

Explanatory Statement

Marine Order 81 (Administration amendment) 2016 (Order 2016/18)

Authority

1. The *Navigation Act 2012* (the Navigation Act) provides for this Order to be made.
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 must or 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) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

6. This Order makes some amendments of an administrative nature to Marine Orders. It amends *Marine Order 1 (Administration) 2013* (MO1) in relation to the terms defined by MO1 that are used in other Orders, updates the list of prescribed recognised organisations set out in MO1, and moves existing requirements for the reporting of marine incidents to the Australian Maritime Safety Authority (AMSA) from *Marine Order 31 (Vessel surveys and certification) 2015* (MO31) into MO1. The Order makes some consequential amendments to other Marine Orders and updates references in MO31 to other Marine Orders.

Overview

7. MO1 provides for administrative matters common to all Marine Orders under the Navigation Act and the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. To facilitate the consistency and shortening of Marine Orders, MO1 sets out rules of interpretation of Marine Orders including definitions of terms often used in other Marine Orders.
8. This Order removes definitions in MO1 of some AMSA position titles that are no longer used in other Orders. The Order also adds in definitions of some terms that are currently defined in several Orders and amends definitions of some terms used in other Orders.
9. In particular, the Order amends the definition of *STCW Code* in MO1 to immediately capture existing and future amendments made to the Seafarers' Training, Certification and Watchkeeping Code. Parts of the STCW Code are adopted by a number of Orders by reference to its definition in MO1, including in the seafarer certification series of Marine Orders. The amendment is necessary because the STCW Code will be amended with effect on 1 January 2017 by IMO Resolution MSC.397(95) to provide for mandatory training requirements for seafarers on vessels subject to the *International Code of Safety for Ships using Gases or other Low-flashpoint Fuels* (the IGF Code). These amendments will also be given effect by amendments made to *Marine Order 70 (Seafarer certification) 2014* (MO70) by *Marine Order 70 (Seafarer certification) Amendment 2016 (No. 1)*.
10. Amending the definition of *STCW Code* so that it is adopted as amended will ensure that, consistent with Australia's obligations under the International

Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention), Australian seafarers must be trained in accordance with the mandatory standards in the latest version of the STCW Code. It will also be consistent with how the STCW Convention is adopted in Marine Orders. The STCW Convention is defined in section 14 of the Navigation Act as amended and in force for Australia from time to time.

11. Adoption of the Code in this way will not impose any additional obligations on seafarers because there have been no amendments made to the Code after the Manila amendments, other than those related to the IGF Code, that impose any additional training obligations on them.

12. In addition to moving existing requirements for the reporting of marine incidents to AMSA from MO31 into MO1, the Order makes some amendments to other Marine Orders that are consequential to the movement of these requirements. The Order also updates references in MO31 to other Marine Orders that have been reissued.

Consultation

13. A copy of the draft of this Order was placed on AMSA's website on 28 October 2016 for stakeholders to consider and provide feedback by 26 November 2016. In addition, a copy of the draft Order was emailed to 120 stakeholders, including ship operators, recognised organisations, shipping industry bodies, port authorities, training organisations, seafarer representative organisations and government agencies. One response was received which did not require further action when preparing the final draft.

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. The amendment made by this Order to the definition of *STCW Code* in *Marine Order 1 (Administration) 2013* will mean that Marine Orders will now adopt the STCW Code as amended and in force for Australia from time to time instead of as at the time of the Manila amendments.

16. The STCW Code, including any amendments in force, is in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Information on obtaining free access to this code from the International Maritime Organization website is also available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. A consolidated STCW Convention and STCW Code hardcopy publication can be purchased from the IMO by visiting the IMO publications webpage link at <https://www.imo.org>.

Commencement

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

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 each Order mentioned in the title of a Schedule is amended in accordance with the Schedule.

Schedule 1 Amendments to Marine Order 1 (Administration) 2013

21. Items 1 and 2 of Schedule 1 omit definitions of AMSA position titles that are no longer used in Marine Orders. AMSA is progressively removing references to the position titles of AMSA decision makers in Marine Orders as Orders are reviewed. Instead, delegation instruments will specify the titles of decision makers for Marine Orders.
22. Item 3 of Schedule 1 updates an AMSA position title that is still used in Marine Orders to refer to the new title of the decision maker. It also includes a definition of *gross tonnage* and a related explanatory note, and a related definition of *GT*. These are terms often used in Marine Orders.
23. Item 4 of Schedule 1 omits a definition of an AMSA position title that is no longer used in Marine Orders.
24. Item 5 of Schedule 1 updates the position title of an AMSA decision maker that is still used in Marine Orders.
25. Item 6 of Schedule 1 amends the definition of *STCW Code* so that it is as amended and in force for Australia from time to time.
26. Item 7 of Schedule 1 inserts a new Division 6A into the Order that includes a new section 23A. A similar provision in MO31 is removed by Schedule 4 of this Order. It is considered that provision prescribing periods for the reporting of marine incidents to AMSA is more appropriately located in MO1. Explanatory notes about related Navigation Act offences and the location of approved forms for the reporting of marine incidents have also been included.
27. Item 8 of Schedule 1 updates the list of recognised organisations (vessel classification societies) in Schedule 1 in response to the merger of Det Norske Veritas and Germanischer Lloyd.

Schedule 2 Amendments to Marine Order 27 (Safety of navigation and radio equipment) 2016

28. Item 1 of Schedule 2 omits definitions of *gross tonnage* and *GT* that are now defined in MO1.
29. Item 2 of Schedule 2 inserts a reference to the new MO1 defined term *GT* into note 2 under section 4 of *Marine Order 27 (Safety of navigation and radio equipment) 2016* (MO27).
30. Item 3 of Schedule 2 omits a note under subsection 26(6) that states that radio logbooks are available from AMSA offices because radio logbooks are no longer available as a publication. Approved forms for radio logbooks are available from the AMSA website.

Schedule 3 Marine Order 28 (Operations standards and procedures) 2015

31. Item 1 of Schedule 3 updates a note to subsection 2(1) of *Marine Order 28 (Operations standards and procedures) 2015* (MO28) to refer to the latest consolidated edition of the STCW Code. The 2011 edition is expected to be replaced soon by a new edition.
32. Item 2 of Schedule 3 updates a note to section 13 of MO28 to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Schedule 4 Marine Order 31 (Vessel surveys and certification) 2015

33. Item 1 of Schedule 4 omits definitions of *gross tonnage* and *GT* from section 4 of MO31 that are now defined in MO1.

34. Item 2 of Schedule 4 inserts into note 3 of Section 4 a reference to the new MO1 defined term *GT*.
35. Item 3 of Schedule 4 updates a reference to a Marine Order to refer to the new issue of the Order.
36. Item 4 of Schedule 4 inserts a new note under section 47 of MO31 pointing out the provisions of the Navigation Act that require the reporting of marine incidents and referencing the provision in MO1 that prescribes periods for the reporting of marine incidents.
37. Item 5 of Schedule 4 omits the provision in MO31 that is replaced by new section 23A of MO1 that prescribes periods for the reporting of marine incidents.
38. Item 6 makes some further amendments to Schedules 1 and 2 of the Order to update references to Marine Orders to refer to the latest issues of these Orders.

Schedule 5 Marine Order 49 (high-speed craft) 2015

39. Item 1 of Schedule 5 updates the reference in a note to section 32 of *Marine Order 49 (High-speed craft) 2015* to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Schedule 6 Marine Order 54 (Coastal pilotage) 2014

40. Item 1 of Schedule 6 updates a note to subclause 13(1) in Schedule 1 of *Marine Order 54 (Coastal pilotage) 2014* to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Schedule 7 Marine Order 70 (Seafarer certification) 2014

41. Item 1 of Schedule 7 updates a note to section 2 of MO70 to refer to the latest consolidated edition of the STCW Convention and Code. The 2011 edition is expected to be replaced shortly by a new edition.
42. Item 2 of Schedule 7 omits a reference in the note to section 2 to a supplement to the consolidated edition of the STCW Convention and Code. The supplement will no longer be relevant when the new consolidated edition is published.
43. Item 3 of Schedule 7 omits a definition of *GT* from section 4 of MO70 as that term is now defined in MO1.
44. Item 4 of Schedule 4 inserts a reference to the new MO1 defined term *GT* into note 3 under section 4.

Schedule 8 Marine Order 91 (Marine pollution prevention — oil) 2014

45. Item 1 replaces a note under section 20 of *Marine Order 91 (Marine pollution prevention — oil) 2014* to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Schedule 9 Marine Order 93 (Marine pollution prevention — noxious liquid substances) 2014

46. Item 1 replaces a note under section 21 of *Marine Order 93 (Marine pollution prevention — noxious liquid substances) 2014* to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Schedule 10 Marine Order 96 (Marine pollution prevention — sewage) 2013

47. Item 1 replaces a note under section 21 of *Marine Order 96 (Marine pollution prevention — sewage) 2013* to refer to the new location (in MO1) of the provision that prescribes periods for the reporting of marine incidents.

Statement of compatibility with human rights

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

Overview of the legislative instrument

49. This Order makes amendments of an administrative nature to a number of Marine Orders. Most of the amendments are to change or remove definitions in *Marine Order 1 (Administration) 2013* (MO1). The Order also updates the list of prescribed recognised organisations (vessel classification societies) set out in MO1, and moves existing requirements for the reporting of marine incidents to AMSA from *Marine Order 31 (Vessel surveys and certification) 2015* into MO1. The Order also makes some consequential amendments to other Marine Orders.

50. The Order defines *STCW Code* in MO1 as being as amended and in force for Australia from time to time. This term is used in other Marine Orders to adopt by reference parts of the Seafarers' Training, Certification and Watchkeeping Code. However, this definitional change will not impose any additional obligations on seafarers. Because Australia is a signatory to the STCW Convention, Australian seafarers must be trained in accordance with the mandatory standards in the latest version of the STCW Code.

51. The Order does not create any offences to which strict liability applies.

Human rights implications

52. 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

53. 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

54. 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*.