



QUEENSLAND PARLIAMENT **COMMITTEES**

Subordinate legislation tabled on 10 September 2024 – Transport Operations (Marine Safety) Legislation Amendment Regulation 2024

State Development, Infrastructure and Works Committee



Report No. 2

58th Parliament, February 2025

Overview


This report summarises the committee’s findings following its examination of the Transport Operations (Marine Safety) Legislation Amendment Regulation 2024 which was tabled on 10 September 2024. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (Legislative Standards Act).¹ The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (Human Rights Act) and the human rights certificate tabled with the subordinate legislation.²

Subordinate legislation examined

| No. | Subordinate legislation | Date tabled | Disallowance date* |
|-----|--|-------------------|--------------------|
| 188 | Transport Operations (Marine Safety) Legislation Amendment Regulation 2024 | 10 September 2024 | 13 March 2025 |

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

Committee consideration of the subordinate legislation

| Committee Comment | |
|---|--|
|  | <p>The Transport Operations (Marine Safety) Legislation Amendment Regulation 2024 (SL No. 188) is the subject of a disallowance motion moved in the Legislative Assembly on 10 December 2024. The debate on the disallowance motion is set down on the Notice Paper for resumption on 18 February 2025. Among other things, SL No. 188 seeks to improve marine safety and reduce the loss of lives in marine incidents by requiring life jackets to be worn for certain heightened-risk boating activities.</p> <p>The committee did not identify any significant issues regarding the policy, consistency with fundamental legislative principles, the lawfulness of the SL No. 188, or non-compliance with the Human Rights Act.</p> <p>The committee is satisfied that the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the Legislative Standards Act and that the human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of SL No. 188 in relation to its compatibility with the Human Rights Act.</p> |

¹ *Legislative Standards Act 1992*, part 4.

² *Human Rights Act 2019*, s 41.

1 SL No. 188 – Transport Operations (Marine Safety) Legislation Amendment Regulation 2024

The Transport Operations (Marine Safety) Legislation Amendment Regulation 2024 (SL No. 188) amends the Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017 and Transport Operations (Marine Safety) Regulation 2016 (TOMSR) to:

- require lifejackets to be worn for certain heightened-risk boating activities if a ship is to be taken to be equipped with the lifejacket³
- provide that a ship is not taken to be equipped with the required lifejacket unless worn by individuals aged 1 year or more when crossing a coastal bar⁴
- phase out a transitional arrangement allowing the use of Personal Floatation Devices (PFDs) which are an older style of lifejacket that do not align with modern Australian Standards⁵
- establish a marine zone by providing for a set of rules under the TOMSR for the operation of ships at Lake Wivenhoe.⁶

SL No. 188 aims to improve marine safety and reduce the loss of lives in marine incidents. The explanatory notes provide data on fatal marine incidents that occurred in 2023 where a majority of those who lost their lives were not wearing a lifejacket. The explanatory notes also refer to incidents around coastal bars in Queensland in recent years involving boats capsizing, swamping, flooding, or person overboard, as well as evidence of greater risks posed by boating at night.⁷

New requirements to wear lifejackets in certain circumstances

SL No. 188 expands the circumstances⁸ where lifejackets must be worn for a ship to be taken to meet the requirement to be equipped with a lifejacket to include:

- people boating alone, or only with children under 12 years on an open boat less than 4.8 metres in length whilst underway

³ SL No. 188, s 7 (amends Transport Operations (Marine Safety) Regulation 2016, s 24). These amendments commence on 1 December 2024. Not equipping a required lifejacket as prescribed by the regulation is an offence under the general safety equipment obligation in section 44 of the *Transport Operations (Marine Safety) Act 1994*; human rights certificate, p 1.

⁴ SL No. 188, s 4 (amends the Transport Operations (Marine Safety— Queensland Regulated Ships Miscellaneous Equipment) Standard 2017, s 24). Not equipping the required lifejacket may be an offence under the general safety obligation about the condition of ships under section 41 of the *Transport Operations (Marine Safety) Act 1994*; explanatory notes, p 3.

⁵ Explanatory notes, p 3.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, pp 1-2.

⁸ SL No. 188, s 7 (amending s 24 of the Transport Operations (Marine Safety) Regulation 2016) and s 4 (amending Transport Operations (Marine Safety— Queensland Regulated Ships Miscellaneous Equipment) Standard 2017, s 24).

- people boating between sunset and sunrise on an open boat less than 4.8 metres in length whilst underway
- people crossing a designated coastal bar on an open boat and on an open area (the deck) of a ship of any length
- children aged 1 year or more and under 12 years on an open boat or an open area (the deck) of a ship of any length whilst underway.⁹

Phasing out Personal Flotation Devices

Under current transitional provisions, a Queensland regulated ship that is required to be equipped with lifejackets can be equipped with PFDs (lifejackets which were made to now outdated Australian Standards¹⁰) if they are within their serviceable life.¹¹

SL No. 188 includes amendments which provide that from 1 September 2025 PFDs will no longer be suitable for meeting lifejacket requirements.¹²

Lake Wivenhoe marine zone

The explanatory notes state that the requirements for the Lake Wivenhoe marine zone are that the owner or master of a ship must not, within the marine zone, operate a ship:¹³

- that is a personal watercraft
- that is powered by an engine that is not an electric engine, a 4-stroke engine or a 2-stroke direct injection engine
- at a speed of more than 6 knots
- between sunset on a day and sunrise on the next day
- for towing anything, including a person (for example, water-skier)
- within a prohibited area near the dam wall.

SL No. 188 provides for a range of exemptions from these requirements,¹⁴ including:

- for Seqwater employees carrying out shipping inspector functions under the *Transport Operations (Marine Safety) Act 1994*
- for Seqwater employees and contractors performing functions under the *South East Queensland Water (Restructuring) Act 2007*

⁹ Explanatory notes, p 2.

¹⁰ PFDs were manufactured to the now outdated standards AS 1512, AS 1499, and AS 2260. The current Standard for lifejackets, AS 4758, was originally published in 2008; explanatory notes, p 3.

¹¹ Explanatory notes, p 3.

¹² Explanatory notes, p 3.

¹³ SL No. 188, s 14 (inserts Transport Operations (Marine Safety) Regulation 2016, s 2); explanatory notes, p 3.

¹⁴ SL No. 188, s 14 (inserts Transport Operations (Marine Safety) Regulation 2016, s 3). Existing exemptions from marine zone requirements, and existing offences for contravention of such requirements, continue to apply; explanatory notes, pp 3-4.

- a speed limit exemption for sailing ships participating in an authorised aquatic event, and ships used for fish stocking activities under a *Fisheries Act 1994* permit.

SL No. 188 also includes minor clarifying amendments to the TOMSR that are of a grammatical nature, including an amendment to, and relocation of, the definition of sailing ship.¹⁵

1.1 Consultation

The explanatory notes detail comprehensive consultation involving industry stakeholders and the public.

The explanatory notes acknowledge that stakeholder views about the proposed requirements for wearing lifejackets were mixed.¹⁶ Some of the stakeholder feedback about the proposed changes included:

- suggestions to extend requirements to ships over 4.8 metres
- proposed boating alone requirements were largely not supported by members of the public who indicated that they boat alone and never wear a lifejacket
- suggestions to change proposed requirements for wearing lifejackets at night to only require them to be worn at night while underway – this feedback resulted in changes to the requirement so that wearing lifejackets at night applies only while underway
- strong support for the proposed reforms from the Queensland Recreational Boating Council and the Boating Industry Association.¹⁷

Stakeholders were largely supportive of phasing out the transitional arrangement allowing the use of PFDs, and of the proposed Lake Wivenhoe marine zone. Feedback on these proposals included:

- Royal Life Saving Queensland recommended that a community communication program occur in advance of implementation of the PFD changes
- recreational sailing stakeholders considered the six-knot speed limit in the Lake Wivenhoe marine zone to be inappropriate for sail boats – this feedback has been addressed through an exemption from the speed limit for sail boats participating in aquatic events.¹⁸

1.2 Disallowance motion moved by Member for Hinchinbrook on 10 December 2024

On 10 December 2024, the Member for Hinchinbrook moved that sections 4, 7, 12 and 13 of SL No. 188 be disallowed, on the basis that the amendments are an over-reach by the state government, are unnecessarily restrictive, and will limit people's ability to enjoy fishing, and

¹⁵ Explanatory notes, pp 3-4.

¹⁶ Explanatory notes, pp 5-6.

¹⁷ Explanatory notes, pp 5-6.

¹⁸ Explanatory notes, pp 6-7.

spending time on the water alone and with family and friends.¹⁹ Sections 4, 7, 12 and 13 relate to the requirements to wear a lifejacket, and the phasing out of PFDs.

In his speech to the motion, the Member for Hinchinbrook acknowledged that some people may consider the amendments would increase marine safety but argued that ‘there is nothing stopping someone from making that safety choice already. People out there are educated ...[and] want to make their own safety conscious decisions’.²⁰ In regard to children under the age of 12 years being required to wear a lifejacket on an open boat or the open area of a boat of any length while underway, the Member stated that ‘parents who have a boat and decide to take the children out should take parental responsibility in looking after those children’ rather than having to comply with a mandatory requirement.²¹ The Member was also of the view that wearing a lifejacket could create an unnecessary risk in getting tangled or caught on a boat’s anchor for example.²²

The Member for Hinchinbrook disagreed with the penalties for non-compliance, and referred to information and concerns about the introduction of the changes to lifejacket requirements communicated to him by industry stakeholders.²³

The Member for Hinchinbrook also argued that people should continue to be allowed to use PFDs rather than requiring them to be replaced by September 2025, ‘in the middle of a cost-of-living crisis’. The Member noted that ‘if some of those older life jackets are no good, they should not have them on board anyway’.²⁴

1.3 Public briefing

The committee held a public briefing in January 2025 with officers from the Department of Transport and Main Roads (department) to obtain further information and clarify aspects of the provisions of SL No. 188.

Safety in heightened risk situations

The departmental officers explained that the provisions in SL No. 188 which expand the circumstances when a lifejacket must be worn were aimed at the improving safety in the heightened risk situations of boating alone, boating at night, crossing coastal bars, and when there are children under 12 in boats, ‘because it will increase the chances of someone’s survival if they unexpectedly end up overboard in any stretch of water across the state’.²⁵

The department noted that there was compelling evidence to indicate that lifejackets save lives. However, despite this ‘there is still a segment of the population that either is not

¹⁹ Queensland Parliament, Record of Proceedings, 10 December 2024, pp 277-279.

²⁰ Queensland Parliament, Record of Proceedings, 10 December 2024, p 278.

²¹ Queensland Parliament, Record of Proceedings, 10 December 2024, p 278.

²² Queensland Parliament, Record of Proceedings, 10 December 2024, p 278.

²³ Queensland Parliament, Record of Proceedings, 10 December 2024, p 279.

²⁴ Queensland Parliament, Record of Proceedings, 10 December 2024, p 279.

²⁵ Public briefing transcript, Brisbane, 23 January 2025, p 2.

convinced or find it hard to accept’.²⁶ The department’s public consultation found that lifejacket requirements for boating at night, crossing bars and children were generally well supported but 58 per cent did not support a requirement to wear a lifejacket while boating alone:

Those who were not supportive indicated that they were also members of the public who boated alone and never wore a life jacket while doing so. ... The group of people we find overrepresented in near misses and fatalities every single year, year after year, is men over 50. That is the very same group who do not like to wear life jackets when they are boating alone.

We take that onboard, but we also have to look at it from a holistic perspective and make decisions on behalf of the public, because that group keeps popping up in the statistics. ... In the 2023 calendar year, there were 14 fatal marine incidents that resulted in 16 lives lost. Of those lives lost, nine drowned and four were presumed drowned and lost at sea, so there were 13. None of those 13 individuals was known to be wearing a life jacket, and that is repeated year after year. In the five years previous, 64 people drowned and 59 of them were not wearing life jackets. The numbers are quite confronting and compelling.²⁷

The department confirmed that the new rules do not make wearing a lifejacket mandatory for all people on all vessels at all times.²⁸ The department advised:

The key part is it being underway. ... We accept that most people are at anchor for a reason—for pleasure purposes. They are swimming or paddling ashore or fishing. In terms of wearing a life jacket during those circumstances, from our perspective it is probably not unreasonable that you can move around the boat without wearing a life jacket. ...

When you are at anchor, you do not have to wear a life jacket. We have always encouraged people, as I said before, to be wearing life jackets during high-risk situations. You may decide to. You may decide at anchor to wear it anyway but you are not required to by the regulation because what we are trying to do is make it fair and reasonable, taking into account the feedback we received and why you would be anchored. We are trying to make it reasonable for people to understand and therefore comply with.²⁹

Changes to lifejacket requirements

The department advised that:

- the state-wide consultation process held in late 2022 showed broad support across the community and the industry for improved safety practices in situations of heightened risk³⁰
- the amendments align with rules for similar high-risk situations in New South Wales, Victoria and South Australia, including making the applicable boat size consistent with other jurisdictions, and removing older style PFDs from use³¹

²⁶ Public briefing transcript, Brisbane, 23 January 2025, p 6.

²⁷ Public briefing transcript, Brisbane, 23 January 2025, p 6.

²⁸ Public briefing transcript, Brisbane, 23 January 2025, pp 2, 3, 4.

²⁹ Public briefing transcript, Brisbane, 23 January 2025, p 5.

³⁰ Public briefing transcript, Brisbane, 23 January 2025, p 2.

³¹ Public briefing transcript, Brisbane, 23 January 2025, pp 2, 4.

- in regard to PFDs that no longer comply with the current Australian standard AS4758, generally ‘life jackets have a serviceable life of around 10 years and the older style vests have been superseded by safer vests that are of a better design, include additional safety features and have increased buoyancy’.³²

Education program for new rules

As outlined in the explanatory notes, the department reiterated that Maritime Safety Queensland will undertake an education and communication program, through stakeholder and industry engagement, social media and other methods to ensure the public understands the changes in relation to all amendments. The department further advised that the education program was focused on local activities at present, including providing information at boat ramps, boat shows, fishing events, and education days, with an extensive education program planned across the maritime sector throughout 2025.³³

The department also advised that it had been active in providing education activities and safety programs in the Torres Strait in recent years where open boats are a principal form of transport, noting the challenges and heightened risks in those areas. The department stated that it had been rolling out the Torres Strait Marine Safety Program, in partnership with the Maritime Safety Queensland and the Queensland Police Service, as well as with the Australian Maritime Safety Authority and the Torres Strait Regional Authority.³⁴

Enforcement

The department advised that any enforcement of the new requirements for wearing lifejackets would be deferred until 1 July 2025 to allow a reasonable period of time for the public to learn about the new regulations.³⁵

1.4 Legislative Standards Act 1992

No issues of fundamental legislative principle were identified.

1.5 Explanatory notes

The explanatory notes comply with part 4 of the Legislative Standards Act.

1.6 Human Rights Act 2019

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity,

³² Public briefing transcript, Brisbane, 23 January 2025, p 2.

³³ Public briefing transcript, Brisbane, 23 January 2025, pp 5-6; explanatory notes, p 6.

³⁴ Public briefing transcript, Brisbane, 23 January 2025, pp 3, 7.

³⁵ Public briefing transcript, Brisbane, 23 January 2025, p 3.

equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The committee considered the following human rights matters in its assessment of whether SL No. 188 is compatible with the Human Rights Act.

1.6.1 Right to a fair hearing; rights in criminal proceedings

Under the TOMSR,³⁶ it is an offence for the owner or master of a ship to operate the ship in a marine zone in contravention of a requirement for the marine zone.³⁷ The human rights certificate states that by introducing a new marine zone, SL No. 188 may limit the right to a fair hearing,³⁸ and rights in criminal proceedings,³⁹ to the extent that it expands the application of an infringement notice offence, which does not require a person to attend court in relation to the offence.⁴⁰

According to the human rights certificate:

If the marine zone offence was not an infringement notice offence, alleged offenders would need to proceed to court where additional costs may be payable. Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position.⁴¹

The human rights certificate lists a range of protections built into the fine enforcement system under the *State Penalties Enforcement Act 1999*, including that a ‘person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine’.⁴²

In conclusion, the human rights certificate states that the importance of protecting marine safety and ensuring an effective enforcement system outweighs any potential limitation on the human rights.⁴³

³⁶ Transport Operations (Marine Safety) Regulation 2016, s 178(1).

³⁷ That is, a requirement of a marine zone mentioned in the Transport Operations (Marine Safety) Regulation 2016, schedule 5.

³⁸ Section 31 of the *Human Rights Act 2019* provides that a person has the right to have a criminal charge, or a civil proceeding, decided by a competent, independent, and impartial court or tribunal after a fair and public hearing.

³⁹ Section 32 of the *Human Rights Act 2019* provides the right to be presumed innocent until proven guilty according to law, as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

⁴⁰ SL No. 188, human rights certificate, p 4.

⁴¹ SL No. 188, human rights certificate, pp 4-5.

⁴² SL No. 188, human rights certificate, p 5.

⁴³ SL No. 188, human rights certificate, p 6.

Committee Comment



The committee is satisfied that SL No. 188 is compatible with the Human Rights Act and that potential limitations are reasonable and demonstrably justified in the circumstances.

1.7 Human rights certificate

The human rights certificate tabled with the SL No. 188 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.



Recommendation 1

The committee recommends that the Legislative Assembly note this report.

Jim McDonald MP
Chair

State Development, Infrastructure and Works Committee

Chair Mr Jim McDonald MP, Member for Lockyer

Deputy Chair Ms Jonty Bush MP, Member for Cooper

Members Mr Terry James MP, Member for Mulgrave

Mr David Kempton MP, Member for Cook

Mr Shane King MP, Member for Kurwongbah

Mr Bart Mellish MP, Member for Aspley