

## Explanatory Statement

### Marine Order 49 (High-speed craft) 2015 (Order 2015/2)

#### Authority

1. Section 98 of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for safety certificates including giving effect to the *International Convention for the Safety of Life at Sea 1974* (SOLAS).
2. Subsection 314 of the Navigation Act provides that regulations may provide for particular matters relating to certificates.
3. 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.
4. Paragraph 339(2) of the Navigation Act provides that the regulations may provide for matters including the design and construction of vessels, the machinery and equipment to be carried on board vessels and the maintenance, testing, survey and certification of vessels.
5. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may give effect to 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 for which provision may be made by regulations. Subsection 342(4) provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in a document as in force or existing at a particular time or from time to time.
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 the following Codes under Chapter X of SOLAS:
  - the *International Code of Safety for High-Speed Craft* adopted by IMO Resolution MSC.36(63), as in force from time to time (the 2000 HSC Code); and
  - the *International Code of Safety for High-Speed Craft* adopted by IMO Resolution MSC.36(63), as in force from time to time (the 1994 HSC Code).
11. The Order also gives effect to the *Code of Safety for Dynamically Supported Craft* adopted by IMO Resolution A.373(X), as in force from time to time (the DSC Code) and deals with the certification of high-speed craft as evidence of survey.

#### Overview

12. The Navigation Act implements Australia's obligations under SOLAS.
13. This Order sets out requirements for high-speed craft and dynamically supported craft that are subject to the Navigation Act.
14. This Order replaces *Marine Order 49 (High-speed craft) 2009* 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 21 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 120 stakeholders, including recognised organisations, shipping and cargo industry bodies, training organisations, unions, Ports Australia and interested government agencies, were invited to participate in the consultation process. No comments were received.

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 16724.

### **Documents incorporated by reference**

17. This Order incorporates the following documents by reference:

- SOLAS
- the 2000 HSC Code
- the 1994 HSC Code
- the DSC Code.

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

### **Commencement**

19. This Order commenced on 16 February 2015.

### **Contents of this instrument**

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

21. Section 1A provides for the commencement of the Order.

22. Section 1B repeals the instrument known as *Marine Order 49 (High-speed craft) 2009*.

23. Section 2 states the purpose of the Order, which is to give effect to the 2000 HSC Code and the 1994 HSC Code mandatory under Chapter X of SOLAS and to the DSC Code.

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

25. Section 4 sets out 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 that 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 that a person may apply to use an equivalent in accordance with the application process set out in *Marine Order 1 (Administration) 2013*.

30. Section 9 sets out which decisions made under the Order are reviewable under section 17 of *Marine Order 1 (Administration) 2013*.

31. Division 2 contains 11 sections and deals with certificates issued under the Navigation Act.
32. Section 10 sets out the certificate requirements for a regulated Australian vessel.
33. Section 11 provides matters concerning an application for a certificate.
34. Section 12 sets out matters concerning the commencement and duration of a certificate.
35. Section 13 sets out matters for the variation of a certificate.
36. Section 14 describes the criteria for the issue of a HSC Safety Certificate. A definition of this certificate is set out in the Order.
37. Section 15 sets out the conditions attaching to a HSC Safety Certificate.
38. Section 16 sets out that an endorsement on a HSC Safety Certificate, mentioned in section 15, must be made by an issuing body.
39. Section 17 describes the criteria for the revocation of a HSC Safety Certificate.
40. Section 18 describes the criteria for the issue of a DSC Construction and Equipment Certificate. A definition of this certificate is set out in the Order.
41. Section 19 sets out the conditions attaching to a DSC Construction and Equipment Certificate.
42. Section 20 describes the criteria for the revocation of a DSC Construction and Safety Certificate.
43. Division 3 contains 7 sections and deals with matters concerning a permit to operate a high speed craft.
44. Section 21 sets out a requirement for a high speed craft to have a permit to operate in force or to meet specific requirements if the craft is undertaking a transit voyage. Failure to comply with the requirement is a strict liability offence. Failure to comply with the requirement also makes a person liable to a civil penalty.
45. Section 22 provides matters concerning an application for a permit to operate.
46. Section 23 describes the criteria for the issue of a permit to operate.
47. Section 24 sets out the conditions attaching to a permit to operate
48. Section 25 sets out matters concerning the duration of a permit to operate.
49. Section 26 sets out matters for the variation of a permit to operate.
50. Section 27 sets out matters for the revocation of a permit to operate.
51. Division 4 contains 3 sections and deals with requirements for foreign vessels.
52. Section 28 sets out the certificate requirement for a foreign vessel.
53. Section 29 sets out the permit requirement for a foreign vessel.
54. Section 30 provides that a foreign vessel must comply with the Code applicable to that vessel and any conditions of the permit to operate.
55. Division 5 contains 1 section and deals with reporting requirements.
56. Section 31 prescribes incidents for the purposes of the definition of marine incident in section 14 of the Navigation Act.
57. Division 6 contains 3 sections and deals with other matters in relation to the operation of the vessel.

58. Section 32 sets out requirements for the operation of a regulated Australian vessel. Failure to comply with these requirements is a strict liability offence. Failure to comply with the requirement also makes a person liable to a civil penalty.

59. Section 33 sets out the information a master or owner of a regulated Australian vessel must have on board when taking the vessel to sea. Failure to comply with this requirement is a strict liability offence. Failure to comply with the requirement also makes a person liable to a civil penalty.

60. Section 34 prescribes, for paragraph 105(1)(c) of the Navigation Act, the period within which AMSA or an issuing body must be informed of an alteration to a vessel.

### **Statement of compatibility with human rights**

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

#### **Overview of the legislative instrument**

62. The Navigation Act implements Australia's obligations under the *International Convention for the Safety of Life at Sea 1974 (SOLAS)* that deals with internationally accepted principles for the certification and safe operation of high-speed and dynamically supported craft. This Order gives effect to the 2000 HSC Code and the 1994 HSC Code under Chapter X of SOLAS, to the DSC Code and deals with the certification of high-speed craft as evidence of survey.

63. Sections 21, 32 and 33 of the Order create offences to which strict liability applies. They also create civil penalties. 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, so are regulatory in nature. The objective of the penalty provisions is to ensure that a vessel is operated within appropriate safety limitations designed to protect life and mitigate threat to the marine environment.

64. In section 21, the penalties imposed are to ensure that a person does not operate a vessel unless a permit to operate is in force, or, if the vessel is on a transit voyage mentioned in either paragraph 1.9 of the 2000 HSC Code or the 1994 HSC Code, that the vessel has a safety plan approved by AMSA and that the master is familiar with information for the safe operation of the craft during the transit voyage.

65. In section 32, the penalties imposed are to ensure that a master or owner of a regulated Australian vessel operates the vessel in accordance with the relevant HSC or DSC Code and any conditions attaching to the permit to operate for the craft.

66. In section 33, the penalties imposed are to ensure that a master or owner makes available to the crew information necessary for its safe operation and maintenance.

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

68. 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. However, having regard to the objectives of the civil penalty provisions in this Order (which are 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.

## Conclusion

69. AMSA considers that this instrument is compatible with the rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

## Making the instrument

70. 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 Authority Act 1990*.