

Explanatory Statement

Marine Order 508 (National law amendment) 2016 (Order 2016/13)

Authority

1. The *Marine Safety (Domestic Commercial Vessel) National Law*, set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law) provides for this Order to be made. The National Law is the single law for the safety of all domestic commercial vessels and their crew. It is supported by Marine Orders made under the National Law by the Australian Maritime Safety Authority (AMSA) as the National Regulator.
2. Division 2 of Part 4 of the National Law provides for matters to be prescribed in the regulations about certificates of survey for domestic commercial vessels.
3. Paragraph 38(1)(c) of Part 4 of the National Law provides for the regulations to prescribe criteria for the issue of a certificate of survey. Paragraph 38(3)(a) of the National Law provides that a certificate of survey is subject to any conditions prescribed in the regulations.
4. Paragraph 143(4)(a) of the National Law provides that an exemption may be granted on application in accordance with the regulations by a person.
5. Subsection 159(1) of the National Law authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
6. Subsection 163(1) of the National Law allows Marine Orders to be made for any matter for which provisions may be made by regulations, with some specified exceptions.
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 163(1) of the national law and is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Order amends *Marine Order 501 (Administration — national law) 2013* (Marine Order 501) to require that applications for the National Regulator to grant an exemption under section 143 of the National Law are to be made in accordance with Marine Order 501, and to require that applications to which Marine Order 501 applies are to be accompanied by any prescribed fee charged by the National Regulator.
10. This Order amends *Marine Order 503 (Certificates of survey — national law) 2013* (Marine Order 503) to amend the criteria for issue of a certificate of survey to recognise equivalent means of compliance approved by the National Regulator, to specify the application process for, and criteria for the approval of, equivalent means of compliance and to clarify who may conduct surveys of vessels.
11. The Order also amends Marine Orders 501 and 503 to include some new definitions that align key terms and concepts between the Marine Orders, the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (the National Law Regulation) and the National Standard for Commercial Vessels.

Overview

12. Marine Order 501 sets out an application process that applies to any matter that a Marine Order provides is a matter for which an application may be made in accordance with Marine Order 501. This Order amends Marine Order 501 to require applications for an exemption from requirements of the national law to be made in accordance with Marine Order 501, and for any applications made in accordance with Marine Order 501 to be accompanied by any prescribed fee charged by the National Regulator for assessing the application.

13. This Order also amends the criteria for issue of a certificate of survey in Marine Order 503 to address the circumstance where an equivalent means of compliance has been approved by the National Regulator and implemented for the vessel. It also provides for related matters including how an application for an equivalent means of compliance is to be made and the criteria for approval.

14. The amendments made by this Order are related to the amendments made to the National Law Regulation by the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulation 2016* to prescribe fees for the assessment of these kinds of applications and the provision of other services by the National Regulator.

Consultation

15. A copy of the draft of this Order was sent to each member of the Maritime Agencies Forum on 25 July 2016 for a two week consultation period. The Maritime Agency Forum represents the maritime safety authorities of each State and the Northern Territory. No significant issues were raised by the Maritime Agency Forum with the proposed amendments.

16. A draft of the Order was also published on the AMSA consultation website on 25 July 2016 for the same two week consultation period. Two submissions were received and no significant issues were raised with the proposed amendments.

17. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OBPR reference number is 16724.

Documents incorporated by reference

18. This Order amends Marine Order 503 to include definitions of some terms as having the same meaning as in the National Standard for Commercial Vessels (the NSCV). The National Standard for Commercial Vessels is defined in section 6 of the National Law and is a prescribed standard for the National Law — see s6A of Marine Order 501). The NSCV is freely available on AMSA's website at <https://www.amsa.gov.au>.

Commencement

19. This Order commenced on 1 September 2016.

Contents of this instrument

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

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

22. Section 3 of this Order provides that each Order is amended in accordance with the amendments in schedules to the Order.

Schedule 1 Amendment Marine Order 501 (Administration—national law) 2013

23. Item 1 of Schedule 1 of this Order amends section 4 (the power provision) to insert a reference to paragraph 143(4)(a) of the national law that provides that an exemption may be granted on application in accordance with the regulations by a person.
24. Items 2 and 3 of Schedule 1 amend section 7 to provide a definition of the term *increased level of risk* as having the meaning given by section 13 of the National Law Regulation and a definition of *registered organisation* as having the meaning given by section 14 of the *Navigation Act 2012*.
25. Item 4 of Schedule 1 includes a new clarifying provision section 7A to provide that a requirement to have a licence, certificate, or other qualification is a requirement to have a licence, certificate or qualification that is in force. The required certificate, licence or other qualification may be mentioned in a Marine Order or in a standard prescribed under section 6A.
26. Item 5 of Schedule 1 amends section 8 to include a new subsection that provides that the granting of an exemption under section 143(1) of the National Law is a matter for which an application must be made in accordance with Marine Order 501. The power to grant an exemption is in section 143 of the National Law and the refusal to grant an exemption on application remains reviewable under the National Law (see s139(1)).
27. Item 6 of Schedule 1 amends section 9(a) to provide that an application must be accompanied by any prescribed fee charged by the National Regulator for assessing the application. Item 7 of Schedule 1 inserts a new note explaining that the prescribed fees are set out in Part 4 of the National Law Regulation.
28. Item 8 of Schedule 1 replaces section 13 with a new section that does not refer to exemptions and the issue of identifiers or certificates. The meaning of the section has not been changed. The National Regulator must still decide an application within the timeframe mentioned in section 12 and if the National Regulator does not decide the application within the specified timeframe it is taken to have refused the application.
29. Item 9 of Schedule 1 replaces the note to section 15 to clarify that reviewable decisions under the Marine Order are different to reviewable decisions under section 139 of the National Law.

Schedule 2 Amendments Marine Order 503 (certificates of survey—national law) 2013

30. Item 1 of Schedule 2 of this Order amends section 6 to provide a definition of *accredited marine surveyor* as meaning a person accredited under section 24 of the National Law Regulation.
31. Item 2 of Schedule 2 of this Order amends section 6 to provide a definition of *equivalent means of compliance*. The term is defined as meaning an equivalent means of compliance by the vessel with a requirement of this Order under which the vessel must comply with a standard mentioned in section 8 of Marine Order 503.
32. Item 2 also amends section 6 to include a definition of *deemed to satisfy solution*. Item 3 also amends section 6 to define *required outcome*. Both terms are defined as having the same meaning as in the NSCV. These definitions are necessary because the terms are used in the criteria for approval of equivalent means of compliance with requirements of the NSCV.

33. Item 4 of Schedule 2 of this Order amends the note to section 6 to make clear that the term *increased level of risk* is defined in Marine Order 501.
34. Item 5 of Schedule 2 of this Order replaces section 11 to clarify that recognised organisations can conduct surveys of vessels. Recognised organisations are commonly known as classification societies. Section 11 now provides that a person who holds an electrical contractor licence issued under State or Territory law can conduct electrical surveys, in addition to marine surveyors. New paragraph 11(c) makes clear that surveys are to be conducted in accordance with any documents approved by specified persons unless the National Regulator considers that this is not necessary. Examples of these documents are set out in a note.
35. Item 7 of Schedule 2 of this Order is a minor technical amendment to section 14.
36. Item 8 of Schedule 2 inserts a new condition on a certificate of survey which requires compliance with any conditions imposed by the National Regulator when approving an equivalent means of compliance.
37. Item 9 is a minor technical amendment.
38. Item 10 omits a condition on a certificate of survey.
39. Item 11 inserts a new subsection into section 14. It clarifies the meaning of a reference to a standard in other conditions on a certificate of survey if there is an equivalent means of compliance in force that relates to survey processes.
40. Item 12 replaces paragraph 17(2)(d) to add another purpose for the suspension of a certificate of survey by the National Regulator on its own initiative — to ensure that a vessel is not operated in contravention of a detention notice. Other purposes already provided for are ensuring the vessel is not operated in contravention of a direction, an improvement notice or a prohibition notice.
41. Item 13 of Schedule 2 of this Order includes a new Division relating to equivalent means of compliance and includes three (3) new provisions. New section 20 provides for the National Regulator to decide an application for an equivalent means of compliance and specifies criteria for approval of an application. It also provides that the National Regulator may approve the application subject to conditions. Subsection 20(4) specifies that a decision to refuse an application for an equivalent means of compliance is a reviewable decision under Marine Order 501.
42. Division 3 of Marine Order 501 applies to an application for an equivalent means of compliance because section 9 of Marine Order 503 provides that all applications under that Order must be made in accordance with Marine Order 501. Division 3 of Marine Order 501 provides for matters such as seeking further information about an application, the time allowed for consideration of an application and notification of a decision on an application.
43. New section 21 requires applications to comply with section 9 of Marine Order 501 and specifies additional matters to be included in an application. These include a statement explaining how the proposed equivalent means of compliance is at least as effective as compliance with each requirement that the equivalent means is to replace.
44. New section 22 provides that an approved equivalent means of compliance commences on the day it is issued and expires on the day if any it is cancelled. Subsection (2) clarifies a decision to cancel an approved equivalent means of compliance is a reviewable decision under Marine Order 501.

Statement of compatibility with human rights

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

Overview of the legislative instrument

46. This Order amends *Marine Order 501 (Administration — national law) 2013* (Marine Order 1) and *Marine Order 503 (Certificates of survey — national law) 2013* (Marine Order 503). The amendments made by the Order are related the amendments made to the National Law Regulation by the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulation 2016* under which fees are prescribed for services provided by the National Regulator, including for the assessment of applications for exemptions and approvals of equivalent means of compliance.

47. The Order amends Marine Order 501 to provide for applications for exemptions from requirements of the National Law to be made in accordance with Marine Order 501 and for applications to which Marine Order 501 applies to be accompanied by any prescribed fee.

48. The Order also amends the criteria in Marine Order 503 for the issue of a certificate of survey for a vessel to recognise the circumstance where an equivalent means of compliance has been approved by the National Regulator and implemented for the vessel. A new Division is inserted into Marine Order 503 providing for applications for equivalent means of compliance, which are to be made in accordance with Marine Order 501.

Human rights implications

49. 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

50. 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*. Any human rights implications regarding the requirement for applications to be accompanied by the prescribed fee have been addressed in the Statement of Compatibility with Human Rights for the *Marine Safety (Domestic Commercial Vessel) National Law Amendment (Cost Recovery) Regulation 2016*.

Making the instrument

51. 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*.