

## **Explanatory Statement**

### **Marine Order 11 (Living and working conditions on vessels) Amendment 2016 (No. 1) (Order 2016/23)**

#### **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 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 Order 11 (Living and working conditions on vessels) 2015* (Marine Order 11) ensure that regulated Australian vessels carry financial security in accordance with MLC standard A2.5.2 to meet abandonment liability for any seafarer of the vessel. Some operational aspects of requirements of the Order have also been clarified.

#### **Overview**

7. This Order amends Marine Order 11 to give effect to changes to the Maritime Labour Convention (MLC) that come into effect internationally on 18 January 2017. The Order also specifies the exchange rate to be used when bank transfers are used to send seafarers' earnings and clarifies the application of approval requirements for vessel accommodation plans. Additional minor amendments remove unnecessary wording in a provision concerning the medical care of seafarers and add a note to assist with the measurement of sleeping berths.

#### **Consultation**

8. A copy of the draft of this Order was placed on the AMSA website for public comment for 4 weeks. Over 205 stakeholders, including seafarer representative organisations, shipping industry peak bodies and interested government departments and agencies, were invited to participate in the consultation process. Only one comment was received and it supported the changes.
9. 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 numbers are 19233 and 21453.

#### **Documents incorporated by reference**

10. MLC standard A2.5.2 forms part of the text of the Maritime Labour Convention which Marine Order 11 incorporates by reference as in force from time to time.
11. The Maritime Labour Convention is available for free on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

12. 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**

13. This Order commenced on 18 January 2017.

### **Contents of this instrument**

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

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

16. Section 3 states that Schedule 1 amends Marine Order 11.

17. Item 1 of Schedule 1 amends section 27 (Wages) to clarify that the currency exchange rate to be used when sending a seafarer's earnings by bank transfer or similar means is the exchange rate published by the Reserve Bank of Australia. This is to ensure that the exchange rate used is not unfavourable to a seafarer.

18. Item 2 of Schedule 1 inserts new section 34A that requires a master or owner to ensure that a vessel has on board documentary evidence of financial security to meet abandonment liability. The provision also sets out information to be included in this documentary evidence, the circumstances when abandonment is taken to have occurred and a requirement for the owner to ensure the documentary evidence is available on the vessel for access by seafarers. The provision creates a strict liability offence for failure to comply and also imposes a civil penalty.

19. Item 3 of Schedule 1 amends section 36 to make clear that the requirement for approval by an issuing body of accommodation plans for new vessels applies to vessels to be registered on the Australian International Shipping Register as well as vessels to be registered on the Australian General Shipping Register.

20. Item 4 of Schedule 1 makes a minor technical amendment to section 64. The words *working on board* are removed as they are unnecessary due to the definition of *seafarer* in section 14 of the Navigation Act. Section 64 relates to medical care for seafarers on board vessels.

21. Item 5 Schedule 1 inserts a note for clause 2 of Schedule 5 to clarify how sleeping berths are to be measured.

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

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

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

23. This Order amends *Marine Order 11 (Living and working conditions on vessels) 2015* (Marine Order 11) to give effect to changes to the Maritime Labour Convention that come into effect internationally on 18 January 2017. Some operational aspects of requirements in the Order have also been clarified.

### **Human rights implications**

24. Item 2 of Schedule 1 adds a new provision to the Order (section 34A) that creates an offence to which strict liability applies. It also creates a civil penalty. 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.

25. A criminal offence has been created to ensure that a vessel owner has financial security on board so that a seafarer is protected against a vessel owner failing to meet its obligations for repatriation costs, maintenance and support, and payment of contractual wages. Strict liability is imposed to ensure masters or owners of vessels meet their financial obligations to seafarers. Failure to carry evidence of financial security may result in the vessel being detained in foreign ports.

26. The requirement to carry financial security is a mandatory requirement of the Maritime Labour Convention. The Preamble to the Maritime Labour Convention outlines reasons for the Convention, including that it was considered that, given the global nature of the shipping industry, seafarers need special protection.

27. 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 of 50 penalty units is also relatively low and are directed at masters or owners rather than the community at large and are regulatory in nature. They are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the relatively low level of civil penalty (and the fact that the provision is protective and preventative in nature) the civil penalty should not be considered to be a criminal matter for human rights law.

28. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of a civil penalty is reasonable, necessary and proportionate.

### Conclusion

29. AMSA considers that this instrument is compatible with the rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

### Making the instrument

30. 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*.