

Explanatory Statement

Marine Order 42 (Carriage, stowage and securing of cargoes and containers) 2016 (Order 2016/6)

Authority

1. Subsection 112(4) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the carriage of cargo on a vessel.
2. Subsection 112(5) of the Navigation Act provides that the regulations may provide for, among other things, the loading, stowing or carriage of cargo in vessels and the giving of related notices.
3. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Safety of Life at Sea (SOLAS).
4. 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.
5. Subsection 341(2) of the Navigation Act which provides that the regulations may provide for a matter by applying, adopting or incorporating, with or without modification, any matter in an instrument or other document as at a particular time, as in force from time to time or that does not exist when the regulations commence.
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 *Legislation Act 2003*.

Purpose

9. This Order gives effect to Part A of Chapter VI of SOLAS. Chapter VI of SOLAS relates to the carriage of cargoes and oil fuels on vessels. Part A sets out the general SOLAS requirements for these matters.

Overview

10. The Navigation Act implements Australia's obligations under SOLAS. This Order implements the requirements of Part A of Chapter VI of SOLAS for the loading, stowing and securing of cargoes on regulated Australian vessels and foreign vessels in Australian ports and waters. It includes requirements to give effect to Regulations 2 (Cargo information), 5 (Stowage and securing), and 5-2 (Blending of liquid bulk cargoes).
11. The Order also includes new requirements for the verification of the gross mass of packed containers. These requirements implement the amendments made to Regulation 2 (Cargo information) of Chapter VI of SOLAS by IMO Resolution MSC.380 (94) that come into force on 1 July 2016. The need for accurate container weight verifications is an important safety issue for cargo vessels that carry containers.

12. Under the new SOLAS requirements for the verification of gross mass of packed containers the competent authority of the State in which the packing of the container was completed must approve a certified method for the weighing of packages and cargo items to be packed in a container. The Order specifies AMSA as the competent authority for this purpose. AMSA has approved the certified method of weighing for Australia under the Order.

13. An aspect of this approved method is that the weighing equipment to be used must comply with either the national measurement legislation or with a standard of accuracy on an AMSA approved list. This provides AMSA with the flexibility to readily adopt relevant new standards. The approved list of accuracy standards is to be located next to the Order on AMSA's website for easy accessibility by stakeholders. A draft list was placed there before commencement of the Order. AMSA will include in the list only standards that are either Australian standards based on internationally accepted standards or international standards. The list will make clear how the standard is being adopted by specifying for each standard the approved version.

14. The opportunity has also been taken to move into this Order from *Marine Order 21 (Safety of navigation and emergency procedures) 2012* (Marine Order 21) the requirement for material safety data sheets for vessels carrying oil or oil fuel. The Order also includes a new requirement to implement Regulation 4 of Chapter VI of SOLAS (the use of pesticides in ships). This will ensure that all the requirements implementing Part A of Chapter VI of SOLAS for the carriage of cargo are in one Order which will assist stakeholders.

Consultation

15. AMSA held a stakeholder discussion forum in Melbourne on 20 November 2015 in relation to the new container gross mass verification requirements of SOLAS that are implemented by the Order. The forum discussions and subsequent stakeholder consultations informed the development of the Order and how it is to be implemented administratively.

16. A copy of the draft of this Order was placed on AMSA's website on 10 March 2016 for comment by 30 April 2016. The draft Order and other information, including the proposal to have an AMSA approved list of accuracy standards, was also emailed to a targeted list of stakeholders including ship operators, recognised organisations, unions, shipping and industry bodies, port authorities, shippers, freight and logistics companies and relevant government agencies.

17. In April 2016 AMSA also held a number of stakeholder meetings about the draft Order in Sydney, Adelaide, Melbourne, Devonport, Brisbane, Darwin, Perth and Fremantle. Ten submissions were received and most of the comments were concerned with administrative implementation issues. Only minor changes were made to the draft Order as a result of submissions.

18. 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 19184.

Documents incorporated by reference

19. This Order incorporates the following documents by reference:

- Chapter VI of SOLAS and Annex I of MARPOL

- the *Code of Safe Practice for Ships Carrying Timber Deck Cargoes, 2011* adopted by IMO resolution A.1048(27), as in force from time to time (the TDC Code)
- the *Code of Safe Practice for Cargo Stowage and Securing*, adopted by IMO resolution A.714(17), as in force from time to time (the CSS Code)
- the International Maritime Dangerous Goods Code adopted by IMO resolution MSC.122(75), as in force from time to time (the IMDG Code)
- the standards of accuracy for weighing equipment in the list of standards approved by AMSA for s10(3)(b)(ii) of the Order
- the *National Measurement Act 1960*, the *National Measurement Regulations 1999* and the *National Trade Measurement Regulations 2009* (the national measurement legislation)
- *Marine Order 44 (Safe containers) 2002* (Marine Order 44).
- the *Revised recommendations on the safe use of pesticides in ships* as set out in the Annex to IMO Circular MSC.1/Circ.1264, amended from time to time
- the *Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds* set out in the Annex to IMO Circular MSC.1/Circ.1264, as amended from time to time
- the *Revised recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo transport units* set out in the Annex to IMO Circular MSC.1/Circ.1361, as amended from time to time
- the *Recommendations for material safety data sheets (MSDS) for MARPOL Annex I oil cargo and oil fuel* adopted by IMO Resolution MSC.286(86), as amended from time to time
- the *Revised guidelines for the preparation of the cargo securing manual* set out in the Annex to IMO Circular MSC.1/Circ.1353/Rev.1, as amended from time to time.

20. 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 Orders link at <http://www.amsa.gov.au>, where AMSA also provides information on how to navigate the IMO website to download the documents for free.

21. SOLAS and MARPOL are of treaty status. SOLAS is incorporated ‘as amended and in force from time to time for Australia’ (see definition of SOLAS in *Marine Order 1 (Administration) 2013* (Marine Order 1), and the definition of *Safety Convention* in section 14 of the Navigation Act). MARPOL is adopted ‘as modified and added to by the 1978 Protocol’ (see definition of MARPOL in Marine Order 1 and the definition of ‘the Convention’ in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*). The original conventions and any amendments in force can also be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

22. IMO published material (including consolidated versions of SOLAS, MARPOL and the TDC Code, the CSS Code, and the IMDG Code) may be purchased from specialist maritime book outlets in Australia or from the IMO (see <http://www.imo.org/en/Publications/Pages/Home.aspx>). To borrow a copy of the

TDC Code, the CSS Code or the IMDG Code from a library in Australia, search for the title on the Australian Libraries Gateway at <https://www.nla.gov.au/libraries/>.

23. The list of the standards of accuracy for weighing equipment approved by AMSA, together with links to the websites where they can be freely accessed, is available from the Marine Orders link at <http://www.amsa.gov.au>.

24. The national measurement legislation and Marine Order 44 are available on the Federal Register of Legislation at <https://www.legislation.gov.au>. Marine Order 44 is also available from the Marine Orders link on the AMSA website. They are incorporated as in force from time to time because, in accordance with s10(a) of the *Acts Interpretation Act 1901* and s13(1)(a) of the *Legislation Act 2003*, any reference to an Act or regulations or a marine order is a reference to the Act, regulations or marine order as amended from time to time.

Commencement

25. This Order commenced on 1 July 2016.

Contents of this instrument

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

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

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

29. Section 2 states the purpose of the Order, which is to give effect to Part A of Chapter VI of SOLAS.

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

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

32. Section 5 provides for rules of interpretation for the Order. It specifies AMSA as the Administration for the Order and as the competent authority for paragraph 4.2 of regulation 2 of Chapter VI.

33. Section 6 sets out the activities and vessels and cargo units to which the Order applies.

34. Section 7 sets out the arrangements for a person to apply for an exemption from a requirement of the Order, the CSS Code or the 2011 TDC Code. It adopts the application process in *Marine Order 1 (Administration) 2013* (Marine Order 1) and sets out criteria to ensure approval is only given if safety is assured.

35. Section 8 sets out the arrangements for a person to apply for use of an equivalent (as defined in Marine Order 1). Again, the application process for this is set out in Marine Order 1 and criteria for the decision are provided to ensure safety if approval is given.

36. Section 9 gives effect to paragraphs 1 and 2.1 of regulation 2 of Chapter VI of SOLAS, which require a shipper to give information about cargo to the master of a vessel before loading.

37. Section 10 gives effect to other paragraphs of regulation 2 of Chapter VI of SOLAS. Subsection 10(1) gives effect to paragraph 3 of regulation 2, which requires the shipper, before a cargo unit is loaded on a vessel, to ensure the gross mass of the units is the same as the gross mass declared on the shipping document required by section 9 above. This applies to the loading of cargo units on a vessel in an Australian port.

38. Subsection 10(2) gives effect to new paragraphs 4 and 5 of regulation 2 of Chapter VI of SOLAS for the loading of a container on a vessel in an Australian port. Paragraph 4 requires the gross mass of cargo carried in a container to be verified and sets out two acceptable verification methods. Paragraph 5 requires the shipper of the cargo to ensure the verified gross mass is stated on the shipping document before the container is loaded on a vessel.
39. Subsection 10(3) sets out when equipment is to be taken to be calibrated and certified for paragraph 4.1 of regulation 2. It is taken to be so calibrated and certified if it complies with the requirements of the national measurement legislation for the kind of equipment, or with a standard of accuracy for weighing equipment that applies to the kind of weighing equipment and is in the list of standards approved by AMSA.
40. Subsection 10(4) makes clear that AMSA has approved for Australia the method for verification of gross mass mentioned in paragraph 4.1 of regulation 2 of SOLAS and the method mentioned in paragraph 4.2 of regulation 2 of Chapter VI of SOLAS, provided the method is followed using equipment that complies with subsection 10(3).
41. Section 11 provides for the shipper for a packed container to ensure the verified gross mass is stated in the shipping document for the container and is obtained in accordance with this Order.
42. Section 12 ensures that a person may load a packed container on a vessel only if the shipping document for the container states the container's verified gross mass.
43. Section 13 provides for compliance with the international standards developed by the IMO to ensure safety in the use of pesticides on cargo vessels and for the fumigation of cargo transport units. Requiring compliance with these standards, which are referenced in the SOLAS requirement that appropriate precautions must be taken in the use of pesticides in ships, particularly for fumigation, will ensure shippers of cargo and the crew of cargo vessels have greater awareness of these international standards.
44. Section 14 provides for the packing, loading, stowing and securing of cargo, cargo units and cargo transport units in accordance with regulation 5 of Chapter VI of SOLAS.
45. Section 15 provides that the master of a vessel, other than a vessel carrying only passengers or certain cargoes, must ensure that the vessel carries an approved Cargo Securing Manual prepared in accordance with the *IMO Revised guidelines for the preparation of the cargo securing manual*.
46. Section 16 restricts the mass that can be loaded in a freight container to the maximum gross mass indicated on the container's Safety Approval Plate.
47. Section 17 provides for AMSA to give notice if it considers that there is a non-compliance with the Cargo Securing Manual, the CSS Code, the TDC Code or this Order, or that the loading, stowage or carriage of cargo a vessel is unsafe. AMSA may prohibit the loading etc of the cargo, or require corrective action to be taken. A notice may require a cargo unit to be weighed so that it's declared gross mass may be checked.
48. Section 18 provides for AMSA to require additional information if it is concerned that loading or carriage of a cargo might create danger to the vessel or a person on board.
49. Section 19 restricts the carriage of cargo on the deck of a vessel, setting out the only circumstances when it is permitted.

50. Section 20 includes an existing requirement relating to the carriage of material safety data sheets on vessels that carry oil or oil fuel. This requirement was previously in Marine Order 21.

51. Section 21 gives effect to Regulation 5-2 of Chapter VI of SOLAS, which restricts the blending of liquid cargoes or production processes involving cargoes on vessels.

Statement of compatibility with human rights

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

Overview of the legislative instrument

53. This Order is made under the *Navigation Act 2012*. It gives effect to Part A of Chapter VI of the International Convention for the Safety of Life at Sea (SOLAS) Part A of Chapter VI deals with cargo information, stowage and securing of cargo, the use of pesticides in ships and the blending of liquid bulk cargoes. It gives effect to the new container gross mass verification requirements contained in Regulation 2 of Chapter VI of SOLAS that come into force internationally on 1 July 2016.

The need for accurate container weight verifications is an important safety issue for cargo vessels that carry containers.

Human rights implications

54. Sections 11, 12, 15, 16, 17 and 20 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.

55. Strict liability is imposed to protect the safety of persons on vessels and the marine environment. 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 shippers of cargo and 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 for achieving the objectives of protecting the safety of persons and the marine environment.

Conclusion

56. 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.

Making the instrument

57. 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*.