

Explanatory Statement

Marine Order 503 (Certificates of survey — national law) 2013 (Order 2013/8)

Authority

1. Division 2 of Part 4 of the *Marine Safety (Domestic Commercial Vessel) National Law* (the **national law**) set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* provides for matters that can be prescribed in the regulations about certificates of survey for domestic commercial vessels.
2. Section 75 of the national law provides for regulations to be made about certificates.
3. Subsection 159(1) of the national law authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
4. Subsection 159(2) of the national law provides for regulations to be made prescribing standards for the national law.
5. Subsection 163(1) of the national law allows the National Regulator to make Marine Orders for any matter in the Act for which provision may be made by regulations, with some specified exceptions.
6. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time including the National Standard for Commercial Vessels (**NSCV**) and the Uniform Shipping Laws Code (**USL Code**).
7. This Order was made under subsection 163(1) of the national law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

8. This Order provides for certificates of survey for domestic commercial vessels to be issued by the National Regulator.

Overview

9. The national law is a key part of the national system for commercial vessel safety. When applied in all Australian jurisdictions (see section 2 of the national law) it will replace existing State and Territory laws, and parts of Commonwealth law, with a single law for the safety of all domestic commercial vessels and their crew in Australian waters. The national law is supported by Marine Orders made under the national law by the National Regulator.
10. The Australian Maritime Safety Authority is the National Marine Safety Regulator (referred to as the **National Regulator** — see section 9 of the national law).
11. This Marine Order provides requirements for the application, issue, variation, suspension and revocation of certificates of survey for domestic commercial vessels. It also specifies the standards that apply to the survey of domestic commercial vessels. A certificate of survey provides evidence that the vessel has been surveyed and meets the applicable standards for design, construction and safety equipment.
12. The effect of the Order is only ancillary to the national law and does not affect the policy background of the national law. For these reasons, and based on the information available, no further analysis in the form of a Regulation Impact Statement is required (OBPR reference number 14031).

Consultation

13. The instrument was developed in consultation with the Maritime Agencies Forum, representing the marine safety authorities of each State and the Northern Territory, and the Department of Transport and Infrastructure. It was advertised for public comment and posted for comment on the national law website. Comments from the public and from marine safety authorities were considered and the draft instrument was developed taking these into account.

Documents incorporated by reference

14. Parts of the following documents are incorporated by reference:

- the National Standard for the Administration of Marine Safety, endorsed by the Australian Transport Council on 6 November 2009 (NSAMS);
- the National Standard for Commercial Vessels (NSCV) adopted by the National Marine Safety Committee;
- the Uniform Shipping Laws Code adopted by the National Marine Safety Committee (USL Code).

15. These documents are available from the Australian Maritime Safety Authority website at <http://www.amsa.gov.au>.

Commencement

16. This Order commenced on 1 July 2013.

Contents of this instrument

17. Section 1 sets out the name of the Order.

18. Section 2 provides for commencement of the Order.

19. Section 3 states the purpose of the Order, which is to provide for certificates of survey for domestic commercial vessels to be issued by the National Regulator.

20. Section 4 sets out the provisions of the national law that provide the powers for the Order to be made.

21. Section 5 states that the Order applies to domestic commercial vessels.

22. Section 6 provides definitions of terms for the Order. Particular attention is drawn to the definition of *new vessel*. A new vessel is a vessel that is not an existing vessel.

23. Section 7 specifies what an existing vessel is. Vessel survey requirements are different for new vessels and existing vessels. In general, existing vessels are those that were registered, held a certificate of survey, had already substantially commenced construction or otherwise operated commercially before the start of the national system for commercial vessel safety.

24. Section 8 sets out the standard that applies to a vessel for paragraph 10(2)(b). This standard comprises some of the standards set out in parts of the NSCV and the USL Code. Different standards apply to new and existing vessels.

25. Section 9 provides for applications under the Order to be made in accordance with *Marine Order 501 (Administration — national law) 2013*.

26. Section 10 provides that an application for a certificate of survey must be in an approved form and the information to be included in an application. A note points out that exemptions from this Marine Order may be provided.

27. Section 11 sets out requirements for the survey process. New vessels are to be surveyed in accordance with section 4 of the National Standard for the Administration of Marine Safety (NSAMS) while different requirements apply for the survey of existing vessels.
28. Section 12 provides criteria for the issue of a certificate of survey. When deciding to issue a certificate of survey, the National Regulator will consider if the application is made correctly, the vessel has been surveyed and meets the applicable standard, and that a load line certificate is in force for the class of vessel if required.
29. Section 13 provides for the term of a certificate of survey. A certificate of survey is valid for five years after it is issued, or until any earlier date stated on the certificate.
30. Section 14 sets out the standard conditions on a certificate of survey. These include requirements for vessel inspection, rectification of vessel defects, notification of certain events or incidents involving the vessel and the correct display of the certificate on the vessel.
31. Section 15 provides that an application for variation, suspension or revocation of a certificate must be in the approved form.
32. Section 16 prescribes criteria for the variation of a certificate on application and on the National Regulator's own initiative. Under section 40 of the national law, a certificate must be varied by the National Regulator on application, or on the National Regulator's own initiative if the criteria prescribed for the applicable circumstance are met.
33. Section 17 provides criteria for suspension of a certificate of survey on application and also purposes for suspension on the National Regulator's own initiative.
34. Section 18 prescribes a period for suspension of a certificate of survey. This period of six months will apply unless the National Regulator specifies a shorter period.
35. Section 19 provides criteria for revocation of a certificate of survey on application and on the National Regulator's own initiative.

Statement of compatibility with human rights

36. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Purpose and effect

37. This instrument is made under the *Marine Safety (Domestic Commercial Vessel) National Law* and provides for certificates of survey for domestic commercial vessels. More specifically, it provides for the application, issue, variation, suspension and revocation of certificates of survey for such vessels, and specifies the standards that apply to the survey of domestic commercial vessels.

Possible effect on human rights

38. This instrument does not engage any of the applicable rights or freedoms.

Assessment

39. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making the instrument

40. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990*.