

## **Explanatory Statement**

### **Marine Order 17 (Chemical tankers and gas carriers) 2016 (Order 2016/20)**

#### **Authority**

1. Section 98 of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for safety certificates.
2. Subsection 112(5) of the Navigation Act provides that the regulations may provide for the loading, stowing or carriage of cargo in vessels, the unloading of cargo from vessels and the giving of notices related to that loading, stowage, carriage or unloading.
3. Section 314 of the Navigation Act provides that the regulations may provide for applications for certificates, determination of applications for certificates, imposition of conditions on certificates and the issuing, variation, renewal, suspension, transfer, surrender and revocation of certificates.
4. 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).
5. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for contravening a provision of the regulations, including providing for the imposition of civil penalties.
6. 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.
7. 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.
8. 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.
9. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

#### **Purpose**

10. This Order provides for the safe operation of chemical tankers and gas carriers. It gives effect to the requirements set out in Parts B and C of Chapter VII of SOLAS dealing with the certification, as evidence of survey, of vessels carrying dangerous liquid chemicals in bulk or liquefied gases in bulk.

#### **Overview**

11. The Navigation Act implements Australia's obligations under SOLAS. This Order is made under the Navigation Act and gives effect to certain requirements of SOLAS relating to construction, equipment and operation of vessels carrying dangerous liquid chemicals in bulk or liquefied gases in bulk. The Order gives effect to Parts B and C of Chapter VII of SOLAS dealing with the survey and certification of vessels that carry these chemicals or gases.

12. The Order gives effect to:
- the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (the IBC Code) for chemical tankers constructed after 30 June 1986; and
  - the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (the BCH Code) for chemical tankers constructed before 1 July 1986; and
  - the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (the IGC Code) for gas carriers constructed after 30 June 1986; and
  - the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (the GC Code) for gas carriers constructed before 1 July 1986; and
  - the Code for Existing Ships Carrying Liquefied Gases in Bulk (the EGC Code) for gas carriers constructed before 1 January 1977.
13. The Order also prescribes certificates provided for in these Codes as safety certificates under the Navigation Act. It prescribes criteria for the issue, variation and revocation of these certificates, prescribes conditions of the certificates and provides for endorsements of the certificates.
14. The Order repeals previous *Marine Order 17 (Liquefied gas carriers and chemical tankers) 2006*. When the Order commences, Schedule 8 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Order.
15. The Order also deals with other matters for the safe operation of vessels. The Order provides an owner of a regulated Australian vessel with a process to obtain approval for the carriage in polar waters of noxious liquid substances in bulk. It also provides for inspectors to give notice that proper precautions must be taken in cargo loading, unloading, stowage and carriage.

## Consultation

16. A copy of the draft of this Order was placed on the AMSA website for public comment on 24 October 2016 for a 4 week consultation period. Around 80 stakeholders, including ship operators, recognised organisations, shipping industry bodies, port authorities, training organisations, seafarer representative organisations and various government agencies were invited to comment. No comments on the draft Order were received.

17. 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 20016.

## Documents incorporated by reference

18. This Order incorporates by reference parts of the following documents as in force from time to time:
- SOLAS;
  - the International Code for Ships Operating in Polar Waters (the Polar Code) adopted by International Maritime Organization (IMO) Resolution MSC.385(94) and MEPC.264(68);

- *Marine Order 1 (Administration) 2013*.

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*), that Marine Order is adopted as in force from time to time because it is adopted by reference to its title in the Order.

19. The Order also incorporates by reference the following documents as in force from time to time:

- the EGC Code adopted by IMO Resolution A.329(IX);
- the BCH Code adopted by IMO Resolution MSC.9(53);
- the GC Code adopted by IMO Resolution A.329(IX);
- the IBC Code adopted by IMO Resolution MSC.4(48);
- the IGC Code adopted by IMO Resolution MSC.5(48).

20. The EGC Code, BCH Code, GC Code, IBC Code, IGC Code and Polar Code are freely available from the IMO website at <http://www.imo.org>. Detailed information as to how to navigate the IMO website to access the Codes is available from the Marine Order link at <http://www.amsa.gov.au>.

21. SOLAS is freely available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>. *Marine Order 1 (Administration) 2013* 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 available from the Marine Order link at <http://www.amsa.gov.au>.

22. 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**

23. This Order commenced on 1 January 2017.

## **Contents of this instrument**

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

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

26. Section 1B provides that *Marine Order 17 (Liquefied gas carriers and chemical tankers) 2006* is repealed.

27. Section 2 states the purpose of the Order, which is to give effect to Parts B and C of Chapter VII of SOLAS dealing with the certification of vessels carrying dangerous liquid chemicals and liquefied gases in bulk as evidence of survey and to provide for the safe operation of chemical tankers and gas carriers.

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

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

30. Section 5 sets out the interpretation of terms used in the Order and makes clear that when codes mentioned in the Order use the term *the Administration* in relation to a regulated Australian vessel the term is referring to AMSA.

31. Section 6 provides that Divisions 1 and 2 of the Order apply to regulated Australian vessels and Divisions 1 and 3 of the Order apply to foreign vessels.
32. Section 7 provides a process for applications for an exemption of a vessel from a requirement of the Order. Like many other Orders, it adopts the application process in *Marine Order 1 (Administration) 2013* (Marine Order 1). An exemption may only be given if AMSA is satisfied that compliance with the requirement would be unnecessary or unreasonable and that giving the exemption would not contravene SOLAS or a code mentioned in the Order. Exemptions may be issued subject to conditions ensuring vessel safety.
33. Section 8 sets out the arrangements for a vessel owner to apply for approval to use an equivalent (as defined in Marine Order 1). The application process set out in Marine Order 1 is adopted. An approval may only be given if AMSA is satisfied that the equivalent would be at least as effective as compliance with the requirement to which the equivalent is an alternative. Approval must not be given if AMSA believes the use of the equivalent would contravene SOLAS or a code mentioned in the Order.
34. Section 9 provides for a vessel owner to apply for approval for the vessel to carry noxious liquid substances mentioned in regulation 2.1.3 of Part II-A of the Polar Code in polar waters. It adopts the application process in Marine Order 1. AMSA may grant approval only if the substances are to be carried in accordance with regulation 2.1.3 of Part II-A of the Polar Code.
35. Division 2 contains 9 sections and sets out requirements for regulated Australian vessels to have specified safety certificates, conditions on the certificates and matters relating to the issuing, duration, variation and revocation of the certificates.
36. Section 10 sets out the safety certificates that chemical tankers and gas carriers that are regulated Australian vessels must have.
37. Section 11 prescribes the certificates required under section 10 as safety certificates that a person may have issued for a regulated Australian vessel upon application to an issuing body. Issuing bodies (as defined in the Navigation Act) include AMSA. For applications to AMSA for the certificates, the section adopts portions of the application process set out in Marine Order 1.
38. Sections 12 and 13 provide the criteria for the issue of each required safety certificate for regulated Australian vessels that are chemical tankers and gas carriers, respectively.
39. Section 14 prescribes the conditions to which a required safety certificate is subject. The conditions include survey and maintenance of the vessel and its equipment in accordance with the BCH Code, IBC Code, EGC Code, GC Code and IGC Code, as applicable to the vessel. A vessel survey required by the Codes must be completed and endorsed on the safety certificate and afterward AMSA must approve of any changes (other than replacement) to the vessel's structure, equipment, fittings, arrangements and material covered by survey.
40. Section 15 provides that an issuing body must be the source of an endorsement on a safety certificate for section 14.
41. Section 16 provides that a safety certificate has a commencement and duration determined by the Code that underpins the decision to issue the certificate under section 12 or 13.

42. Section 17 prescribes compliance of a vessel with the conditions on a safety certificate (set out in section 14) as the circumstance in which an issuing body may vary a safety certificate.
43. Section 18 prescribes the circumstances in which a safety certificate may be revoked by an issuing body.
44. Division 3 contains 1 section and sets out the requirements for a foreign vessel that is a chemical tanker or gas carrier, including appropriate certificates and documentation.
45. Section 19 provides that a foreign vessel to which SOLAS applies must comply with Parts B and C of Chapter VII of SOLAS if it is a chemical tanker or gas carrier. It also provides that the foreign vessel must have on board any certificate it is required to have under Chapter VII of SOLAS. A foreign vessel to which SOLAS does not apply must have certain certificates or documentation if it is a chemical tanker or gas carrier.
46. Division 4 contains 2 sections and sets out requirements to be followed for safe operations of, and in relation to, regulated Australian vessels and foreign vessels.
47. Section 20 provides that the master or owner of a chemical tanker or gas carrier must ensure that the vessel complies with certain operational requirements mentioned in the BCH Code, IBC Code, EGC Code, GC Code and IGC Code that apply to the vessel. Failure to ensure compliance is a strict liability offence and also makes the person contravening the provision liable to a civil penalty.
48. Section 21 provides that an inspector can give any person a notice to desist or take precautions if the person's activity, or failure to do an activity, is causing certain risks during loading, stowage, carriage or unloading of cargo on a vessel.

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

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

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

50. The *Navigation Act 2012* (the Navigation Act) implements Australia's obligations under the International Convention for the Safety of Life at Sea (SOLAS). This Order is made under the Navigation Act and gives effect to certain requirements of SOLAS relating to the construction, equipment and operation of vessels carrying dangerous liquid chemicals in bulk or liquefied gases in bulk. The Order gives effect to Parts B and C of Chapter VII of SOLAS dealing with the survey and certification of vessels that carry these chemicals and gases.

51. The Order gives effect to:

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- the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (the GC Code) for gas carriers constructed before 1 July 1986; and
- the Code for Existing Ships Carrying Liquefied Gases in Bulk (the EGC Code) for gas carriers constructed before 1 January 1977.

52. The Order prescribes certificates provided for in these Codes as safety certificates under the Navigation Act. It prescribes criteria for the issue, variation and revocation of these certificates, prescribes conditions of the certificates and provides for endorsements of the certificates.

53. The Order also deals with other matters for the safe operation of vessels. The Order provides an owner of a regulated Australian vessel with a process to obtain approval for carriage in polar waters of noxious liquid substances in bulk and provides for inspectors to give notice that proper precautions must be taken in cargo loading, unloading, stowage and carriage.

### Human rights implications

54. Section 20 of the Order creates offences to which strict liability applies. It also creates civil penalties. The penalties are low (50 penalty units), are directed at masters and owners of vessels rather than the community at large and are protective and preventative in nature. The penalties are imposed to ensure the safe handling in port and transport of dangerous liquid chemicals and gases. The hazards associated with the liquids and gases can include flammability, corrosiveness, toxicity and a need for them to be carried at extremes of temperature or under pressure. These hazards create risks of severe harm to the crew, terminal staff, the vessels and the environment if there is a failure to comply with operational requirements. The criminal penalty provisions are authorised by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act.

55. 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. Having regard to the objectives of the civil penalty provisions (which are protective and preventative in nature), and the relatively low level of penalty, the civil penalties should not be considered to be a criminal matter for human rights law.

### Conclusion

56. 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

57. 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*.