

## Explanatory Statement

### Marine Order 75 (Seafarer certification amendment) 2016 (Order 2016/5)

#### Authority

1. This Order amends *Marine Order 70 (Seafarer certification) 2014* (Marine Order 70), *Marine Order 71 (Master and deck officers) 2014* (Marine Order 71), *Marine Order 73 (Ratings) 2014* (Marine Order 73) and *Marine Order 74 (Masters and deck officers — yachts) 2015* (Marine Order 74). It is made under the same provisions of the *Navigation Act 2012* (the Navigation Act) as the Orders that it affects:

- section 28 which provides that regulations may provide for seafarer certificates and give effect to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention);
- subsection 29(1) which provides that regulations may prescribe different classes of seafarer certificates and require an individual to hold a seafarer certificate of a particular kind to undertake particular duties, or perform particular functions, as a seafarer;
- subsection 29(2) which provides that the regulations may prescribe, for seafarer certificates, proficiencies, competencies and standards, qualifications, experience, minimum age, character, health, nationality, citizenship or residence;
- subsection 29(3) which provides that the regulations may provide for:
  - (i) how the attainment of proficiencies, competencies and standards is to be evidenced (including the gaining of sea service and other experience); and
  - (ii) the instruction, training and examination of seafarers (including the conduct of exams etc); and
  - (iii) the recognition of certificates and other documents granted or issued to or for masters, officers and seafarers under the national law, the law of a State, a Territory or a foreign country; and
  - (iv) conditions to which seafarer certificates are subject;
- section 314 which provides for other matters to be prescribed for certificates, including the persons who may apply, the way of applying, the criteria for their issue, variation, renewal and revocation.

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. 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.

4. 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.

5. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

## Purpose

6. This Order amends Marine Orders 70, 71, 73 and 74 which deal with seafarer certification. This package of Marine Orders gives effect to Australia's obligations under the STCW Convention.

7. The amendments are the first set of amendments since the seafarer certification package of Marine Orders was introduced. The amendments:

- make a small number of changes identified as necessary by the audit conducted by the European Maritime Safety Agency in late 2014 (the EMSA audit) to verify that Australia complies with and has implemented the 2010 amendments of the STCW Convention and STCW Code (the Manila amendments);
- provide for marine radio qualifications in Marine Order 70 instead of *Marine Order 6 (Marine radio qualifications) 2000* (Marine Order 6) to reduce duplication of certification arrangements and provide clarity to stakeholders about these arrangements;
- provide for two new grades of ratings seafarer certificates to be issued by AMSA;
- correct a small number of minor drafting errors, clarify some provisions and rearrange some of the information for readability.

## Overview

8. This Order makes amendments to all the Marine Orders in the seafarer certification package other than *Marine Order 72 (Engineer officers) 2014*. The amendments proposed to be made to that Marine Order are still being developed in consultation with relevant stakeholders.

9. The amendments made to Marine Order 70 mainly relate to the issue by AMSA of GMDSS (global maritime distress safety system) radio operator certificates, and certificates of recognition of these and other kinds of radio operator certificates. These matters were previously dealt with in Marine Order 6. When the Order commences, Schedule 3 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that schedule modifies Marine Order 6 which this Order repeals.

10. One amendment inserts a note explaining that the Trans Tasman Mutual Recognition arrangements between Australia and New Zealand apply to seafarer occupations. Other amendments clarify the eligibility requirements for some vessel endorsements that may be issued to seafarers. The term of approval by AMSA for a registered training organisation to provide a seafarer training course has also been extended from 4 to 5 years in line with Australian Skills Quality Authority terms of approval. The opportunity has also been taken to shorten the Order by providing that applications for revalidation and endorsements of certificates can be made in approved forms.

11. The amendments made to Marine Order 71 mainly clarify that the certificates issued by countries other than Australia that can be recognised by AMSA for the issue of master and deck officer certificates cannot be certificates restricted to service on vessels engaged on near-coastal voyages. Other amendments clarify that the qualifying seagoing service eligibility requirements for the issue and revalidation of master and deck officer certificates must comply with the general requirements for qualifying seagoing service.

12. The amendments made to Marine Order 73 enable AMSA to issue two new ratings seafarer certificates — Navigational Watch Rating and Engine Room Watch Rating certificates. Previously section 11 of Marine Order 73 allowed Certificate of

Safety Training holders to perform duties as part of a navigational watch or an engine room watch if they met specified STCW compliant requirements. However, the certification issued was not a ratings certificate within the seafarer certification regime. Issuing seafarer certificates for the performance of these duties will ensure that the related arrangements eg for review of decisions will apply. Eligibility requirements and revalidation requirements have also been included for these certificates.

13. Similar amendments to those made to Marine Order 71 in relation to master and deck officer certificates have also been made to Marine Order 73 in relation to the general requirements for qualifying seagoing service.

14. Notes have been included in all four Marine Orders that state where the STCW Convention and Code can be accessed for free. Previously the notes included in Marine Order 70 and 71 only stated where consolidated editions could be purchased.

### **Consultation**

15. A copy of the draft of this Order was placed on AMSA's website on 15 January 2016 for stakeholders to consider and provide feedback by 19 February 2016. In addition, a copy of the draft Order was emailed to 160 stakeholders, including ship operators, recognised organisations, unions, shipping and industry bodies, port authorities, training organisations, seafarer representative organisations and various government agencies. Two submissions were received which were considered when the final draft was prepared.

16. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is 19584.

### **Documents incorporated by reference**

17. Parts of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, the Seafarers' Training, Certification and Watchkeeping Code and the International Convention for the Safety of Life at Sea, 1974 are incorporated by reference by some of the amendments made by this Order. These documents were previously incorporated by reference by the Orders it amends or replaces.

18. The STCW Convention, STCW Code and SOLAS are of treaty status and the original conventions and any amendments in force can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. The definitions of STCW Convention and SOLAS used in the Orders amended by this Order make clear that these Conventions are incorporated as in force from time to time. The STCW Code is incorporated as adopted by resolution of the 2010 Conference of the Parties to the STCW Convention — see definition of STCW Code in *Marine Order 1 (Administration) 2013*.

19. Information on obtaining copies of any International Maritime Organization (IMO) Resolution, IMO document or other document that is mentioned in this Order is available from the Marine Order link at <http://www.amsa.gov.au>, where AMSA also provides information on how to navigate the IMO website to download the documents.

20. IMO published material (including consolidated editions of the STCW Convention and Code, and SOLAS) may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

## Commencement

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

## Contents of this instrument

22. Section 1 sets out the name of the Order.
23. Section 2 provides for the commencement of the Order.
24. Section 3 repeals Marine Order 6.
25. This Order has four schedules with each schedule amending an existing Marine Order. Section 4 of this Order provides that each Marine Order named in the title of a schedule is amended in accordance with the amendments in that schedule.

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

26. Item 1 of Schedule 1 of this Order replaces a note under section 2 of Marine Order 70. The note specifies where the STCW Convention and the STCW Code can be accessed for free and states that a consolidated edition can be purchased from the IMO.
27. Item 2 inserts into section 3 a reference to the Navigation Act provision which provides that regulations may give effect to SOLAS.
28. Items 3 and 4 insert required definitions into section 4.
29. Items 5 and 6 omit definitions from section 4. These definitions are included by other schedules to this Order in the Marine Orders where they are used.
30. Item 7 amends the definition of *near-coastal waters* so that it is consistent with the terminology of section 16 of the Navigation Act.
31. Item 8 amends the definition in section 4 of *oral examination*.
32. Item 9 inserts into section 4 a definition of *radio operator duties and functions*.
33. Item 10 inserts into note 4 under section 4 a reference to the definition of *Maritime Labour Convention*.
34. Item 11 inserts a note under section 6 that points out that the Trans-Tasman mutual recognition arrangements apply to seafarer occupations.
35. Item 12 inserts into subsection 7(1) a reference to a GMDSS radio operator certificate so that a GMDSS radio operator certificate is prescribed as a class of seafarer certificate for subsection 29(1) of the Navigation Act.
36. Item 13 inserts a reference to paragraph (1)(ca) into paragraph 7(2)(b) so that a certificate of recognition of a GMDSS radio operator certificate is a kind of seafarer certificate.
37. Item 14 replaces the note under section 8 with a note that also points out that a December 2013 Supplement to the HSC Code is available from the IMO.
38. Item 15 replaces subsection 10(1) so that an application for a seafarer certificate must be made in the approved form. Related notes are also included including a note pointing out where the approved form is available.
39. Item 16 amends subsection 21(1) so that the arrangements for recognition by AMSA of equivalence in training that apply to eligibility for seafarer certificates also applies to endorsements of seafarer certificates.
40. Item 17 replaces the heading of subdivision 3.2 and inserts two new sections relating to GMDSS radio operator certificates including eligibility criteria.

41. Item 18 amends a criteria for issue of a certificate of proficiency as marine cook in paragraph 23(b) so that it is consistent with paragraph 4 of Standard A3.2 of the Maritime Labour Convention.
42. Item 19 inserts a note after paragraph 23(e) that refers to paragraph 4 of Standard A3.2 of the Maritime Labour Convention.
43. Item 20 is a minor clarifying amendment.
44. Item 21 inserts a new provision that sets out the requirements for revalidation of GMDSS radio operator certificates.
45. Item 22 inserts into section 26 a definition of *radio operator certificate*, together with a related explanatory note, for the purposes of Division 4.
46. Item 23 replaces the heading of section 27.
47. Item 24 amends subsection 27(2) to make clear that the section 27 application process does not apply for certificates of recognition or restricted certificates of recognition of radio operator certificates.
48. Item 25 replaces subsection 27(3) so that an application for a certificate of recognition or restricted certificate of recognition of a certificate other than a radio operator certificate must be made in the approved form. Related notes are also included, including a note pointing out where the approved form is available.
49. Item 26 inserts a new section 27A into the Order. The new section sets out the application process for certificates of recognition or restricted certificates of recognition of radio operator certificates.
50. Item 27 inserts into section 28 a reference to section 27A.
51. Item 28 inserts a new subsection (2A) after subsection 29(2) to clarify how the criteria in for issue of a certificate of recognition applies to recognition of an appropriate radio operator certificate.
52. Item 29 inserts a new paragraph into subsection 29(3) that sets out a criteria for issue of a restricted certificate of recognition of an appropriate radio operator certificate.
53. Item 30 inserts a new subsection into section 29 to make clear that subsection (4) does not apply to a certificate of recognition or a restricted certificate of recognition of a radio operator certificate.
54. Item 31 replaces subsection 31(2) so that an application for revalidation of a seafarer certificate must be made in the approved form. Related notes are also included including a note pointing out where the approved form is available.
55. Item 32 replaces subsection 34(2) so that an application for endorsement of a seafarer certificate other than a certificate of safety training must be made in the approved form. Related notes are also included including a note pointing out where the approved form is available.
56. Item 33 amends paragraph 39(b) so that the timeframe within which a person must pass a final assessment for a certificate to be issued or revalidated is within the 5 years before the certificate is issued or revalidated.
57. Item 34 corrects a minor drafting error in section 47. A certificate of recognition of a specified class of seafarer certificate is a kind of seafarer certificate under section 7 of the Order so there is no need to mention it separately.
58. Item 35 inserts a note under section 47 that points out that a certificate of recognition is a kind of seafarer certificate.

59. Item 36 amends section 54 so that the term of an approval by AMSA of an application by a seafarer training organisation of a training course is extended from 4 to 5 years. This is consistent with the term of approval of similar courses by the Australian Skills Quality Authority.
60. Item 37 makes a minor consequential amendment to paragraph 63(c).
61. Item 38 omits the reference to *Marine Order 54 (Coastal pilotage) 2011* in section 63 because that Order has been repealed and the reference in new *Marine Order 54 (Coastal pilotage) 2014* to *Marine Order 3 (Seagoing qualifications) 2004* is correct.
62. Item 39 amends the eligibility requirements for cargo tanker endorsements to ensure they comply with the STCW Convention. The need for this amendment was identified by the EMSA audit.
63. Items 40 and 41 are minor technical amendments that correct minor drafting errors.
64. Item 42 inserts the revalidation requirements for a WIG type A craft (ground effect) vessel endorsement.
65. Item 43 sets out further amendments to the revalidation requirements for some vessel endorsements. The acceptable timeframes for completion of approved sea service or appropriate courses of training have been extended. This change responds to representation from the maritime industry that there was difficulty in complying with the previous timeframes due to limited availability of courses and the practical difficulties caused by the need to release a number of seafarers at the same time to complete the courses.

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

66. Item 1 of Schedule 2 of this Order replaces a note under section 2 of Marine Order 71. The note specifies where the STCW Convention and the STCW Code can be accessed for free and states that a consolidated edition can be purchased from the IMO.
67. Item 2 inserts required definitions into section 4 of Marine Order 71. *Length*, for a vessel, means the overall length.
68. Item 3 removes the definition of *steering certificate* as it is not used in the Order. It also includes a definition of *monitored*.
69. Item 4 replaces section 10 to clarify that the general requirements for qualifying seagoing service set out in Schedule 3 apply to the qualifying seagoing service eligibility requirements and revalidation requirements set out in Schedules 2 and 3 respectively and are not themselves the qualifying seagoing service requirements for certificates or their revalidation.
70. Items 5 and 6 amend section 11 to clarify that the kinds of seafarer certificates or certificates of recognition that may be revalidated under subsection 11(1) of this Order are master or deck officer certificates or certificates of recognition of those kinds of certificates.
71. Item 7 replaces section 12 to clarify when previously issued certificates of competency as master or deck officer expire if AMSA did not determine an expiry day.
72. Item 8 amends the eligibility requirements for a Master <24m FG grade of certificate in relation to the kind of near coastal certificate to be held.
73. Item 9 corrects a minor drafting error.

74. Items 10 and 11 move requirements relating to one of the eligibility requirements for a Watchkeeper Deck < 500 GT and Watchkeeper Deck grade of certificate so they are closer to the relevant requirement. These requirements were previously in Schedule 3.
75. Items 12 to 14 amend the eligibility requirements for the Chief Mate <3000 GT, Chief Mate and Master <3000 GT grades of certificate respectively to clarify that if the person does not hold a specified certificate of competency, the person must hold a foreign certificate that AMSA considers at least equivalent to a specified certificate. A certificate that is restricted to service on vessels engaged on near-coastal voyages is not sufficient as the holder would not have satisfied the sea service and training requirements of STCW Reg II/1 which is a prerequisite to hold a Chief Mate <3000 GT and Master <3000 GT certificate of competency.
76. Item 15 amends the eligibility requirements for a Master <3000 GT grade of certificate in relation to the kinds of certificates that may be held.
77. Items 16 and 17 amend the eligibility requirements for the Master <3000 GT and Master grades of certificate respectively to make clear that if the person does not hold a specified certificate of competency, the person must hold a foreign certificate that AMSA considers to be at least equivalent to a specified certificate.
78. Item 18 replaces the title of Schedule 3 to make clear these are the general requirements for qualifying seagoing service.
79. Item 19 omits a clause in Schedule 3. This clause has been moved to a more appropriate location in other schedules.
80. Item 20 updates the title reference for Schedule 5.
81. Item 21 makes some further minor technical amendments. The timeframe for completion of approved revalidation courses for revalidation of certificates has also been extended from 12 months to 5 years. This is for the same reasons previously identified at paragraph 65 in relation to the extension of time for completion of courses necessary for the revalidation of vessel endorsements.

*Schedule 3 Marine Order 73 (Ratings) 2014*

82. Item 1 of Schedule 3 of this Order replaces a note under section 2. The note specifies where the STCW Convention and the STCW Code can be accessed for free and states that a consolidated edition can be purchased from the IMO.
83. Item 2 inserts required definitions into section 4 of Marine Order 73.
84. Item 3 amends the definition of *steering certificate*.
85. Item 4 replaces section 9 to clarify that the general requirements for qualifying seagoing service set out in Schedule 3 apply to the qualifying seagoing service eligibility requirements and revalidation requirements set out in Schedules 2 and 3 respectively and are not themselves the qualifying seagoing service requirements for certificates or their revalidation.
86. Items 5 and 6 amend section 10 to clarify that the kinds of seafarer certificates or certificates of recognition that may be revalidated under subsection 11(1) of this Order are ratings certificates or certificates of recognition of those kinds of certificates.
87. Item 7 omits section 11 because watchkeeping requirements are now being dealt with as eligibility requirements for two new ratings seafarer certificates — Navigational Watch Rating and Engine Room Watch Rating.

88. Item 8 replaces Schedule 1 so that it includes the two new ratings seafarer certificates.
89. Item 9 inserts the eligibility requirements for the new Navigational Watch Rating and Engine Room Watch Rating grades of certificate.
90. Item 10 replaces the title of Schedule 3 to clarify that these are the general requirements for qualifying seagoing service.
91. Item 11 omits an aspect of the qualifying seagoing service general requirements so that service as a deck rating or deck trainee rating does not have to have been performed on voyages of at least 24 hours duration.
92. Items 12 and 13 insert into Schedule 4 the requirements for revalidation of a Navigational Watch Rating certificate or an Engine Room Watch Rating certificate under Options 1 and 2 respectively.
93. Item 14 makes some further minor technical amendments to Schedule 2 and Schedule 4.

#### *Schedule 4 Marine Order 74 (Masters and deck officers — yachts) 2015*

94. Item 1 of Schedule 1 of this Order replaces a note under section 2 of Marine Order 74. The note specifies where the STCW Convention and the STCW Code can be accessed for free and states that a consolidated edition can be purchased from the IMO.

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

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

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

96. This Order is made under the *Navigation Act 2012*. It amends Marine Orders in the seafarer certification package of Marine Orders. The Order makes amendments:

- to address the findings of an STCW audit of audit conducted by the European Maritime Safety Agency in late 2014 to verify that Australia complies with and has implemented the 2010 amendments of the STCW Convention and STCW Code (the Manila amendments);
- to reduce duplication of certification arrangements and provide clarity for stakeholders about those arrangements by including the processes for obtaining marine radio qualifications in the seafarer qualifications package of Marine Orders instead of in a separate Marine Order (*Marine Order 6 (Marine radio qualifications) 2000*);
- to include in *Marine Order 71 (Ratings) 2014* two new grades of ratings seafarer certificates that may be issued by AMSA;
- to correct a small number of minor drafting errors, clarify some provisions and rearrange some information for readability.

97. This Order is an amending Order. The Orders that it amends specify the training, qualifying seagoing service and other eligibility requirements for the issue, endorsement and revalidation of seafarer certificates. A small number of the amendments that this Order makes are to those eligibility requirements.

98. This Order does not introduce any offence provisions into other Orders.

#### **Human rights implications**



99. Any amendments made by this Order to the standards of competency and training and other requirements for certificates of competency or endorsement or revalidation of those certificates may place limits on the promotion and advancement of seafarers. However, those limitations are required to implement Australia's international obligations under the IMO's STCW Convention and are necessary to ensure the safety of vessels and persons on board vessels by ensuring that only appropriately qualified seafarers work on vessels.

#### Conclusion

100. The 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**

101. 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*.