

Explanatory Statement

Marine Order 16 (Load Lines) 2014 (Order 2014/15)

Authority

1. Subsection 98 of the *Navigation Act 2012* (the Navigation Act) provides that regulations may provide for safety certificates including giving effect to the Load Lines Convention.
2. Subsection 309(2) of the Navigation Act provides that the regulations may provide for the keeping of logbooks.
3. Section 113 of the Navigation Act provides that the regulations may provide for when a vessel is overloaded.
4. Section 314 of the Navigation Act provides that regulations may provide for particular matters relating to certificates.
5. Paragraph 340(1)(d) of the Navigation Act provides that regulations may be made to give effect to the Load Lines Convention.
6. Subsection 339(1) of the Navigation Act provides that regulations may be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.
7. Subsection 341(1) of the Navigation Act provides that regulations may provide for the imposition of penalties and civil penalties for a contravention of certain instruments, including an order.
8. Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about any matter for which provision must or may be made by regulations.
9. 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.
10. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

11. This Order gives effect to the Load Lines Convention and deals with load lines and marking matters, including the certification of vessels to provide evidence of compliance with the requirements of this Order.

Overview

12. The Navigation Act implements Australia's obligations under the Load Lines Convention which establishes uniform principles and rules with respect to the limits to which vessels engaged on international voyages may be loaded.
13. This Order sets out vessel requirements concerning load lines and marking matters for safeguarding life and property at sea.
14. This Order replaces *Marine Order 16 (Load Lines) 2004* following a review of the Order as part of AMSA's ongoing review of instruments. The structure of the Order has been changed and current legislative drafting style applied. When the Order commences, Schedule 7 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 placed on the AMSA website for public comment. Over 300 stakeholders, including industry organisations and interested

government agencies, were invited to participate in the consultation process. Two comments were received and were taken into account.

16. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is ID 16286.

Documents incorporated by reference

17. This Order incorporates the following documents by reference:

- Load Lines Convention
- SOLAS

18. IMO documents may be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

19. This Order commenced on 1 November 2014.

Contents of this instrument

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

21. Section 1A sets out the commencement of the Order.

22. Section 1B repeals the instrument known as *Marine Order 16 (Load Lines) 2004*.

23. Section 2 states the purpose of the Order, which includes giving effect to the Load Lines Convention and the certification of vessels as evidence of compliance with load line and marking requirements of this Order.

24. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.

25. Section 4 sets out the definitions of terms used in the Order.

26. Section 5 sets out the interpretation of terms used in the Order.

27. Section 6 describes the vessels to which the Order applies.

28. Section 7 provides a person may apply for an exemption of a vessel from a requirement of this Order in accordance with the application process mentioned in *Marine Order 1 (Administration) 2013*.

29. Section 8 provides a person may apply to use an equivalent in accordance with the application process set out in *Marine Order 1 (Administration) 2013*.

30. Division 2 contains 11 sections and deals with International Load Lines and International Load Lines Exemption Certificates issued under the Navigation Act.

31. Section 9 sets out the certificate requirement for a regulated Australian vessel to which the Load Lines Convention applies, or would apply if engaged on international voyages.

32. Section 10 provides matters concerning an application for certificates.

33. Section 11 sets out matters concerning the commencement and duration of certificates.

34. Section 12 sets out certificate variation matters.

35. Section 13 sets out certificate revocation matters.

36. Section 14 describes the criteria for the issue of an International Load Lines Certificate.
37. Section 15 sets out the conditions attaching to an International Load Lines Certificate.
38. Section 16 sets out the requirement for an International Load Lines Certificate to be endorsed by an issuing body.
39. Section 17 describes the criteria for the issue of an International Load Lines Exemption Certificate.
40. Section 18 sets out the condition attaching to an International Load Lines Exemption Certificate.
41. Section 19 sets out the requirement for an International Load Lines Exemption Certificate to be endorsed by an issuing body.
42. Division 3 contains 2 sections and deals with the requirements for foreign vessels.
43. Section 20 deals with certificate requirements for foreign vessels.
44. Section 21 sets out obligations for foreign vessels.
45. Division 4 contains 2 sections and deals with information requirements.
46. Section 22 sets out a requirement concerning loading stress information. It is a strict liability offence if loading stress information of a specified kind is not on board a vessel. Failure to comply with the requirement also makes a person liable to a civil penalty.
47. Section 23 sets out a requirement concerning stability information. It is a strict liability offence if stability information of a specified kind is not on board a vessel. Failure to comply with the requirement also makes a person liable to a civil penalty.
48. Division 5 contains 2 sections and deals with the overloading of vessels.
49. Section 24 sets out the circumstances when a vessel is overloaded.
50. Section 25 sets out matters for determining the appropriate load line.
51. Division 6 contains 4 sections and deals with miscellaneous matters concerning regulated Australian vessels.
52. Section 26 sets out the requirement for entry into the official logbook of load line matters.
53. Section 27 prescribes when notification of alterations to AMSA and an issuing body must occur.
54. Section 28 deals with marking requirements for regulated Australian vessels. It is a strict liability offence for the master and owner if a vessel is not marked in accordance with the specified manner. Failure to comply with the requirement also makes a person liable to a civil penalty.
55. Section 29 provides for AMSA to determine a lesser bow height in specified circumstances.

Compatibility with human rights

56. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
57. This Order is made under the Navigation Act and gives effect to Australia's international obligations under the International Load Lines Convention.

58. This Order safeguards life and property at sea by giving effect to internationally accepted principles and rules concerning limits to which vessels may be loaded.

59. Section 22 and 23 of the Order deal with loading stress and stability information requirements and create criminal offences to which strict liability applies. They also create civil penalty provisions. The penalties are low (50 penalty units) and the penalty provisions are directed at masters and owners of vessels, rather than the community at large being regulatory in nature. The objective of the penalty provisions is to prevent failure in vessel structure and stability.

60. Section 28 of the Order creates criminal and civil penalties for the master and owner to which strict liability also applies. The penalties are to ensure a vessel is marked with appropriate deck line, load line, subdivision load line and draught marks. These markings help ensure that a vessel is not overloaded. Vessel markings are generally determined at initial survey with the owner responsible for their correct application before the vessel commences service. However, both the master and owner are responsible for ensuring that at the time a vessel goes to sea accurate and up to date markings have been correctly applied for the safe operation of the vessel. The objective of the penalties is to ensure that all persons (including crew and shore based personnel) involved in the loading and unloading of the vessel can be aware of stability parameters. Awareness of a vessel's particular stability parameters could prevent the vessel becoming unseaworthy and possible catastrophic loss of the vessel including loss of life and threat to the marine environment. The penalties (50 penalty units) are considered low by AMSA.

61. The criminal penalty provisions in this Order are authorised by paragraph 341(1)(a) of the Navigation Act. The civil penalty provision in this Order are authorised by paragraph 341(1)(b) of the Navigation Act.

62. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

63. AMSA considers that this instrument is compatible with human rights. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

64. 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*.