

Explanatory Statement

Marine Order 505 (Certificates of competency — national law) Amendment 2014 (No.1) (Order 2014/12)

Authority

1. This Order amends *Marine Order 505 (Certificates of competency — national law) 2013 (MO505)*. That Order was made under the following provisions 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*:

- Division 4 of Part 4 of the national law provides for matters that can be prescribed in the regulations about certificates of competency for undertaking particular duties or performing particular functions in relation to domestic commercial vessels.
- 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.
- 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.

2. Subsection 63(3) of Division 4 of Part 4 of the national law provides for the prescribing of periods of suspension of certificates of competency.

3. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.

4. This Order was made under subsection 163(1) of the national law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

5. This Order prescribes different periods for suspension by the National Regulator of certificates of competency for different reasons.

Overview

6. MO505 deals with matters relating to certificates of competency issued by the National Regulator under the national law. The Australian Maritime Safety Authority (**AMSA**) is the National Regulator — see section 9 of the national law). The national law is a key part of the national system for commercial vessel safety.

7. MO505 provides requirements for the application, issue, variation, suspension and revocation of certificates of competency for the master or crew of domestic commercial vessels. The Order also provides for endorsement and renewal of certificates.

8. Due to an oversight MO505 does not currently provide for periods of suspension of certificates of competency. This may have the effect that a certificate of competency cannot be suspended. It is important that the National Regulator has the power to suspend a certificate in circumstances where safety may be jeopardised. This amendment remedies this situation and also clarifies how long a suspension may be in force.

Consultation

9. A copy of the draft of this Order was circulated to the Maritime Agencies Forum which comprises senior representatives of State and Territory marine safety agencies. All Maritime Agency Forum members either supported the proposed amendment or raised no objection to it.

10. A copy of the draft was also placed on AMSA's website on 5 May 2014 for stakeholders to consider and provide written feedback by 31 May 2014. Subscribers to the AMSA newsletter *Working Boats* were also notified by email of the proposed amendment. No comments were received.

11. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order will have machinery impacts and therefore no regulatory impact statement was required (OBPR reference number 16495).

Documents incorporated by reference

12. No documents are incorporated by reference by this amendment.

Commencement

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

Contents of this instrument

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

15. Section 2 provides for commencement of the Order.

16. Section 3 provides that MO505 is amended in accordance with Schedule 1.

17. Item [1] of Schedule 1 sets out prescribed periods for suspension of a certificate of competency. Each prescribed period is the maximum period a suspension may remain in force. The National Regulator may specify in writing an earlier period (see paragraph 63(3)(b) of the national law).

18. Under section 63 of the national law, the National Regulator may suspend a certificate of competency on the National Regulator's initiative in two circumstances. The first circumstance is where the National Regulator is satisfied that the suspension is necessary to protect human life, secure the safe navigation of vessels or deal with an emergency involving a serious threat to the environment. These purposes are set out in paragraph 63(2)(a) of the national law. The second circumstance is where the National Regulator is satisfied that the suspension is necessary to ensure unpaid fees are recovered or that the competency and medical requirements of Part D of the National Standard of Commercial Vessels (the *NSCV*) for the holder of the certificate are met. These purposes are prescribed under paragraph 63(2)(b) of the national law and set out in subsection 18(2) of MO505.

19. In the first circumstance, the prescribed period of suspension is 14 days after the holder of the certificate has been notified in writing of the suspension, unless the National Regulator seeks to revoke the person's certificate. In that case, under section 72 of the national law the National Regulator must give the holder a show cause notice as to why the certificate should not be revoked and take into consideration any response. The prescribed period in these circumstances is 14 days after the end of the period mentioned in the show cause notice, or 14 days after the day the National Regulator receives the response, whichever is the earlier.

20. In the second circumstance, the prescribed period is six months after the end of the period specified in the suspension show cause notice. A holder will be given the

opportunity to respond to the suspension show cause notice and their response taken into consideration prior to a decision being made on the proposed suspension.

Compatibility with human rights

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

Overview of the legislative instrument

22. This amendment provides that the National Regulator may suspend a certificate of competency of the master or crew of domestic commercial vessels in certain circumstances.

Human rights implications

23. The power to suspend a certificate of competency engages the right to work of persons who work on domestic commercial vessels.

24. However, the National Regulator may only use this power to suspend in specified circumstances — where the National Regulator is satisfied that the suspension is necessary to protect human life, secure the safe navigation of vessels or deal with an emergency involving a serious threat to the environment. These purposes are set out in paragraph 63(2)(a) of the national law. The second circumstance is where the National Regulator is satisfied that the suspension is necessary to ensure unpaid fees are recovered or that the competency and medical requirements specified in Part D of the NSCV for the holder of the certificate are met. These circumstances are prescribed under paragraph 63(2)(b) of the national law in subsection 18(2) of MO505.

25. A holder of a certificate will always be given the opportunity to respond to a proposal by the National Regulator to revoke the certificate after it has been suspended for a purpose mentioned in paragraph 63(2)(a) of the national law, or before a decision is made about whether to suspend the certificate for up to 6 months for a purpose prescribed under paragraph 63(2)(b) of the national law.

Conclusion

26. This legislative instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Making the instrument

27. 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*.