

Explanatory Statement

Marine Order 25 (Equipment — lifesaving) 2014 (Order 2014/17)

Authority

1. This Order is made under the *Navigation Act 2012* (the Navigation Act).
2. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
3. Paragraph 339(2)(b) of the Navigation Act provides that the regulations may provide for the machinery and equipment to be carried on board vessels for sending or receiving distress, urgency and other signals.
4. Paragraph 339(2)(g) of the Navigation Act provides that the regulations may provide for the equipment to be carried on board vessels and the measures to be carried out, for saving life at sea.
5. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to the International Convention for the Safety of Life at Sea (SOLAS).
6. Subsection 341(1) of the Navigation Act provides for the imposition of penalties in regulations.
7. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
8. 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.
9. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

10. This Order gives effect to Chapter III of SOLAS (Chapter III) which incorporates requirements of the *International Life-Saving Appliance Code* (the LSA Code). The Order prescribes matters for paragraph 339(2)(b) of the Navigation Act which provides for regulations for machinery and equipment for distress calls. The Order also prescribes matters for paragraph 339(2)(g) of the Navigation Act which provides for regulations for equipment and measures for the saving of life at sea.

Overview

11. This Order implements Australia's obligations under Chapter III of SOLAS which deals with lifesaving appliances and arrangements on board vessels. Chapter III incorporates requirements of the LSA Code which contains the international standards for the carriage and testing of lifesaving appliances and arrangements. The Order replaces *Marine Order 25 (Equipment — lifesaving) 2009*.
12. The Order applies Chapter III to Australian and foreign vessels that come within its terms. Foreign vessels not covered by SOLAS are required to comply with any certificates issued by or for the administration of the country in which they are registered. Foreign vessels covered by SOLAS must comply with Chapter III.
13. The Order sets out some requirements for equipment and certification of equipment that apply to all regulated Australian vessels (RAVs). RAVs that are covered by SOLAS must comply with Chapter III. Additional requirements are also imposed. RAVs not covered by SOLAS are required to comply with the

requirements specified by the Order. RAVs not covered by SOLAS are passenger vessels that are certified as Class 1D or 1E, cargo vessels less than 500GT and fishing vessels certified as Class 3A.

14. A new requirement for vessels to have ship-specific plans and procedures for recovery of persons from the water is applied to all RAVs, whether or not they are covered by SOLAS. The new requirement was adopted by resolution of the International Maritime Organization (IMO) as an amendment to Chapter III. Since the Order applies Chapter III to foreign vessels that come within SOLAS, this new procedure also applies to those vessels. The IMO asked contracting governments to determine whether the requirements of the new SOLAS regulation could also be applied to non-SOLAS vessels. The new SOLAS regulation is applied to all regulated Australian vessels by this Order.

15. The structure of the Order has been changed and current legislative drafting style applied. When this Order commences, Schedule 12 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

16. A copy of the draft of this Order was posted on AMSA's website for public comment. Over 300 stakeholders including shipping and cargo industry bodies, maritime unions and relevant government agencies were invited to comment. Three responses were received and these comments were taken into account when preparing the final draft.

17. 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 16724.

Documents incorporated by reference

18. This Order incorporates the following documents by reference:

- Chapter III
- International Convention on Tonnage Measurement of Ships (the Tonnage Convention)
- the *National Standard for Commercial Vessels* adopted by the Council of Australian Governments (NSCV)
- the *Uniform Shipping Laws Code* adopted by the Australian Transport Council established by the Council of Australian Governments (the USL Code)
- the *International Life-Saving Appliance Code* adopted by IMO Resolution MSC.48(66) (the LSA Code)
- IMO Resolution MSC.81(70) *Revised Recommendation on Testing of Life-Saving Appliances*
- IMO Resolution A.520(13) *Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances and Arrangements*
- IMO Circular MSC.1/Circ. 1328 *Guidelines for the approval of inflatable liferafts subject to extended service intervals not exceeding 30 months*
- IMO Resolution A.761 (18), *Recommendation on conditions for the approval of servicing stations for inflatable liferafts*

- AS/NZS 4280.1:2003 *406 MHz satellite distress beacons — Marine emergency position-indicating radio beacons (EPIRB) (IEC 61097-2:2002, MOD)*
- ISO 18813:2006: *Ships and marine technology - Survival equipment for survival craft and rescue boats*
- ISO 17339:2002: *Ships and marine technology - Sea anchors for survival craft and rescue boats*
- IMO Resolution A.802 (19) *Performance Standards for survival craft radar transponders for use in search and rescue operations*
- IMO Resolution A.1021(26): *Code on Alarms and Indicators 2009*
- AS 2700—2011 *Colour standards for general purposes*

19. Copies of IMO resolutions and circulars mentioned in the Order are available on AMSA's website at <http://www.amsa.gov.au>. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

20. This Order commences on 1 December 2014.

Contents of this instrument

21. Section 1 sets out the name of the Order.
22. Section 1A provides for the commencement of the Order.
23. Section 1B repeals the previous issue of the Order which was continued in effect and modified by *Marine Order 4 (Transitional Modifications) 2013*.
24. Section 2 states the purpose of the Order, which is to give effect to Chapter III of SOLAS and to prescribe matters for paragraphs 339(2)(b) and (g) of the Navigation Act.
25. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
26. Section 4 sets out definitions of terms used in the Order.
27. Section 5 provides for the interpretation of certain expressions used in the Order.
28. Section 6 applies the Order to regulated Australian vessels and foreign vessels.
29. Section 7 provides a process for an exemption from a requirement of the Order.
30. Section 8 enables an application for approval to use an equivalent of a requirement of the Order.
31. Section 9 provides for transitional matters for an appliance, equipment or arrangement approved under the two previous issues of the Order.
32. Section 10 provides for transitional matters for an appliance, equipment or arrangement on a vessel constructed before 1 July 1998 that complied with issue 3 of the Order.
33. Division 2 contains four sections and sets out the provisions that apply to foreign vessels.
34. Section 11 applies Division 2 to foreign vessels.

35. Section 12 provides that a foreign vessel to which Chapter III applies must comply with that Chapter.
36. Section 13 sets out the requirements for a foreign vessel to which Chapter III does not apply.
37. Section 14 applies sections 17 and 18 of the Order to foreign vessels.
38. Division 3 contains eight sections and provides for general matters relating to equipment for regulated Australian vessels.
39. Section 15 sets out the requirements for the replacement of survival craft.
40. Section 16 provides that appliances and equipment that are additional to the requirements of the Order must also comply with the specifications applicable to the kind of equipment.
41. Section 17 makes it an offence to damage appliances or equipment through improper use. The offence is a strict liability offence. A civil penalty is also provided.
42. Section 18 makes it an offence to damage, through improper use, a label on lifesaving appliances or equipment. The offence is a strict liability offence. A civil penalty is also provided.
43. Section 19 provides that the owner of the vessel must ensure that lifesaving appliances or equipment used on the vessel are manufactured, serviced and repaired in accordance with systems approved by an issuing body.
44. Section 20 provides for the issue of certificates of approval to show that appliances, equipment or arrangements have been approved under the Order. The section also covers duration, renewal and revocation of certificates of approval.
45. Section 21 requires the owner or master of a vessel to ensure that inflatable liferafts installed in the vessel are serviced by an approved servicing station. This is an offence provision.
46. Section 22 provides for matters relating to the approval of servicing stations.
47. Division 4 contains four sections dealing with requirements for cargo vessels at least 500 GT and for all passenger vessels
48. Section 23 sets out the application of the Division.
49. Section 24 provides that the owner or master of a vessel other than a passenger vessel mentioned in section 25 must ensure that the vessel complies with Chapter III.
50. Section 25 sets out requirements for equipment on passenger vessels certified Class 1D or 1E. This is an offence provision.
51. Section 26 requires compliance with Schedule 1 which sets out additional requirements for the vessels to which this Division applies.
52. Division 5 contains three subdivisions and deals with requirements for cargo vessels less than 500 GT.
53. Subdivision 5.1 deals with regulated Australian vessels certified as Class 2D or 2E.
54. Section 27 sets out the application of the subdivision.
55. Section 28 sets out requirements for equipment on passenger vessels certified Class 2D or 2E. This is an offence provision.

56. Subdivision 5.2 deals with regulated Australian vessels certified as Class 2C.
57. Section 29 sets out the application of the subdivision.
58. Section 30 requires Class 2C vessels to comply with the requirements for survival craft and rescue boats that apply to Class 2A and 2B vessels.
59. Section 31 sets out requirements for equipment on passenger vessels certified Class 2C. This is an offence provision.
60. Subdivision 5.3 deals with regulated Australian vessels certified as Class 2A or 2B.
61. Section 32 sets out the application of the subdivision.
62. Section 33 sets out survival craft and rescue boat requirements for vessels at least 85 metres long.
63. Section 34 sets out survival craft and rescue boat requirements for vessels between 35 and 85 metres long.
64. Section 35 sets out survival craft and rescue boat requirements for vessels between 25 and 35 metres long.
65. Section 36 sets out survival craft and rescue boat requirements for vessels less than 25 metres long.
66. Section 37 sets out survival craft and rescue boat requirements for oil tankers, chemical tankers and gas carriers
67. Section 38 sets out requirements for lifebuoys.
68. Section 39 sets out requirements for lifejackets.
69. Section 40 sets out requirements for immersion suits and anti-exposure suits.
70. Section 41 requires that a vessel that is at least 45m long must have a line-throwing appliance.
71. Section 42 sets out distress signal requirements.
72. Section 43 sets out the requirement for an alarm signal.
73. Section 44 sets out the requirement for an emergency electrical installation.
74. Section 45 requires that the vessel carry certain information for seafarers on life-saving signals.
75. Section 46 provides that stowage, launching and recovery of survival craft and rescue boats must comply with Chapter III.
76. Section 47 provides for the approval, testing, servicing and maintenance of the lifesaving appliances or arrangements mentioned in sections 33 to 46.
77. Section 48 sets out communications requirements for cargo vessels between 300 and 500GT on overseas voyages.
78. Division 6 contains three sections and deals with matters relating to fishing vessels.
79. Section 49 applies this Division to a fishing vessel that is a regulated Australian vessel.
80. Section 50 sets out requirements for a fishing vessel that is at least 500 GT.
81. Section 51 sets out requirements for a fishing vessel that is less than 500 GT.

82. Division 7 contains one section and deals with recovery of persons from the water.
83. Section 52 sets out requirements for plans and procedures for the recovery of persons from the water. This is an offence provision. The section applies to all regulated Australian vessels that are not bound to comply with Chapter III. Those vessels that are required to comply with Chapter III are already required to comply with its provisions for procedures for recovery of persons from the water.
84. Schedule 1 sets out further requirements for regulated Australian vessels that are cargo vessels at least 500GT and for all passenger vessels.
85. Schedule 2 sets out requirements for the contents of First aid kits.

Statement of compatibility with human rights

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

Overview of the legislative instrument

87. This Order is made under the *Navigation Act 2012* (the Navigation Act). It gives effect to provisions of the International Convention for the Safety of Life at Sea (SOLAS) that deal with lifesaving appliances to be carried on a vessel and lifesaving arrangements to be implemented for a vessel. Chapter III of SOLAS incorporates requirements of the LSA Code which contains the international standards for the carriage and testing of lifesaving appliances and arrangements. The Order provides additional safety measures under the Navigation Act for all vessels including vessels not covered by SOLAS.
88. A new requirement in the Order, beyond the requirements of the Order it replaces, is for vessels to have ship-specific plans and procedures for recovery of persons from the water. This is in accordance with a resolution adopted by the International Maritime Organization (IMO) amending Chapter III of SOLAS. The Order applies the new requirement to foreign vessels to which SOLAS applies, and to all regulated Australian vessels, whether or not they come under SOLAS.

Human rights implications

89. Sections 17, 18, 21, 25, 28, 31 and 52 of the Order create offences to which strict liability applies. They also create civil penalties. 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.
90. Strict liability is imposed to protect the safety of lives at sea. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act.
91. The civil penalty provisions in sections other than 17 and 18 are directed at the owners and masters of vessels rather than the community at large and are regulatory in nature. Sections 17 and 18 prohibit misuse of safety equipment that damages it or defaces a label on it. This regulation is necessary to achieve the purpose of the Order because it seeks to ensure that safety equipment will be available if needed. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

92. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate for achieving the objective of safety of lives at sea.

93. This Order may engage and limit the right to work mentioned in Article 6 of the International Covenant on Economic, Social and Cultural Rights. Section 21 of the Order provides for approval by an issuing body of those who service inflatable liferafts. Approval occurs in accordance with the criteria set out in an International Maritime Organization (IMO) resolution which is binding on Australia. The approval process is necessary to ensure that only competent organisations service inflatable liferafts. It is considered that any limitation on the right to work as a result of the approval process for servicing stations for inflatable liferafts is reasonable, necessary and proportionate for achieving the objective of safety of lives at sea.

Conclusion

94. 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* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate for the saving of lives at sea.

Making the instrument

95. 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*.