

## Guideline

# Application for an exemption from section 67A of the *Transport Operations (Marine Pollution) Act 1995* — Compulsory insurance for ships

## Background

The *Transport Operations (Marine Pollution) Act 1995* (TOMPA) and *Regulation 2018* (TOMPR) require owners of all ships (including commercial or recreational ships) over 15 metres length overall to have an insurance policy that is sufficient to meet the clean-up costs of the discharge of pollutants from the ship into Queensland's coastal waters and the costs of salvage or removal of the ship from Queensland's coastal waters, if the ship is abandoned or wrecked. These provisions support the 'polluter pays' principle.

A copy of the legislation is available at <https://www.legislation.qld.gov.au>

## Purpose

The purpose of this reference document is to articulate the requirements a ship's owner must satisfy before an exemption can be considered and outline the application process for an exemption from section 67A of TOMPA.

## Definitions

**Discharge:** Schedule 1 (Dictionary) of TOMPA refers to the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) definition of discharge, which means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying.

**Discharge expenses:** Under section 111 of TOMPA, this includes the reasonable costs and expenses incurred by the State for actions taken in relation to a likely or actual discharge of a pollutant or pollutants. This includes (but is not limited to) investigating, taking action to prevent or minimise impacts from the incident, treating animals and plants affected by a discharge, and rehabilitating or restoring Queensland's marine and coastal environment.

**Length overall:** Measurement of length overall must be in accordance with section 7A of TOMPA. A Marine Information Bulletin is provided on Maritime Safety Queensland's website to assist.

**Pollutant:** A harmful substance. Under TOMPA this includes oil, noxious liquid substances, packaged harmful substances, sewage and garbage, or anything containing these substances.

**Ship:** Schedule 1 of TOMPA refers to MARPOL's definition of a ship which includes a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms and (under TOMPA) aircraft when on the surface of the water.

## Exemption requirements

Exemption from section 67A of TOMPA is possible for ship owners who cannot reasonably obtain or keep in force an insurance policy, and can demonstrate the risk of their ship discharging pollutants or being abandoned or wrecked in Queensland's coastal waters is minimal.

Applicants for exemption under section 67A of TOMPA must be able to demonstrate that the nominated ship is seaworthy, does not present a threat to the environment and that all steps have been taken in an attempt

to obtain insurance cover as outlined in the application. If the Minister for Transport and Main Roads (the Minister) is reasonably satisfied that, for the particular ship, the abovementioned criteria have been met, then a regulation exempting the ship from the insurance under section 67A of TOMPA can be made.

If a regulation exempting a ship from section 67A of TOMPA is made, the owner and master of the ship are still liable for payment of 'discharge expenses' to the State, in relation to a discharge or likely discharge of pollutants from a ship into Queensland's coastal waters, as detailed under section 115 of TOMPA.

A Ship Insurance Exemption Application Form (F4522) must be completed:

<https://www.support.transport.qld.gov.au/qt/formsdat.nsf/Forms/QF4522>.

Before an application can be submitted to Maritime Safety Queensland, the ship owner will need to obtain and/or develop the following documentation (items A to D below) to be incorporated into the final application:

#### **A. Certificate of registration**

For a recreational vessel:

- a Certificate of Registration issued under the *Transport Operations (Marine Safety) Act 1994 (TOMSA)* or other proof that the vessel is registered under TOMSA.

For a Domestic Commercial Vessel:

- a Certificate of Operation issued under the *(Domestic Commercial Vessel) National Law Act 2012*
- where applicable, a Certificate of Survey issued under the *(Domestic Commercial Vessel) National Law Act 2012*.

#### **B. Seaworthiness report**

This is a written report from a marine surveyor accredited under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* confirming the seaworthiness of the ship and includes current photographs of the ship for which the exemption is sought.

Note: The seaworthiness report must be dated and must not be more than 12 months old.

#### **C. Risk management plan**

A risk management plan for the ship is required, which details the procedures to be followed to prevent or minimise the risk of the ship discharging pollutants into Queensland's coastal waters and must be kept on-board the ship at all times. The risk management plan should provide the master or the person in command with clear guidance on the:

- prevention of marine pollution
- control of pollution discharges including containment and recovery and reporting to authorities
- training of crew and review of the plan
- action to be taken as a result of a grounding, fire or explosion, collision, and sinking.

The risk management plan should detail the procedures to be followed to minimise the risk of the ship discharging pollutants into Queensland's coastal waters, including:

- the routine maintenance procedures necessary to ensure that the ship is in good repair and proper working order, and that the ship's equipment, as far as is relevant to avoiding discharging pollutants into coastal waters, is in good repair and proper working order
- the action to be taken to control, mitigate or stop the discharge of pollutants into Queensland's coastal waters, including:
  - immediate action to be taken to control, mitigate or terminate the discharge of pollutants from the ship
  - strategies to address operational discharges as a result of pipe or valve discharge, tank overflow, cargo and refuelling operations, hull leakage and bilge discharges
  - procedures to be followed by the master or person in command to notify the authorities of any actual discharge of pollutants and where the discharge of pollutants is probable as a

result of an incident involving the ship. A template for a pollution report can be found on the Maritime Safety Queensland website at: <https://www.msq.qld.gov.au/Marine-pollution/POLREP>

- the procedure to be followed to ensure that all ship's crew are familiar with the risk management plan, including:
  - the requirement for the master, or the person in command, to familiarise the crew with the procedures to be followed and
  - demonstration on the use of any equipment relevant to avoiding the discharge of pollutants.

The risk management plan should be reviewed at a minimum on an annual basis and also following any incident involving the discharge of pollutants to evaluate the effectiveness of the plan.

#### **D. Evidence of inability to obtain an insurance policy**

This is written evidence of the ship owner's inability to reasonably obtain or keep in force an insurance policy under section 67A (2) of TOMPA, including a reputable marine insurer's refusal to issue an insurance policy for the ship under that section stating why the policy was refused.

## **Application Submission**

The completed [Ship Insurance Exemption Application form \(F4522\)](#) and supporting documents must be submitted to the General Manager (Maritime Safety Queensland):

General Manager  
Maritime Safety Queensland  
Department of Transport and Main Roads  
PO Box 2595  
Brisbane Qld 4001

## **Review of application for exemption**

After reviewing the application for an exemption from insurance under section 67A of TOMPA, the General Manager (Maritime Safety Queensland) may determine that further information is required to support/justify the application. In these circumstances the General Manager (Maritime Safety Queensland) may will write to the owner outlining the additional information required.

#### **Approval:**

Once all the information is received, if it is considered that the risk of the ship discharging pollutants, or being abandoned or wrecked is low, and it is demonstrated that an insurance policy could not reasonably be obtained or kept in force, the Minister will recommend that a regulation be made exempting the ship from section 67A of TOMPA. Once the exempting regulation has been made, the General Manager (Maritime Safety Queensland) will write to the owner granting the exemption from section 67A and outlining the conditions of the exemption.

- **Note:** The making of an exempting regulation is a legislative process. Maritime Safety Queensland must create a regulation to exempt a ship from section 67A of TOMPA. As such, **a minimum of 12 weeks** is required to progress from a complete and accurate application for exemption to the amendment to legislation and for the exemption to come into force. Ship owners should also be aware that the ship's details and conditions of the exemption will be publicly available in a schedule to TOMPR.

If a regulation exempting a ship from section 67A of TOMPA is made, it will automatically expire 12 months after the date it enters into force. The regulation will outline the conditions under which the exemption has been granted and is likely to include, but is not limited to:

- the exemption from section 67A will automatically expire 12 months after the date it enters into force

- the risk management plan submitted as part of the application must be kept on-board the ship at all times
- any conditions placed on the operation of the ship considered appropriate to minimise the risk of a discharge of pollution into coastal waters, or the ship becoming abandoned or wrecked.

At the end of each 12-month period the ship owner will need to re-apply to the General Manager (Maritime Safety Queensland), for renewal of the exemption from section 67A of TOMPA. Each year the ship's owner must resubmit a new seaworthiness report (not more than 12 months old) and written evidence of a reputable marine insurer's refusal to issue an insurance policy for the ship to the General Manager (Maritime Safety Queensland).

#### **Refusal:**

If the Minister is *not* satisfied with the information provided for an initial application or a renewal application, for instance considers the risk of the ship discharging pollutants, or being abandoned or wrecked is not low, or that there is insufficient evidence that an insurance policy could not reasonably be obtained or kept in force, or the ship owner fails to apply for a renewal of the exemption, the exemption will be refused or cancelled.

In these circumstances, the General Manager (Maritime Safety Queensland) will write to the owner identifying the reasons why the exempting regulation will not be made or renewed. Depending on why the exempting regulation will not be made, one or more of the following actions will occur:

- the ship owner must obtain an insurance policy required under section 67A. Until such time as an insurance policy is obtained, the ship must not be operated in Queensland's coastal waters until it is compliant with section 67A of TOMPA.
- Maritime Safety Queensland will commence enforcement action for contravening section 67A of TOMPA.

## **Further information**

For further information contact your local Maritime Safety Queensland office:

Airlie Beach	+61 7 4841 4500
Bundaberg	+61 7 4132 6600
Cairns	+61 7 4052 7400
Gladstone	+61 7 4971 5200
Hervey Bay	+61 7 4194 9600
Mackay	+61 7 4944 3700
Sunshine Coast	+61 7 5373 2310
Brisbane	+61 7 3632 7500
Southport	+61 7 5585 1810
Townsville	+61 7 4421 8100

Additional information on marine pollution and ship insurance requirements is available on Maritime Safety Queensland's website <http://www.msq.qld.gov.au/Marine-pollution> .