

Explanatory Statement

Marine Order 2 (Australian International Shipping Register) 2016 (Order 2016/16)

Authority

1. Subsection 339(1) of the *Navigation Act 2012* (the Navigation Act) authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
2. 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 must or may be made by regulations.
3. 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.
4. The Marine Orders that are modified by this Order set out the powers under the Navigation Act under which they are made.
5. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

6. This Order modifies two Marine Orders as they apply to ships registered on the Australian International Shipping Register (AISR) and the seafarers who work or propose to work on those ships.
7. The modifications made by this Order are needed to implement the crewing arrangements provided for in the *Shipping Registration Act 1981* (SRA) and to apply international standards for liferafts including equipment to be carried.

Overview

8. This Order modifies *Marine Order 70 (Seafarer certification) 2014* (MO70) to provide for the streamlined recognition by AMSA of foreign qualifications of seafarers working on ships registered on the AISR (International Register vessels). The Order provides for the issue by AMSA of certificates of equivalence and interim certificates of equivalence to these seafarers.
9. The Order also modifies *Marine Order 25 (Equipment — lifesaving) 2014* (MO25) to apply international standards for liferafts carried by International Register vessels including the equipment they are to carry, consistent with the International Convention for the Safety of Life at Sea (SOLAS) requirements. The modifications made to MO70 and MO25 by the Order are substantially the same as the modifications first made by *Marine Order 2 (Australian International Shipping Register) 2013*.
10. By way of background, the AISR was established under the SRA on 1 July 2012. AMSA is responsible for maintaining the AISR and regulating ships on the AISR. The AISR is available to Australian owned/operated ships that are predominantly engaged in international trading. International Register vessels can operate with crews of different nationalities, provided they employ at least one Australian national or Australian resident as the Master or Chief Mate, and at least one Australian national or Australian resident as the Chief Engineer or First Engineer (see section 33A of the SRA). Further information about the AISR can be found on AMSA's website at <http://www.amsa.gov.au>.

11. All Marine Orders apply to International Register and General Register vessels but Marine Orders as modified by this Order only apply to International Register vessels. This Order repeals previous *Marine Order 2 (Australian International Shipping Register) 2013* because six of the Orders modified by that Order have been reissued since it commenced in 2013 taking into consideration their application to International Register vessels and they therefore no longer need to be modified for International Register vessels and seafarers.

12. As at the date this Order was made, there are no International Register vessels as no ships have registered on the AISR. However, this Order is required in case this occurs.

Consultation

13. A copy of the draft of this Order was placed on the AMSA website for public comment on 8 September 2016 for a 3 week consultation period. Around 60 stakeholders, including recognised organisations, shipping and cargo industry bodies, port authorities, seafarer representative organisations and various government agencies were invited to comment. No comments on the draft Order were received.

14. 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

15. This Order incorporates by reference into a modified version of MO25 part of the *International Life-Saving Appliance Code* adopted by International Maritime Organization (IMO) Resolution MSC.48(66), as in force from time to time (the LSA Code).

16. The LSA Code is freely available from the IMO website at <http://www.imo.org>. Detailed information as to how to navigate the IMO website to access the LSA Code is available from the Marine Order link at <http://www.amsa.gov.au>.

17. This Order incorporates by reference into a modified version of MO70 parts of the following documents as in force from time to time:

- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the STCW Convention);
- the Seafarers' Training, Certification and Watchkeeping Code (the STCW Code);
- *Marine Order 9 (Health — medical fitness) 2010* (MO9).

All these documents were previously incorporated by reference by the Order this Order replaces.

18. Because MO9 is adopted by the Order by reference to its title it is adopted as in force from time to time. This is due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*). The STCW Code, like the STCW Convention, is incorporated as amended and in force for Australia from time to time — see definition of *STCW Code* in *Marine Order 1 (Administration) 2013*.

19. The STCW Convention and STCW Code, including any amendments in force, are freely available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>. MO9 is available on the Federal Register of

Legislation. Information on obtaining copies of any IMO Resolution or Marine Order that is mentioned in this Order is also available from the Marine Order link at <http://www.amsa.gov.au>.

20. IMO published material may also 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

21. This Order commences on 1 January 2017.

Contents of this instrument

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

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

24. Section 1B provides that *Marine Order 2 (Australian International Shipping Register) 2013* is repealed.

25. Section 2 states the purpose of the Order, which is to provide for qualifications for seafarers on International Register vessels and lifesaving equipment required for those vessels.

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

27. Section 4 sets out the definition of the term *International Register vessel* used in the Order.

28. Section 5 provides that the Order applies to International Register vessels, seafarers who work or propose to work on an International Register vessel and the owners of International Register vessels.

29. Section 6 provides that Schedule 1 modifies MO25 and MO70.

30. The items in Division 1 of Schedule 1 modify MO25.

31. Item 1 in Division 1 modifies Schedule 1 of MO25 to omit Division 1 regarding carriage on the vessel of narcotic drugs for use in survival craft and other goods for therapeutic use in a first-aid outfit.

32. Item 2 modifies Schedule 1 of MO25 to omit clause 8 regarding carriage of additional lifejackets on a cargo vessel.

33. Item 3 modifies Schedule 1 of MO25 by substituting clause 10 regarding liferaft equipment. For International Register vessels, the variation of normal equipment requirements of a liferaft from those mentioned in paragraph 4.5.1 of the LSA Code is limited to the additional requirement for first-aid outfits to comply with Schedule 2 of MO25.

34. The items in Division 2 of Schedule 1 modify MO70.

35. Item 4 in Division 2 modifies section 4 of MO70 to provide definitions of three additional terms used in MO70 as modified by the Order.

36. Item 5 modifies section 4 of MO70 to provide a definition of the term *foreign certificate* to be used in relation to the eligibility criteria for certificates of equivalence and interim certificates of equivalence to be issued by AMSA to seafarers working on International Register vessels.

37. Item 6 modifies section 4 of MO70 to provide a definition of the term *interim certificate of equivalence*.
38. Item 7 modifies section 4 of MO70 to add to note 3 mention of the term *Australian International Shipping Register* being defined in *Marine Order 1 (Administration) 2013*.
39. Item 8 modifies MO70 by substituting section 6 to limit application of the modified MO70 to certain persons who are performing, or intending to perform, particular duties or functions on an International Register vessel.
40. Item 9 modifies MO70 to provide that the kinds of seafarer certificates that a person may apply for under subsection 30(1) of the Navigation Act include certificates of equivalence and interim certificates of equivalence.
41. Item 10 modifies MO70 to provide that individuals can serve or be employed as a seafarer, even though they only hold a certificate of equivalence or interim certificate of equivalence, as long as they do so on an International Register vessel. Those serving or employed on an International Register Vessel as Masters, Chief Mates, Chief Engineers or First Engineers — if not Australian nationals or Australian residents — must have a valid certificate of equivalence, certificate of recognition or certificate of competency qualifying them to perform the duties or functions of those positions.
42. Item 11 modifies MO70 so that subsection 10(1) does not apply to an application for a certificate of equivalence.
43. Item 12 modifies MO70 by adding subsection (1A) to section 10. The subsection provides that an application for a certificate of equivalence must be in writing. A note to the subsection makes clear that an approved form must be used if such a form is approved by AMSA for the application.
44. Item 13 modifies MO70 to include a section 14A specifying additional conditions for certificates of equivalence and interim certificates of equivalence. These are requirements for the proposed certificate holders to have training compliant with the STCW Convention when intending to perform certain duties on the vessel. The item also replaces sections 15 and 15A to provide for the duration of interim certificates of equivalence and certificates of equivalence, respectively.
45. Item 14 modifies MO70 by inserting section 15B. The section prevents the application of Subdivision 3.1 for assessment of a seafarer's eligibility to be issued a certificate of equivalence or interim certificate of equivalence. The Subdivision would otherwise apply to create a requirement for qualifying seagoing service.
46. Item 15 modifies MO70 by substituting the heading to Subdivision 3.2 so that it includes reference to the modified Subdivision's coverage of eligibility criteria for certificates of equivalence and interim certificates of equivalence.
47. Item 16 modifies MO70 by inserting sections 23A, 23B and 23C to provide criteria for AMSA to assess eligibility of a seafarer to be issued with a certificate of equivalence or interim certificate of equivalence.
48. Section 23A sets out the eligibility criteria for an interim certificate of equivalence based upon the seafarer holding an appropriate foreign certificate for the duties to be performed, including holding a certificate of medical fitness.
49. Section 23B establishes the criteria for a certificate of equivalence similarly but includes requirements regarding passing approved English language assessments. If the seafarer is to work as an officer on the International Register vessel, they must also pass an assessment in knowledge of the Australian maritime

regulatory framework. The section also establishes the criteria for a seafarer's eligibility to be issued with a further certificate of equivalence once the seafarer's certificate of equivalence has expired.

50. Section 23C provides timeframes within which a seafarer may attempt to pass an English language assessment or an assessment in knowledge of the Australian maritime regulatory framework.

51. Item 17 modifies MO70 by substituting subsection 31(1) so that certificates of equivalence may not be revalidated. A note to the subsection makes clear that a person may apply for a further certificate of equivalence and refers the reader to the criteria for issue of a further certificate of equivalence.

52. Item 18 modifies MO70 to extend application of subsection 36(3) to an application for endorsement of a certificate of equivalence.

Statement of compatibility with human rights

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

Overview of the legislative instrument

54. This Order modifies two other Marine Orders as those Marine Orders apply to ships registered on the Australian International Shipping Register (International Register vessels), the seafarers working or proposing to work on those vessels, and the owners of those vessels.

55. The Marine Orders modified are *Marine Order 25 (Equipment — lifesaving) 2014* (MO25) and *Marine Order 70 (Seafarer certification) 2014* (MO70). MO25 is modified so that the lifesaving equipment requirements for International Register vessels are consistent with those required under the International Convention for the Safety of Life at Sea (SOLAS). MO70 is modified to implement the crewing arrangements provided for in the *Shipping Registration Act 1981* (SRA) for seafarers on International Register vessels. The modifications to both Marine Orders are substantially similar to the modifications that have been in place until now.

56. The Order replaces *Marine Order 2 (Australian International Shipping Register) 2013*. That previous Marine Order modified for International Register vessels other Marine Orders in addition to those modified by the Order. This Order no longer needs to modify those Marine Orders as new issues of those Orders have been made that apply, without modification, to International Register vessels.

Human rights implications

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

Conclusion

58. 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

59. 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*.