

Explanatory Statement

Marine Order 501 (Administration — national law) 2012 (Order 2013/6)

Authority

1. Subsection 159(1) 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* authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
2. 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.
3. This Order was made under subsection 163(1) of the national law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

4. The instrument deals with administration and interpretation of the other Marine Orders made under the national law. Its purpose is to reduce the volume of the Marine Orders and to facilitate their consistent interpretation.

Overview

5. 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.
6. The Australian Maritime Safety Authority is the National Marine Safety Regulator (referred to as the ***National Regulator*** — see section 9 of the national law).
7. This Marine Order sets out definitions to apply to all Orders, an application process and a review process, details for the return of detained vessels and an infringement notice scheme. It also provides for the National Regulator to approve forms.
8. Each other Order may or may not adopt the application and review processes in this instrument for decisions that are not covered by the application or review processes in the national law.
9. The Order is equivalent to *Marine Order 1 (Administration) 2011*, made under the *Navigation Act 1912* and continued in effect under the *Navigation Act 2012*.
10. The effect of the Order is minor or machinery in nature. 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

11. 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

12. No documents are incorporated by reference in this instrument.

Commencement

13. This Order commenced on 1 July 2013.

Contents of this instrument

Division 1

14. Section 1 states the name of the Order.

15. Section 2 provides for commencement of the Order.

16. Section 3 states the purpose of the Order, noted in paragraph 4.

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

18. Section 5 provides for references in the National Standard for Commercial Vessels and the National Standard for Administration of Marine Safety to be read as applying to the National Regulator.

19. Section 6 sets out the matters the National Regulator may consider when determining whether a person is a fit and proper person when deciding whether or not to issue the person with a certificate or to revoke a certificate issued to a person.

Division 2

20. Section 7 defines terms that will apply in all Marine Orders unless an individual Order provides otherwise. This will in effect be a dictionary for the Marine Orders. More terms that are used in more than 1 Order will be included in future if required.

Division 3

21. Division 3 sets out a single application process for matters under Orders that can be adopted by reference by the Order that provides for the matter.

22. Section 8 states that the Division applies to any matter that an Order provides is a matter for which an application may be made in accordance with this Order. Another Marine Order may vary the process in this instrument as it applies to applications under the other Order. For example, it may provide for a longer deadline for deciding an application that is complex or involves consultation with other parties.

23. Section 9 provides for the form and content of an application.

24. Section 10 provides for the National Regulator to ask for further information or documents or agreements when dealing with an application. This may be from the applicant or from another person, which may include eg state maritime agencies (for survey records) or privately owned entities.

25. Section 11 provides that the decision maker must tell the applicant about any request made under section 10, and the effect the request may have on the period for consideration of the application.

26. Section 12 sets out deadlines for considering an application. They may be varied by an Order that adopts the application process. The standard deadline is 90 days after an application is made. Depending upon the nature of the application, the National Regulator

may need to inspect a vessel, or require additional matters to be attended to before approving an application.

27. However, if the decision maker requests further information, documents etc, the deadline for consideration of the application is 90 days after the decision maker receives what has been requested.

28. Also, if the decision maker asks for information etc but does not receive it all within a reasonable time, he or she can continue to consider the application. It is not possible to put a fixed time limit on this circumstance. Different periods may be reasonable in different cases. The decision maker is constrained by the requirement to consider the application after allowing a reasonable time for requests to be answered.

29. Section 13 sets out the procedure for dealing with an application. The decision maker must give reasons if the decision is not to approve an application or grant an exemption. If a decision is not made on time, or, an identifier or certificate applied for is not issued in time, the decision maker is taken to have decided not to approve the application or, for an exemption, decided not to grant the exemption. This triggers a right of review.

Division 4

30. Section 14 provides for the information required for an application for review.

31. Section 15 provides that a decision mentioned in section 13 is a reviewable decision. A decision is made under the Order that adopts the application process in this Division.

32. Section 16 provides that a person who is affected by a reviewable decision may apply to the National Regulator for internal review of the decision. A delegate of the National Regulator who is more senior to the delegate who made the reviewable decision will review the decision. The standard timeframe for a decision on internal review is 90 days after the applicant is notified of the initial decision. Standard internal review arrangements apply for notification of the applicant of the outcome of the internal review, that the applicant may apply to the Administrative Appeals Tribunal (AAT) for review of the decision and may request a statement of reasons for the decision.

33. Section 17 provides for AAT review of the decision made on review.

Division 5 Return of detained vessels

34. This Division provides for the return of vessels detained by the National Regulator.

35. Section 18 provides for the application of this Division to the return of detained vessels.

36. Section 19 provides that the National Regulator may impose conditions on the return of the vessel. It also sets out circumstances to be considered by the National Regulator in deciding whether to return the vessel. Circumstances include whether any outstanding fees have been paid, whether the reasons for detaining the vessel have been fixed or no longer exist, and the meeting of any conditions for return of the vessel.

37. Sections 20 and 21 set out arrangements for the return of the vessel, including requirements for notice to be given by the National Regulator to the owner etc after it decides to return the vessel and for its return to be as soon as practicable.

Division 6 Infringement notices

38. This Division provides for infringement notices to be given by the National Regulator. The scheme is similar to others already in place in subordinate legislation.

39. Section 22 sets out when an infringement notice can be given. It may only be given if there are reasonable grounds for believing that a person has committed an offence under a section of the national law mentioned in Schedule 1 of the Order. Infringement notices may be given by the National Regulator or a marine safety inspector.
40. Section 23 provides for the contents of infringement notices.
41. Section 24 provides how an infringement notice is to be given and that it must be given within 12 months of the alleged offence.
42. Section 25 provides for the penalty for an infringement notice. It will be the amount of penalty units mentioned in Schedule 1 for the offence.
43. Section 26 provides timeframes for payment of the penalty payable under an infringement notice. It must be paid within 28 days after the notice is given, or within another period mentioned in the Order.
44. Section 27 sets out arrangements for the National Regulator to grant, on application, a recipient of an infringement notice an extension of time to pay the infringement notice penalty.
45. Section 28 allows the National Regulator, on application by a recipient of an infringement notice, to make an arrangement with the person for the person to pay the infringement notice penalty amount by instalments.
46. Section 29 sets out arrangements for the withdrawal by the National Regulator of an infringement notice, whether or not an application is made by the notice's recipient, if satisfied that in all the circumstances it is proper to do so. If a notice is withdrawn, any amount of infringement notice penalty paid under the notice must be repaid.
47. Section 30 provides for what must be included in a notice of a decision to refuse to withdraw an infringement notice.
48. Section 31 provides for payment of the infringement notice penalty if the National Regulator refuses to withdraw the infringement notice.
49. Section 32 sets out the effect of payment of an infringement notice penalty. The person's criminal liability is discharged and further proceedings cannot be taken against the person for the offence.
50. Section 33 provides that admissions made by a person in an application for withdrawal of an infringement notice are inadmissible in proceedings against the person for the alleged offence.
51. Section 34 provides that if a person elects not to pay an infringement notice penalty and is convicted of the alleged offence mentioned in the notice, the court must not take into account the fact that the person chose not to pay the infringement notice penalty.
52. Section 35 provides for the kinds of certificates that can be used as evidence at a hearing of a prosecution for an offence mentioned in an infringement notice.
53. Section 36 makes clear that the National Regulator does not have to issue a person suspected of having committed an offence mentioned in Schedule 1 with an infringement notice. It also provides that nothing in this Division is to affect the liability of a person to be prosecuted for an alleged offence if an infringement notice is not given, or is given and then withdrawn, or to limit the penalty that may be imposed by a court on a person convicted of an offence.

Division 7 Approved forms

54. This Division sets out arrangements for approved forms. It provides that the National Regulator may approve a form for a provision of a Marine Order and that approved forms must be used for the purpose for which it is approved. Approved forms are available on the AMSA website.

55. Schedule 1 sets out the offences under the national law, including Marine Orders, for which an infringement notice may be given.

Statement of compatibility with human rights

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

Purpose and effect

57. This instrument deals with administration and interpretation of the other Marine Orders made under the national law. Its purpose is to reduce the volume of the Marine Orders and to facilitate their consistent interpretation.

58. The instrument sets out definitions to apply to all Orders, an application process and a review process, details for the return of detained vessels and an infringement notice scheme. It also provides for the National Regulator to approve forms.

59. Each other Order may or may not adopt the application and review processes in this instrument for decisions that are not covered by the application or review processes in the national law.

Possible effect on human rights

60. This Order provides definitions and sets up processes for the operation of the national law and Marine Orders made under the National Law. Given its nature as a process instrument, it does not engage any of the applicable rights or freedoms.

Assessment

61. 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

62. 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*.