

## Explanatory Statement

### Marine Order 76 (Seafarer certification amendment) 2015 (Order 2015/7)

#### Authority

1. The following provisions of the *Navigation Act 2012* (the *Navigation Act*) provide for this Order to be made.
2. Section 28 of the Navigation Act provides that regulations may provide for seafarer certificates and give effect to the International Convention on Certification and Watchkeeping for Seafarers, 1978 (the *STCW Convention*).
3. Section 29 of the Navigation Act provides for regulations to prescribe different classes of seafarer certificates and to require an individual to hold a seafarer certificate of a particular kind to undertake particular duties or functions. It also provides that regulations may prescribe specified matters for seafarer certificates.
4. Section 314 of the Navigation Act provides for other matters to be prescribed for certificates, including matters relating to applying for them, the criteria for their issue, variation or revocation, the information to be included in certificates and conditions to which certificates are subject. It allows the regulations to provide for the renewal, suspension, transfer and surrender of certificates.
5. 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.
6. 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.
7. 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.
8. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislative Instruments Act 2003*.

#### Purpose

9. This Order makes consequential amendments to *Marine Order 70 (Seafarer certification) 2014* (Marine Order 70) and *Marine Order 71 (Masters and deck officers) 2014* (Marine Order 71) that are required because of new *Marine Order 74 (Masters and deck officers — yachts) 2014* (Marine Order 74).

#### Overview

10. This Order makes consequential amendments to Marine Order 70 and Marine Order 71 that are required because of new Marine Order 74. Marine Order 74 introduces new seafarer qualifications for masters and deck officers of yachts. It is part of the package of Marine Orders dealing with seafarer certificates that may be issued by AMSA (the *seafarer certification package*).
11. This Order amends Marine Order 70 so that it prescribes a certificate of competency as master or deck officer for a yacht as a class of certificate for which a person may apply. The Order amends Marine Order 71 so that a person who holds a master or deck officer certificate under Marine Order 74 may perform the duties permitted by that certificate on a yacht.

12. Marine Order 71 and Marine Order 74 work together so that a seafarer may hold either a master or deck officer certificate under MO71 or a master or deck officer certificate for yachts under Marine Order 74 to perform the duties or functions permitted by the certificate on yachts.

13. The Order also amends notes that refer to other Orders in the seafarer certification package to also refer to Marine Order 74.

### **Consultation**

14. AMSA consulted on this Order when meeting with key stakeholders on Marine Order 74. A copy of the draft of this Order was placed on AMSA's website on 17 September 2015, together with a copy of the draft of Marine Order 74, for a four week period of public consultation. It was also emailed together with draft Marine Order 74 to a targeted list of stakeholders including recognised organisations, the yachting industry, training organisations, seafarer representative organisations and relevant government agencies.. No submissions were received relating to this Order.

15. 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 19652.

### **Documents incorporated by reference**

16. This Order does not incorporate any documents by reference.

### **Commencement**

17. This Order commences immediately after the commencement of Marine Order 74.

### **Contents of this instrument**

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

19. Section 2 provides for the commencement of the Order.

20. Section 3 provides that a Marine Order named in the title of a Schedule to the Order is amended in accordance with the schedule.

#### *Schedule 1 Marine Order 70 (Seafarer certification) 2014*

21. Item 1 of Schedule 1 of this Order amends subsection 7(1) to include a certificate of competency as master or deck officer for a yacht as a class of seafarer certificate. Because of this amendment, all the administrative arrangements in Marine Order 70 that apply to seafarer certificates will apply to these kinds of seafarer certificates, for example, the application process for seafarer certificates, review of decisions and the recognition of equivalent qualifications held by seafarers that were issued in other countries.

22. Item 2 of Schedule 1 amends a note under subsection 10(1) to refer to new Marine Order 74.

23. Item 3 of Schedule 1 amends a note under section 16 to refer to new Marine Order 74.

24. Item 4 of Section 6 amends a note under subsection 31(2) to refer to new Marine Order 74.

#### *Schedule 2 Marine Order 71 (Masters and deck officers) 2014*

25. Item 1 of Schedule 2 includes a note under subsection 2(1) that mentions that Marine Order 74 provides for alternative master or deck officer qualifications under the Navigation Act for yachts.

26. Item 2 of Schedule 2 is a minor technical amendment.

27. Item 3 of Schedule 2 inserts a new subsection into section 7 so that despite subsection 7(1) a person holding a seafarer certificate as a master or deck officer for yachts may perform the duties or functions permitted by that certificate.

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

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

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

29. This Order is made under the *Navigation Act 2012*. It makes consequential amendments to *Marine Order 70 (Seafarer certification) 2014* (Marine Order 70) and *Marine Order 71 (Masters and deck officers) 2014* (Marine Order 71) that are required because of new *Marine Order 74 (Masters and deck officers — yachts) 2014* (Marine Order 74). It does not create any offences.

30. The Order amends Marine Order 70 so that it prescribes a certificate of competency as master or deck officer for a yacht as a class of certificate for which a person may apply. The Order amends Marine Order 71 so that it does not prevent a person who holds a master or deck officer certificate under Marine Order 74 from performing the duties permitted by that certificate on a yacht. The Order also amends notes that refer to other Orders in the seafarer certification package to also refer to Marine Order 74.

#### **Human rights implications**

This instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Conclusion**

31. 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**

32. 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*.