section 4.2.1, do you consider that there are other issues with public marine facility managers' appointments?
Question 3: Do you consider that the solutions offered in section 4.2.1 respond effectively to the issues?
Question 4: Are there other solutions that MSQ could consider for conditions for public marine facility managers?
Question 5: Has MSQ accurately identified the impacts for conditions for public marine facility managers?
Question 6: Do you consider that the impacts are minimal?
Section 4.2.2 Clarifying public marine facility managers' responsibilities
Question 7: Apart from the issues outlined in section 4.2.2, do you consider that there are other issues with public marine facility managers' responsibilities or responsibilities of managers of public marine facilities that are not currently included in the Regulation?
Question 8: Do you consider that the solutions offered in 4.2.2 respond effectively to the issues?
Question 9: Are there other solutions that MSQ could consider for public marine facility managers' responsibilities?
Question 10: Has MSQ accurately identified the impacts for public marine facility managers' responsibilities?
Question 11: Do you consider that the impacts are minimal?
Section 4.2.3 Authorised officer provisions
Question 12: Apart from the issues outlined in section 4.2.3, do you consider that there are other issues with Authorised Officer provisions?
Question 13: Do you consider that the solutions offered in 4.2.3 respond effectively to the issues?
Question 14: Are there other solutions that MSQ could consider for Authorised Officers?
Question 15: Has MSQ accurately identified the impacts for Authorised Officers?
Question 16: Do you consider that the impacts are minimal?
Section 4.2.4 Use of facilities at State managed boat harbours
Question 17: Apart from the issues outlined in section 4.2.4, do you consider that there are other issues with use of facilities?
Question 18: Do you consider that the solutions offered in 4.2.4 respond effectively to the issues?

Question 19: Are there other solutions that MSQ could consider for use of facilities at State managed boat harbours?

Question 20: Has MSQ accurately identified the impacts for the use of facilities at State managed boat harbours?

Question 21: Do you consider that the impacts are minimal?

Section 4.2.5 Approvals

Question 22: Apart from the issues outlined in section 4.2.6, do you consider that there are other issues with approvals?

Question 23: Do you consider that the solutions offered in 4.2.6 respond effectively to the issues?

Question 24: Are there other solutions that MSQ could consider for approvals?

Question 25: Has MSQ accurately identified the impacts for approvals?

Question 26: Do you consider that the impacts are minimal?

6 Contact Us

MSQ is undertaking a consultation process with key stakeholders and the community in relation to these proposed changes and invites you to provide any feedback you may have on this proposal by no later than 24 February 2023. Please provide any feedback or questions you may have relating to this proposal via return email to consultation@msq.qld.gov.au or write to us at: Attention Policy and Operations, Maritime Safety Queensland GPO Box 2595, Brisbane Qld 4001.