



Queensland

# Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007

## Subordinate Legislation 2007 No. 112

made under the

*Transport Operations (Marine Safety) Act 1994*

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## **Part 1 Preliminary**

### **1 Short title**

This standard may be cited as the *Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2007*.

### **2 Commencement**

This standard commences on 15 June 2007.

### **3 Purposes of standard**

The purposes of this standard are—

- (a) to help providers and users of hire and drive ships and tour guides to understand their general safety obligations under part 4, division 1<sup>1</sup> of the Act; and
- (b) to provide other measures for marine safety in relation to hire and drive ships.

### **4 Definitions**

The dictionary in the schedule defines particular words used in this standard.

### **5 Meaning of *hire and drive ship***

A ship is a *hire and drive ship* if the ship is—

- (a) a commercial ship registered under the Marine Safety Regulation as a class 1F ship; and
- (b) not more than 6m in length; and
- (c) when hired, made available—
  - (i) for the recreational use of the user of the ship; and
  - (ii) without master or crew.

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<sup>1</sup> Part 4 (General safety obligations and standards), division 1 (General safety obligations) of the Act

*Example of ships that may be a hire and drive ship—*

an outboard powered dinghy, a personal watercraft or a small yacht

## **Part 2                      Obligations of intending providers and providers**

### **6                      Inspection of ship before each hiring**

A person who proposes to hire out a hire and drive ship must, before each hiring of the ship, ensure that the ship and its equipment are inspected to ensure the ship is seaworthy, and is appropriately equipped, to meet the ordinary perils of the voyage on which the ship is about to proceed.

### **7                      Ship must have positive flotation before hiring**

A person must not hire out a hire and drive ship unless the ship has positive flotation.

### **8                      Safety management plan**

- (1) The provider of a hire and drive ship must have a written safety management plan for the ship that is appropriate to ensure the safe operation of the ship having regard to the ship's—
  - (a) type; and
  - (b) type of intended operation; and
  - (c) intended area of operation.
- (2) The plan must deal with the following matters—
  - (a) safety precautions for the safe operation of the ship's motor and systems;
  - (b) the procedure to initiate a rescue;
  - (c) action to be taken in the following emergencies—
    - (i) fire;

- (ii) person overboard;
  - (iii) collision;
  - (iv) loss of propulsion;
  - (v) grounding or stranding;
  - (vi) severe weather;
  - (vii) medical emergency.
- (3) Before the user of a hire and drive ship operates the ship, the provider of the ship must give the user a summary of the action to be taken under the ship's safety management plan in an emergency.

## **9 Provider not to allow user to operate ship if user has insufficient skills or abilities**

The provider of a hire and drive ship must not allow the user of the ship to operate it unless—

- (a) the provider has reasonable grounds to believe that the user has the skills and abilities necessary for the user to operate the ship safely, while it is hired, having regard to the ship's size, type, propulsion power and intended area of operation; and
- (b) the provider has a declaration mentioned in section 26(a) about the user.

## **10 Briefing before user operates ship**

- (1) Before the user of a hire and drive ship operates the ship, the provider of the ship must ensure the user is briefed on the following matters—
- (a) the action to be taken under the ship's safety management plan in an emergency;
  - (b) weather conditions forecast by the Bureau of Meteorology for the period for which the ship is hired for the ship's intended area of operation, but only if the forecast is reasonably available;

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- (c) the likely effect of the weather expected in the ship's intended area of operation;
- (d) tides and currents and their likely effect on the movement of the ship in its intended area of operation;
- (e) the location of reefs and anchorages in the ship's intended area of operation;
- (f) specific hazards and dangers to navigation in the ship's intended area of operation;
- (g) the risks to the health or safety of each person who will be aboard the ship while the ship is being operated and hired that may arise from the unsafe operation of the ship;

*Example—*

risk of back injury from the unsafe operation of a personal watercraft

- (h) if there is coral in the ship's intended area of operation, visibility of coral under various conditions of tide, weather and sunlight;
- (i) handling of the ship while underway including techniques of stopping or turning;
- (j) anchoring, if the ship has provision for anchoring;
- (k) operation of the ship's radio, if the ship is fitted with a radio;
- (l) navigation in the ship's intended area of operation;
- (m) operation and stowage of lifesaving appliances;
- (n) all the ship's systems;
- (o) the expected date and times of leaving and return of the ship;
- (p) the Marine Safety Regulation, section 40;<sup>2</sup>
- (q) the Marine Safety Regulation, part 5, division 9;<sup>3</sup>

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2 Marine Safety Regulation, section 40 (Life jackets and personal flotation devices)

3 Marine Safety Regulation, part 5 (Ship operations), division 9 (Speed limits and other restrictions)

- (r) the obligations under the collision regulations having effect under the Marine Safety Regulation likely to be relevant to the operation of the ship while it is hired;
- Example—*  
obligations about steering or sailing
- (s) the obligation of the master of a ship—
- (i) under section 43<sup>4</sup> of the Act, not to cause the ship to be operated unsafely, for example, not to cause the ship to be operated in an unpredictable way; and
  - (ii) under section 44<sup>5</sup> of the Act, not to operate the ship unless it is equipped with the safety equipment required by the Marine Safety Regulation; and
  - (iii) under section 125<sup>6</sup> of the Act, to report a marine incident as defined in section 123<sup>7</sup> of the Act;
- (t) any obligation under the hiring agreement for the ship allowing the provider to end the agreement if the ship is operated unsafely while it is hired.
- (2) The briefing must include a practical demonstration of the following—
- (a) the ship's safety equipment;
  - (b) the ship's steering and emergency steering;
  - (c) bilge pumping;
  - (d) starting and operating the motor and what to do if the motor does not start;
  - (e) if the ship is a sailing ship, sail handling, reefing and furling.

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4 Section 43 (General obligation on persons involved with operation of ship to operate it safely) of the Act

5 Section 44 (Safety equipment obligation) of the Act

6 Section 125 (Marine incidents must be reported) of the Act

7 Section 123 (What is a marine incident) of the Act

- (3) The briefing must also include a practical demonstration of the handling of the ship while it is underway, unless the provider considers on reasonable grounds that the practical demonstration is unnecessary having regard to the user's skills and ability to operate the ship safely.

## 11 Who must give briefing

- (1) A briefing under section 10 must be given by a person (the *briefer*) who—
  - (a) has sufficient experience and knowledge in the matters mentioned in section 10 to give an adequate briefing; and
  - (b) holds at least a recreational marine driver licence; and
  - (c) if the briefing relates to a personal watercraft—holds a personal watercraft licence.
- (2) If the briefer has given less than 100 briefings under section 10 the briefings must be overseen by a person (the *overseer*) who—
  - (a) complies with subsection (1)(a), (b) and (c); or
  - (b) holds both of the following—
    - (i) at least a restricted coxswain licence;
    - (ii) if the briefing relates to a personal watercraft—a personal watercraft licence.
- (3) The overseer is overseeing briefings given under section 10 if the overseer—
  - (a) reviews material prepared for the briefings; and
  - (b) is available to provide the briefer with advice, and assistance, as required for the delivery of the briefings; and
  - (c) regularly monitors the delivery of the briefings.
- (4) Subsection (3)(c) does not require the overseer to monitor the delivery of each briefing.



## **12 Records to be kept**

- (1) Before the user of a hire and drive ship operates the ship, the provider of the ship must ensure—
  - (a) a written record is made containing the following information—
    - (i) the date and time the ship was hired;
    - (ii) the period for which the ship is hired;
    - (iii) the date and time of the briefing of the user of the ship under section 10;
    - (iv) the full name and address of the user;
    - (v) the full name of, and licences held by, the person who gave the briefing;
    - (vi) the number of persons intended to be on board the ship while the ship is hired, as advised by the person who is to be the first or only user of the ship to operate it as master while it is hired; and
  - (b) the record is signed—
    - (i) by or for the provider; and
    - (ii) by the user and the person who gave the briefing.
- (2) The provider of a hire and drive ship must ensure—
  - (a) a written record is made of the date and time the ship is returned to the provider at the end of the period for which the ship is being operated by the user; and
  - (b) that the record is signed by or for the provider.
- (3) The provider must keep a record made under subsection (1) or (2) for at least 1 year after it is made.

## **13 When provider must ensure user is appropriately licensed**

- (1) This section applies if—
  - (a) a hire and drive ship is hired at a particular place (the *point of hire*) but the user does not intend to operate the ship from the point of hire; or

*Example—*

a dinghy, on a trailer, hired from a service station

- (b) the user of a hire and drive ship intends the ship to be underway at any time between sunset and sunrise; or
  - (c) the user of a hire and drive ship intends the ship to be operated beyond smooth waters while the ship is not in direct line of sight supervision of—
    - (i) the provider of the ship; or
    - (ii) if the ship is to take part in a tour while it is hired—the tour guide for the tour;
  - (d) the user of a hire and drive ship intends the ship to be operated under power at more than 10kn while the ship is not in direct line of sight supervision of—
    - (i) the provider of the ship; or
    - (ii) if the ship is to take part in a tour while it is hired—the tour guide for the tour.
- (2) Before the user operates the hire and drive ship, the provider must ensure that the user is appropriately licensed.

#### **14 Minimum age to operate ship**

- (1) The provider of a hire and drive ship must not allow a person who is under 16 years to operate the ship unless—
  - (a) the person is under the direct supervision of a user who is at least 18 years; and
  - (b) the user can immediately resume operating the ship.
- (2) The provider of a hire and drive ship may rely for subsection (1) on a statement by a person of the person's age unless it is unreasonable to do so.

#### **15 Provider to require user to operate ship within particular area and not to operate ship beyond particular area**

- (1) The provider of a hire and drive ship must require the user of the ship to operate it within the ship's intended area of operation.

- (2) The ship's intended area of operation must be within the area of operation stated in the ship's registration certificate.
- (3) The provider of a hire and drive ship must require the user of the ship not to operate it beyond smooth waters unless the provider considers the sea conditions are safe for the ship.

## **16 Provider to monitor and give directions**

- (1) This section applies while a hire and drive ship is being operated under the direct line of sight supervision of the provider of the ship.
- (2) The provider must—
  - (a) monitor the operation of the ship to see whether it is being operated safely; and
  - (b) give the user of the ship any express direction necessary to ensure the safe operation of the ship.

## **17 Rescue ship to be available**

- (1) This section does not apply if a hire and drive ship is hired at the point of hire but the user does not intend to operate the ship from the point of hire.
- (2) The provider of a hire and drive ship must ensure that a ship (*rescue ship*) is available to go to the rescue of the hire and drive ship at all times while the hire and drive ship is being operated within the hire and drive ship's intended area of operation.
- (3) The rescue ship must be appropriately sized, powered and equipped having regard to the nature of the use to which the hire and drive ship is to be put under the hiring.

## **18 Search and rescue**

- (1) This section applies if a hire and drive ship is not returned to the provider of the ship within the time agreed between the provider and the user.
- (2) The provider of the ship must—

- (a) use all reasonable means to find out where the ship is and whether the persons on board the ship are safe; and
- (b) if the whereabouts of the ship and the safety of persons can not be established, initiate a search for, and rescue of, the persons on board the ship.

## **19 Provider must have tour plan for tour**

- (1) The provider of a hire and drive ship who proposes to conduct a tour must have a written tour plan for the type of tour proposed.
- (2) The tour plan must state the operating conditions appropriate to ensure the safe operation of the ships taking part in that type of tour.

*Example—*

The tour plan may state that a single file formation of the ships is to be kept while in a narrow channel.

- (3) Without limiting subsection (2), the tour plan must include the following operating conditions—
  - (a) the tour guide for the tour must not allow more than the following number of ships to take part in the tour—
    - (i) if a permit issued to the provider states the number of ships that may take part in a tour—the number of ships stated;
    - (ii) otherwise—the number of ships that can reasonably be monitored under section 23 by the tour guide;
  - (b) at all times during the tour, the tour guide must—
    - (i) take reasonable steps to ensure a safe formation of the ships taking part in the tour is kept; and
    - (ii) take reasonable steps to ensure a safe distance between the ships taking part in the tour is kept; and
    - (iii) keep in close contact with and regularly monitor each ship taking part in the tour;

- (c) if a break in the safe formation of the ships happens, the tour guide must stop the ships and regroup them into a safe formation;
  - (d) if the tour involves crossing a bar or operating in surf conditions, the tour guide must tell the marine radio base servicing the ships' intended area of operation during the tour—
    - (i) the time the tour is to leave; and
    - (ii) the expected time of return from the tour; and
    - (iii) the number of ships taking part in the tour; and
    - (iv) the number of persons taking part in the tour; and
    - (v) the tour destination; and
    - (vi) the time the ships returned from the tour.
- (4) In this section—
- permit* means—
- (a) a permission under *Great Barrier Reef Marine Park Act 1975* (Cwlth); or
  - (b) an authority under the *Marine Parks Act 2004*.

## **20 Provider to ensure tour guide is qualified**

The provider of a hire and drive ship must ensure the tour guide employed or engaged by the provider in relation to a tour—

- (a) has the experience and skills to safely lead or guide a tour; and
- (b) holds at least a restricted coxswain licence that allows the tour guide to operate a commercial ship as its master in the ship's intended area of operation during the tour; and
- (c) if any of the ships taking part in the tour is a personal watercraft—holds a personal watercraft licence.

**21 Provider to ensure tour guide complies with tour guide's obligations**

The provider of a hire and drive ship who conducts a tour must ensure the tour guide for the tour complies with the tour guide's obligations under sections 22, 23 and 24 if the provider is not also the tour guide for the tour.

## **Part 3 Obligations of tour guides**

**22 Tour guide to comply with tour plan**

The tour guide for a tour must comply with the tour plan applying to the tour.

**23 Tour guide to monitor and give directions**

- (1) This section applies while a hire and drive ship is being operated under the direction of the tour guide for the tour that the ship is taking part in.
- (2) The tour guide must—
  - (a) monitor the operation of the ship to see whether it is being operated safely; and
  - (b) give the user of the ship any express direction necessary to ensure the safe operation of the ship.

**24 Tour guide to ensure tour leader ship is equipped with additional equipment**

The tour guide for a tour must ensure that the tour leader ship used for the tour is equipped with<sup>8</sup>—

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<sup>8</sup> For further provisions about equipping ships see section 44 of the Act and the *Transport Operations (Marine Safety—Commercial Ships and Fishing Ships Miscellaneous Equipment) Standard 2006*

- (a) a marine radio or similar communications device that is appropriate having regard to the tour location and local conditions; and

*Example of a similar communications device—*

a mobile phone

- (b) a basic first aid kit.

## **Part 4                      Obligations of users**

### **25      When user must be appropriately licensed**

- (1) This section applies if—
  - (a) a hire and drive ship is hired at the point of hire but the user does not intend to operate the ship from the point of hire; or  
*Example—*  
a dinghy, on a trailer, hired from a service station
  - (b) the user of a hire and drive ship intends the ship to be underway at any time between sunset and sunrise; or
  - (c) the user of a hire and drive ship intends the ship to be operated beyond smooth waters while the ship is not in direct line of sight supervision of—
    - (i) the provider of the ship; or
    - (ii) if the ship is to take part in a tour while it is hired—the tour guide for the tour; or
  - (d) the user of a hire and drive ship intends the ship to be operated under power at more than 10kn while the ship is not in direct line of sight supervision of—
    - (i) the provider of the ship; or
    - (ii) if the ship is to take part in a tour while it is hired—the tour guide for the tour.

- (2) While the user of the hire and drive ship is operating the ship, the user must be appropriately licensed.

## **26 User to give provider information**

Before the user of a hire and drive ship operates the ship, the user of the ship must—

- (a) give the provider of the ship a written declaration stating that to the best of the user's knowledge, the user has no medical condition that makes the user unable to operate the ship safely; and
- (b) if the user is to be the first or only user of the ship to operate it as master while it is hired—advise the provider of the ship the number of persons intended to be on board the ship while the ship is hired; and
- (c) give the provider of the ship the other information the provider reasonably requires to enable the provider to decide whether—
  - (i) the provider of the ship has the reasonable grounds mentioned in section 9(a); or
  - (ii) a person is under 16 years for section 14; and
- (d) tell the provider the user's full name and address; and
- (e) sign any record for the hiring made under section 12(1).

## **27 User not to operate ship in a particular way**

The user of a hire and drive ship—

- (a) must comply with a requirement under section 15(1) or (3); and
- (b) must not operate the ship in a way that is contrary to an express direction for the safe operation of the ship given by—
  - (i) the provider of the ship; or
  - (ii) if the ship is taking part in a tour—the tour guide for the tour.



## **Part 5**

## **Repeal**

### **28 Repeal**

The Transport Operations (Marine Safety—Hire and Drive Ships) Standard 2000 SL No. 116 is repealed.

## Schedule Dictionary

### section 4

***appropriately licensed***, in relation to a user of a hire and drive ship, means the user holds the licence or licences that the user would be required to hold under the Marine Safety Regulation, section 95 if the ship were a recreational ship.

***beyond***, in relation to smooth waters, means seawards from the smooth waters.

***hire*** a ship includes—

- (a) make the ship available under a commercial arrangement; and
- (b) provide for the ship to be made available under a commercial arrangement.

***hire and drive ship*** see section 5.

***intended area of operation***, in relation to a hire and drive ship, means the area in which the provider of the ship intends that the ship will be used while it is hired.

***length*** see the Marine Safety Regulation, section 6(b).

***Marine Safety Regulation*** means the *Transport Operations (Marine Safety) Regulation 2004*.

***point of hire*** see section 13.

***positive flotation*** see the Marine Safety Regulation, schedule 15.

***provider***, of a hire and drive ship, means a person who hires out the ship.

***smooth waters*** see the Marine Safety Regulation, schedule 15.

***tour*** means a voyage, conducted by a provider of a hire and drive ship, in which 1 or more hire and drive ships are led or guided under the direction of a tour guide.

### Schedule (continued)

**tour guide** means—

- (a) the provider conducting the tour who operates a tour leader ship; or
- (b) a person employed or engaged by the provider to operate a tour leader ship.

**tour leader ship** is a commercial ship used to lead or guide the hire and drive ships taking part in a tour.

**underway** see the Marine Safety Regulation, schedule 15.

**user**, of a hire and drive ship, means—

- (a) an individual to whom the ship is hired; or
- (b) an individual who may have command or charge of the ship under a hiring of the ship.

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### ENDNOTES

- 1 Made by the general manager on 24 April 2007.
- 2 Approved by the Governor in Council on 14 June 2007.
- 3 Notified in the gazette on 15 June 2007.
- 4 Laid before the Legislative Assembly on . . .
- 5 The administering agency is the Department of Transport.