

Explanatory Statement

Marine Order 1 (Administration) 2013 (Order 2013/17)

Authority

1. This Order was made under the *Navigation Act 2012* (the Navigation Act), the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (the AFS Act) and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Prevention Act). These Acts allow AMSA to make Orders about matters that can be provided for by regulations. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.
2. Paragraph 25(2)(d) of the Navigation Act provides for regulations to prescribe matters of which AMSA must be satisfied before, by written instrument, making an opt-in declaration for a vessel.
3. Subsection 26(2) of the Navigation Act provides that if AMSA is satisfied of matters prescribed by the regulations AMSA is to revoke an opt-in declaration for a vessel if requested by the owner, or any of the owners.
4. Subsection 305(1) of the Navigation Act provides for regulations to provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty as an alternative to civil proceedings.
5. Section 309 of the Navigation Act provides for regulations to be made for the keeping of an official log book.
6. Section 336 of the Navigation Act provides for regulations to be made for the publication by AMSA of information obtained about a vessel.
7. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.
8. Paragraph 341(3)(b) of the Navigation Act provides for regulations to be made providing for review of decisions under the regulations.
9. Section 25 of the AFS Act authorises the Governor-General to make regulations required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.
10. Subsection 33(1) of the Pollution Prevention Act authorises the Governor-General to make regulations required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.

Purpose

11. This instrument provides for administrative matters common to all Marine Orders other than those made under the *Marine Safety (Domestic Commercial Vessel) National Law) Act 2012*. Its purpose is to reduce the volume of the Marine Orders and to facilitate their consistent interpretation.
12. The Order sets out definitions to apply to all Orders and provides a single application and review process for exemptions and equivalents and any other matter that a Marine Order provides is subject to the process. The Order prescribes opt-in arrangements under the Navigation Act, prescribes recognised organisations, provides for the approved form for an official logbook of a vessel and prescribes certain information that AMSA may publish about vessels. The Order also provides for transitional matters arising from the repeal of the *Navigation Act 1912*.

Overview

13. This Order sets out:
 - definitions for the Order
 - definitions and rules for interpretation of all Marine Orders
 - a list of recognised organisations
 - a single application process for exemptions from requirements of Orders, for equivalents to be used instead of matters required by Orders, for equivalent guidelines to apply, for modifications of requirements of Orders to apply or for any other matter that a Marine Order provides is subject to this application process
 - information on the approved form of official logbooks for vessels
 - the information that AMSA may publish about vessels
 - matters for vessels to opt-in to coverage under the *Navigation Act*
 - matters for infringement notices
 - transitional matters arising from the repeal of the *Navigation Act 1912*.
14. When this Order commences, schedule 1 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

15. A copy of the draft of this Order was posted on AMSA's website for public comment. Over 300 stakeholders including industry organisations and interested government agencies were invited to comment. Three responses were received and these comments were taken into account when preparing the final draft.
16. The Office of Best Practice Regulation (OBPR) was also consulted on the proposed Order. OBPR considered that the Order dealt with matters of a minor or machinery nature and that no further analysis (in the form of a Regulatory Impact Statement) was required. The OBPR reference number is 15355.

Documents incorporated by reference

17. No documents are incorporated by reference in this Order.

Commencement

18. This Order commences on the day after it is registered.

Contents of this Order

Division 1 Preliminary

19. Section 1 sets out the name of the Order.
20. Section 2 provides for the commencement of the Order.
21. Section 3 states the purpose of the Order, which is to provide for administrative matters common to all Marine Orders and to facilitate their consistent interpretation. The Order prescribes matters for recognised organisations, the publication of information about vessels and arrangements to opt-in to coverage under the *Navigation Act*. The Order also provides for the form of the official log book and sets out a number of matters for the enforcement of civil penalties.
22. Section 4 sets out the provisions in the *Navigation Act*, the *AFS Act* and the *Pollution Prevention Act* that provide the powers for the Order to be made.

23. Section 5 sets out definitions of terms used in the Order.

Division 2 Interpretation of Marine Orders

24. Section 6 sets out definitions for the interpretation of all Marine Orders. There is a definition of equivalent which applies for a Marine Order unless that Order defines equivalent in a different way.

25. Section 7 clarifies that a requirement to have a certificate, licence or qualification means that the required certificate, licence or qualification must be in force.

26. Section 8 prescribes recognised organisations for the definition of *recognised organisation* in section 14 of the Navigation Act. AMSA has agreements with the recognised organisations listed in Schedule 1 for provision of survey and certification services for vessels registered in Australia. Recognised organisations are mentioned in a number of Orders. Changes to the list are infrequent.

27. Section 9 describes how a penal provision will be identified in Marine Orders.

Division 3 Application and review process

28. Division 3 sets out a single application and review process for exemptions, equivalents, modifications and any other matters that Marine Orders provide are subject to this application process. An example of another matter that a Marine Order may provide is subject to the application process in this Order is an application for a safety certificate to be issued under the Act.

29. Section 10 states the type of applications to which this Division may be made to apply. The section provides that a Marine Order may vary the application process as it applies to applications under that Order. For example, it may provide for a longer deadline for deciding an application for a complex approval.

30. Section 11 provides for the form and content of an application.

31. Section 12 provides that the AMSA decision-maker may ask for information, documents or agreements when dealing with an application.

32. Section 13 provides that the decision maker must tell the applicant about any request made under section 12, and the effect the request may have on the period for consideration of the application.

33. Section 14 provides the period within which an application must be considered.

34. Section 15 provides the requirements for the decision and notification of decision that AMSA must follow when dealing with an application. The section provides that if AMSA has not approved the decision within the time mentioned in section 14, then AMSA is taken to have decided not to approve the application or grant the exemption.

35. Section 16 provides that a decision mentioned in section 15 is a reviewable decision.

36. Section 17 provides that a person who is affected by a reviewable decision may apply to AMSA for internal review of the decision. The standard timeframe for a decision on internal review is 90 days after the applicant is notified of the initial decision.

37. Section 18 provides for AAT review following the internal review of a decision provided for in section 17.

Division 4 Approved forms and official log books

38. Section 19 provides that if AMSA approves a form for a purpose, that form must be used for the purpose. Approved forms are available on the AMSA website.
39. Section 20 provides that the official log book for a regulated Australian vessel must be in the approved form.

Division 5 Publication of information about vessels

40. Division 5 sets out the information AMSA may publish about vessels. Section 336 of the Navigation Act gives the power to make regulations about the information relating to a vessel that AMSA may publish. *Marine Order 55 (Publication of information about vessels) 2004*, which is repealed by this Order, previously made provision for the publication by AMSA of information about vessels. This material has been included in this Order as part of a process of consolidating and reducing the number of Marine Orders.
41. Section 21 sets out a list of matters relating to a vessel about which AMSA may publish information.

Division 6 Opting-in to coverage

42. Division 6 provides for matters relating to vessels opting-in to coverage under the Navigation Act.
43. Section 22 prescribes matters for the Navigation Act for an application by a vessel to opt-in to coverage under the Act. The section provides for an approved form and sets out matters of which AMSA must be satisfied in order to make an opt-in declaration under the Act.
44. Section 23 prescribes matters of which AMSA must be satisfied before revoking an opt-in declaration under the Act

Division 7 Infringement notices.

45. Division 7 provides for matters relating to infringement notices.
46. Section 24 provides that where there are reasonable grounds for believing that a person has contravened a civil penalty provision, AMSA may give the person an infringement notice with a penalty of one-fifth of the maximum penalty that a court could impose for contravention of the provision.
47. Section 25 provides a list of information that an infringement notice must contain.
48. Section 26 provides a timeframe for giving an infringement notice and provides the manner in which the notice must be given.
49. Section 27 provides that a penalty stated in an infringement notice must be paid within 28 days after the day the notice is given to the recipient or within another period mentioned in this Order.
50. Section 28 outlines the procedure for applying for an extension of time to pay an infringement penalty.
51. Section 29 makes provision for paying an infringement notice penalty by instalments.
52. Section 30 provides that a recipient of an infringement notice may apply within 28 days for the notice to be withdrawn.

53. Section 31 provides that if AMSA refuses to withdraw an infringement notice, notice of that decision must include certain information on the consequences of the refusal.
54. Section 32 provides that if AMSA refuses to withdraw an infringement notice, the infringement notice penalty must be paid within 28 days of receiving notice of the refusal.
55. Section 33 provides that payment of an infringement notice penalty discharges the person's liability for the contravention.
56. Section 34 provides that evidence of an admission made in an application for withdrawal of an infringement notice under subsection 30(2) is inadmissible in proceedings against the person for the alleged contravention.
57. Section 35 provides that if a person has elected not to pay an infringement notice penalty, that fact is not to be taken into account by a court that has subsequently found that the person has contravened the civil penalty provision mentioned in the notice.
58. Section 36 provides that certain certificates are evidence of the facts stated in the certificates, for the purpose of a hearing for proceedings for an alleged contravention mentioned in an infringement notice.
59. Section 37 provides that this Division does not require that an infringement notice be given, and does not affect liability for prosecution for an alleged contravention if an infringement notice is not given or is withdrawn.

Division 8 Transitional matters

60. Section 38 repeals *Marine Order 1 (Administration) 2011* and *Marine Order 55 (Publication of information about vessels) 2004*.
61. Section 39 provides that references in Marine Orders to *Marine Order 1 (Administration) 2011* or provisions of that Order are references to this Order or provisions of this Order.
62. Section 40 provides for the effect of certain certificates that were in force under the Navigation Act 1912 immediately before the repeal of that Act.
63. Section 41 provides for the effect of certain things done under the Navigation Act 1912 before the repeal of that Act.

Schedule 1

64. Schedule 1 lists the recognised organisations prescribed under section 8.

Compatibility with human rights

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

Overview of the legislative instrument

66. This instrument is made under the *Navigation Act 2012*, the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. Its purpose is to provide for administrative matters common to all Marine Orders made under those Acts.

Human rights implications

67. This instrument does not engage any of the rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

68. Division 7 sets out the process for infringement notices to be issued if there are reasonable grounds for believing that a person has contravened a civil penalty provision under a Marine Order. The effect on human rights of the civil penalty offences for which notices may be given is addressed in the explanatory statements for the Orders in which the offences are created.

69. The procedures set out in Division 7 are consistent with the usual Commonwealth procedures for infringement notice schemes, including time to pay, payment by instalments, application for a notice to be withdrawn, and a court hearing if an infringement notice penalty is not paid.

Conclusion

70. 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

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