

## Explanatory Statement

### Marine Order 58 (Safe management of vessels) 2015 (Order 2015/4)

#### Authority

1. The following provisions of the *Navigation Act 2012* (the Navigation Act) provide for this Order to be made:

- section 98 provides that regulations may be made about safety certificates
- section 314 provides that regulations may be made about particular matters relating to certificates
- subsection 339(1) 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
- paragraph 340(1)(a) provides that the regulations may be made to give effect to the International Convention for the Safety of Life at Sea (SOLAS)
- subsection 341(1) provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations
- subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for which provision must or may be made by regulations.

2. 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.

3. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislative Instruments Act 2003*.

#### Purpose

4. This Order provides for the safe management and operation of vessels and pollution prevention by giving effect to Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) which requires compliance with the International Safety Management (ISM) Code.

#### Overview

5. This Order provides for matters concerning safety management systems on vessels and gives effect to Chapter IX of SOLAS which requires compliance with the ISM Code. The owner of a vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code must ensure that the vessel's safety management system, approved by its Administration under the ISM Code, is applied on the vessel in accordance with the ISM Code and the ISM Guidelines.

6. Masters and owners of regulated Australian vessels and foreign vessels must not take a vessel to sea without a safety management certificate or interim safety management certificate issued under the Order. Masters of regulated Australian vessels and foreign vessel are also required to have on board a document of compliance or interim document of compliance in force for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code.

7. This Order replaces *Marine Order 58 (International Safety Management Code) 2002* following a review of the Order as part of AMSA's ongoing review of instruments. Current legislative drafting style has been applied. When the Order commences Schedule 34 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that schedule modifies the previous issue of the Order.

8. This Order gives effect to the amendments to the ISM Code adopted by the International Maritime Organization's (IMO) Maritime Safety Committee in resolution MSC.353(92).

### **Consultation**

9. A copy of the draft of this Order was placed on the AMSA website on 4 August 2015 for public comment by 11 September 2015. Over 150 stakeholders including every vessel operator with AMSA issued ISM certification, recognised organisations, shipping and cargo industry bodies, training organisations, seafarer representative organisations and various government agencies were invited to comment and 4 responses received from Maritime Union of Australia, Mipec, Woodside Energy Ltd and DNV-GL. These comments were taken into account when preparing the final instrument.

10. The Office of Best Practice Regulation (OBPR) considers that the Order deals with matters of a minor or machinery nature and no regulatory impact statement is required. The OBPR reference number is 16724.

### **Documents incorporated by reference**

11. The following documents are incorporated by reference:

- *International Safety Management (ISM) Code* as defined in Regulation 1 of Chapter IX of SOLAS, as in force from time to time (the ISM Code)
- *Chapter IX of SOLAS (Management for the safe operation of ships)*
- *Revised Guidelines on the implementation of the International Safety Management (ISM) Code by Administrations* adopted by IMO Resolution A.1071(28), as in force from time to time (the ISM Guidelines).

12. IMO documents including SOLAS, the ISM Code and ISM Guidelines may be purchased from:

International Maritime Organization  
4 Albert Embankment, London SE1 7SR  
Telephone +44(0)20 7735 7611  
Fax +44(0)20 7587 3210  
IMO website: <http://www.imo.org>

### **Commencement**

13. This Order commenced on the day after it was registered.

### **Contents of this instrument**

14. Section 1 states the name of the Order.

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

16. Section 1B repeals the previous issue of the Order.

17. Section 2 states the purpose of the Order, which is to provide for the safe management and operation of vessels and pollution prevention by giving effect to Chapter IX of SOLAS which requires compliance with the ISM Code.

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

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

20. Section 5 sets out some rules of interpretation for the Order.

21. Section 6 describes the application of the Order to various kinds of vessels.

22. Section 7 provides the power of approving an exemption that may be exercised by AMSA.
23. Section 8 provides certain decisions under the Order are reviewable.
24. Section 9 specifies safety management and interim safety management certificates for subsection 99(1) of the Navigation Act and requires owners and masters of vessels to which the Order applies to ensure vessels have safety management or interim safety management certificates in order to go to sea.
25. Section 10 provides that the owner of a vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code must ensure that the vessel's approved safety management system is applied on the vessel in accordance with the ISM Code and the ISM Guidelines.
26. Section 11 provides that the master of a regulated Australian vessel or a foreign vessel may take the vessel to sea only if there is on board a copy of a document of compliance or interim document of compliance in force for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code.
27. Section 12 provides that a person may apply for a document of compliance or an interim document of compliance in accordance with *Marine Order 1 (Administration) 2013*.
28. Section 13 sets out the issuing criteria for a document of compliance and an interim document of compliance.
29. Section 14 sets out the conditions to which a document of compliance is subject to.
30. Section 15 sets out the duration of a document of compliance and an interim document of compliance.
31. Section 16 provides that a person may apply for a renewal of a document of compliance in accordance with *Marine Order 1 (Administration) 2013*.
32. Section 17 sets out the criteria for AMSA to vary or revoke a document of compliance or an interim document of compliance and provides that the holder of revoked documents must comply with a notice to give a revoked document to AMSA.
33. Section 18 provides that Division 3 of *Marine Order 1 (Administration) 2013* (other than section 17) applies to an application to AMSA for a safety management certificate and an interim safety management certificate.
34. Section 19 sets out the issuing criteria for a safety management certificate and an interim safety management certificate.
35. Section 20 sets out the conditions to which a safety management certificate and an interim safety management certificate are subject to.
36. Section 21 sets out the duration of a safety management certificate and an interim safety management certificate.
37. Section 22 provides that a person may apply for renewal of a safety management certificate within 6 months before the certificate would expire in accordance with *Marine Order 1 (Administration) 2013*.
38. Section 23 sets out the criteria for varying or revoking a safety management certificate and an interim safety management certificate.

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

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

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

40. This Order is made under the *Navigation Act 2012* (the Navigation Act). It provides for matters concerning safety management systems on vessels and gives effect to Chapter IX of SOLAS which requires compliance with the International Safety Management (ISM) Code.

41. The owner of a vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code must ensure that the vessel's safety management system, approved by its Administration under the ISM Code, is applied on the vessel in accordance with the ISM Code and the ISM Guidelines.

42. Masters and owners of regulated Australian vessels and foreign vessels must not take a vessel to sea without a safety management certificate or interim safety management certificate issued under the Order. Masters of regulated Australian vessels and foreign vessel are also required to have on board a document of compliance or interim document of compliance in force for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code.

### **Human rights implications**

43. Sections 11 and 17 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.

44. Strict liability is imposed to protect life 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. The civil penalty provisions are directed at masters and owners of vessels rather than the community at large and are regulatory in nature. 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. 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.

### **Conclusion**

45. AMSA considers that this 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**

46. 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 Safety Authority Act 1990*.