

Explanatory Statement

Marine Order 32 (Cargo handling equipment) 2016 (Order 2016/19)

Authority

1. Subsection 112(5) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the loading, stowing or carriage of cargo in vessels and the unloading of cargo from vessels and the giving of notices about those matters.
2. Paragraph 125(2)(c) of the Navigation Act provides that the regulations may provide for checks and tests of machinery and equipment.
3. Subsection 339(1) of the Navigation Act provides that regulations may be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Navigation Act.
4. Paragraph 339(2)(b) of the Navigation Act provides that the regulations may provide for machinery and equipment to be carried on board vessels and paragraph 339(2)(c) allows them to provide for the operating, maintaining, checking and testing of machinery and equipment.
5. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for the contravention of provisions of the regulations including the imposition of civil penalties.
6. 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.
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 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Order prescribes matters for machinery and equipment of a vessel that is used for loading or unloading including its inspection, testing, maintenance and operation.
10. The Order also gives effect to those parts of the following instruments of the International Labour Organization (ILO) that apply to machinery, appliances and equipment of a vessel that are used for its loading or unloading: *Convention No. 27, Marking of Weight (Packages Transported by Vessels), 1929*, *Convention No. 152, Occupational Safety and Health (Dock Work), 1979*, *Recommendation No. 160, Occupational Safety and Health (Dock Work), 1979* and the ILO Code of Practice *Safety and Health in Ports, 2005*.

Overview

11. The Order seeks to ensure the safety of people involved in the inherently dangerous activity of moving containers and other cargo on and off vessels. It provides for the inspection, testing and use of material handling equipment, requirements for loading or unloading a vessel, requirements for safe working loads and related certificates, and for the maintenance and repair of equipment used in loading and unloading.
12. The Order applies to the loading or unloading of a regulated Australian vessel anywhere, to the loading or unloading of a foreign vessel at an Australian port and to

the loading or unloading of a foreign vessel that is an offshore industry mobile unit at an Australian port or in Australia's territorial sea.

13. The Order, unlike the previous issue of the Order, does not provide occupational health and safety requirements for stevedores. This is because, unlike the *Navigation Act 1912*, the Navigation Act does not provide the power to regulate occupational health and safety matters for shore side workers engaged in loading and unloading vessels. State work health and safety legislation provides for the regulation of these matters. AMSA worked with Safe Work Australia to develop the Code of Practice *Managing Risks in Stevedoring*, which has been approved under section 274 of the model Work Health and Safety (WHS) Act. The Code of Practice *Managing Risks in Stevedoring* is available from the Safe Work Australia website at <http://www.safeworkaustralia.gov.au> and was consulted upon separately.

14. Stevedores working on shore and on ships are subject to both the State and Territory Work Health and Safety legislation and to Marine Orders. In some circumstances these laws will operate concurrently, for example, when a stevedore operates a shore-mounted crane this Order will regulate the use of material handling equipment used for loading or unloading ships while the State and Territory work health and safety legislation will apply to the systems of work associated with the stevedore operating the ship-mounted crane.

15. Non-mandatory requirements in the Order have been removed. When this Order commences, Schedule 17 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

16. A copy of the draft of this Order was placed on the AMSA website for public comment on 11 November 2014 for a 6 week consultation period. This period was Cargo handling then extended to 30 January 2015. Over 80 stakeholders, including recognised organisations, shipping and cargo industry bodies, maritime unions, ports and various government agencies were invited to comment. Nine written submissions were received by AMSA and one to the effect of no comment. All submissions were taken into account when preparing the final draft. However, it was necessary to delay making the Order until the Code of Practice was finalised to ensure regulatory coverage relating to both occupational health and safety of stevedores and the safety of machinery, appliances and equipment used for the loading or unloading vessels.

17. A further draft of the Order was also provided to Safe Work Australia's Temporary Advisory Group working on the draft Code of Practice *Managing Risks in Stevedoring*. Their comments were taken into account when preparing the final Order.

18. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 17521.

Documents incorporated by reference

19. This Order incorporates by reference the following documents (or parts of them):

- AS 3668-1989 *Flexible intermediate bulk containers — Non-dangerous goods* as in force on 1 January 2017;
- AS 3569-2010 *Steel Wire Ropes — product specification*, as at the date of amendment by the 2012 amendment

- AS 4143.1-1993 *Methods of Test for Fibre Ropes* as in force on 1 January 2017;
- AS 4142.1-1993 *Fibre ropes — Care and safe usage* as in force on 1 January 2017;
- ILO Code of Practice *Safety and Health in Ports, 2005*, as in force from time to time
- International Maritime Dangerous Goods Code (IMDG Code), as in force from time to time
- Chapter 6.5 of the latest edition of the *Recommendations on the Transport of Dangerous Goods — Model Regulations*, published by the United Nations (Model Regulations)
- Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS)
- IMO Resolution MSC.277(85), as in force from time to time
- ISO 6780:2003 *Flat pallets for intercontinental materials handling — Principal dimensions and tolerances* as in force on 1 January 2017.
- *Marine Orders Part 32 Cargo Handling Equipment Issue 2*, as in force on 1 February 1998
- *Marine Order 32, issue 3 (Cargo handling equipment)*, as in force on 6 December 2011.

20. Australian Standards and ISO standards mentioned in this Order are available for purchase from the SAI Global website at <https://www.saiglobal.com>. Persons having difficulty obtaining a copy of an Australian or ISO standard mentioned in this Order can contact AMSA. Contact details for AMSA are on the AMSA website at <http://www.amsa.gov.au>.

21. The ILO Code of Practice *Safety and Health in Ports, 2005* is available for free download from the International Labour Organization (ILO) website at <http://www.ilo.org>.

22. The IMDG Code is available for free download from the International Maritime Organization (IMO) website at <http://www.imo.org>. The Marine Orders link on the AMSA website at <http://www.amsa.gov.au> provides information on how to navigate the IMO website to download documents. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

23. The Model Regulations are available for free download from the United Nations Economic Commission for Europe (UNECE) website at <http://www.unece.org>.

24. SOLAS is of treaty status and is incorporated “as amended and in force from time to time for Australia” (see definition of SOLAS in *Marine Order 1 (Administration) 2013*, and definition of Safety Convention in section 14 of the Navigation Act.). The original convention and any amendments in force can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

25. Information on obtaining access to IMO Resolution MSC.277(85) is available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>, where AMSA provides information on how to navigate the IMO website to download documents. The IMO resolution can be downloaded for free. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

26. The previous issues of Marine Orders of which part are incorporated by reference (see item 7 of Schedule 2) are available on the Federal Register of Legislation.

Commencement

27. This Order commenced on 1 January 2017.

Contents of this instrument

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

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

30. Section 1B repeals the previous issue of the Order (which was made under the *Navigation Act 1912* and continued in effect, for the Navigation Act, by *Marine Order 4 (Transitional modifications) 2013*).

31. Section 2 states the purpose of the Order, which is to prescribe matters for vessel machinery and equipment that is used for loading or unloading vessels, including its inspection, testing, maintenance and operation, and also to give effect to certain ILO instruments that apply to machinery, appliances and equipment that are used for loading or unloading vessels.

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

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

34. Section 5 sets out a rule of interpretation for the Order for when a vessel is taken to have been constructed.

35. Section 6 describes the vessels to which the Order applies and where it applies to them. It makes clear that a kind of vessel to which it applies is offshore industry mobile units.

36. Section 7 provides for exemptions from requirements of the Order. AMSA may approve an application made under *Marine Order 1 (Administration) 2013* for an exemption. Associated appeal rights are also in *Marine Order 1 (Administration) 2013*. AMSA may also allow a provision of the Order to be dispensed with in relation to a loading or unloading operation in certain circumstances. This enables an inspector on the docks to do this at the time of the loading or unloading operation. However, AMSA may only dispense with a provision if doing so would not risk the safety of persons or damage the vessel or the environment.

37. Section 8 provides for an applicant to apply for approval to use an equivalent instead of complying with a requirement of the Order. The application procedure and associated appeal rights are set out in *Marine Order 1 (Administration) 2013*.

38. Division 2 sets out requirements for loading or unloading a vessel.

39. Section 9 provides that the master of a vessel must ensure that operations are carried out in accordance with this Order.

40. Section 10 prescribes requirements for paragraph 94(1)(b) of the Navigation Act that relate to the employment of seafarers to handle cargo in connection with the loading or unloading of a vessel.

41. Section 11 provides that a person may only operate a power operated hatch cover on a vessel in certain circumstances. Breach of this obligation may result in a criminal or civil penalty under the Order. Section 11 also provides that material handling equipment used for loading or unloading a vessel must comply with the ILO Code.

42. Section 12 provides that a person may not remove or interfere with material handling equipment when loading or unloading a vessel. Breach of this obligation may result in a criminal or civil penalty under the Order.

43. Section 13 provides that the master of a vessel must ensure that loading or unloading of cargo using material handling equipment complies with Schedule 1.
44. Section 14 provides for the giving of notices by AMSA in relation to unsafe or inadequate loading or unloading arrangements. A notice may prohibit loading or unloading, stowage or carriage of cargo, require additional conditions to be met or require verification of the mass of a cargo unit. Failure to comply with a notice may result in a criminal or civil penalty under the Order.
45. Section 15 provides that the master of a vessel must ensure that cargo spaces and lifting appliances on board the vessel comply with Schedule 2 and that cargo spaces have a safe atmosphere in accordance with Schedule 1. Other requirements for access to vessels in port are set out in *Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016*.
46. Section 16 provides for cargo that is to be loaded or unloaded at an Australian port to be marked with its gross mass in accordance with Schedule 7. Breach of this obligation may result in a criminal or civil penalty under the Order.
47. Section 17 provides for an inspector to require a person to weigh an article of cargo or goods that are not cargo.
48. Division 3 sets out requirements for safe working loads and certificates.
49. Section 18 requires the owner of a vessel on which lifting appliances are installed to carry a rigging plan, drawings and instructions for their use. Breach of this obligation may result in a criminal or civil penalty under the Order.
50. Section 19 requires safe working loads to be determined and marked.
51. Section 20 requires safe working loads of articles of material handling equipment to be determined by a competent person in accordance with an Australian standard, or equivalent international standard, that applies to the article.
52. Section 21 deals with material handling equipment loads. It provides that material handling equipment must be used in accordance with Schedule 5. It also provides that material handling equipment may only be used to handle a load that exceeds the safe working load in specified circumstances.
53. Section 22 provides for the testing, inspection and certification of material handling equipment.
54. Section 23 provides for certificates of test. Certificates must be in the approved form. Non-Australian certificates of test are taken to be in the approved form if AMSA considers that it contains equivalent information to that required by the approved form.
55. Section 24 provides for regular inspection of loose gear not mentioned in Schedule 3 and for records of inspections.
56. Section 25 provides for the master of a vessel to keep a register of the vessel's material handling equipment. It also provides for competent persons or responsible persons who supervise or carry out tests etc of the material handling equipment to record them in the register. Breach of these obligations may result in a criminal or civil penalty under the Order.
57. Section 26 requires certificates of test or records of inspection of material handling equipment on a vessel, or copies of them, to be kept with the register of material handling equipment.

58. Section 27 provides that the owner of a vessel must maintain material handling equipment, mechanical ventilation equipment, lighting and other equipment used in loading or unloading the vessel.

59. Section 28 provides that the master of a vessel may allow vessel machinery to supply power to equipment used for loading or unloading only if there are enough qualified persons to maintain the engineer watch in accordance with the vessel's minimum safe manning certificate issued under Regulation V/14 of SOLAS.

60. Section 29 provides that persons may only repair material handling equipment if they are competent to do so and equipped to perform the repair. Breach of this obligation may result in a criminal or civil penalty under the Order.

61. Section 30 provides that repaired material handling equipment may be used before it has been tested and examined only in certain specified circumstances, for example if the repair is the normal periodic replacement of a component.

62. Section 31 requires heat treatment of equipment if a competent person considers it necessary.

63. Section 32 sets out transitional arrangements for the recognition of a test or examination conducted under a previous issue of the Order. It also provides for the recognition of certificates of test issued under or recognised for a previous issue of the Order. It also provides that vessels built before 1 January 2015 need not comply with certain provisions of the Order if they comply with the corresponding provisions of an earlier issue of the Order.

Schedules

64. Schedule 1 sets out requirements for safety during cargo operations.

65. Schedule 2 sets out requirement for access on board vessels.

66. Schedule 3 sets out the procedures for testing and examination of material handling equipment.

67. Schedule 4 sets out requirements for material handling equipment.

68. Schedule 5 sets out requirements for the safe use of material handling equipment including requirements relating to the maximum permissible loads.

69. Schedule 6 sets out requirements for derricks and cranes used for loading and unloading, including retention of drawings and instructions, the fitting of effective motion-limiting devices and the marking of cranes.

70. Schedule 7 sets out requirements for the marking of cargo and mechanical stowing appliances with their gross mass.

71. Schedule 8 sets out requirements for splices in wire rope.

Statement of compatibility with human rights

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

Overview of the legislative instrument

73. This Order is made under the *Navigation Act 2012*. It seeks to ensure the safety of people involved in the inherently dangerous activity of moving containers and other cargo on and off vessels. It regulates the inspection, testing and use of material handling equipment that is used for loading or unloading of vessels. The Order also gives effect to certain instruments of the International Labour Organization (ILO) that apply to machinery, appliances and equipment of a vessel that are used for its loading or unloading.

Human rights implications

74. Sections 11, 12, 14, 16, 18, 25 and 29 of the Order create offences to which strict liability applies. They also create civil penalties. 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.

75. Strict liability is imposed to ensure the safety of seafarers and persons on or near vessels when they are loaded or unloaded. 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 provisions are directed at seafarers and owners of vessels rather than the community at large and are regulatory in nature. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act.

76. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate for achieving the safety of persons on or near vessels to which the Order applies.

Conclusion

77. This instrument is compatible with the rights and 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

78. 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*.