

Explanatory Statement

Marine Order 505 (Certificates of competency — national law) Amendment 2017 (No. 1) (Order 2017/1)

Authority

1. Subsection 159(1) of the *Marine Safety (Domestic Commercial Vessel) National Law* (the national law) set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
2. Paragraph 160(1)(b) of the national law provides that the regulations may prescribe matters relating to the approval of training organisations.
3. Subsection 163(1) of the national law allows the Marine Safety National Regulator (the National Regulator) to make Marine Orders for any matter in the Act for which provision may be made by regulations, with some specified exceptions.
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 163(1) of the national law and is a legislative instrument for the *Legislation Act 2003*.

Purpose

6. This Order repeals *Marine Order 506 (Approval of training organisations — national law) 2013* (MO506). The Order also makes a small number of amendments to *Marine Order 505 (Certificates of competency — national law) 2013* consequential to the repeal of MO506.

Overview

7. MO506 was made under the national law.
8. The repeal of MO506 reduces duplication of regulatory requirements. It required vocational education and training (VET) providers to obtain approval from the National Regulator (the Australian Maritime Safety Authority) (AMSA) to provide Maritime Training Package courses. It was a condition of that approval that a VET provider be registered with the Australian Skills Quality Authority (ASQA) or another VET regulatory body. VET providers were also subject to compliance audits by AMSA.
9. Before the commencement of this Order, under the national law a person was required to hold a qualification issued by a training organisation approved under MO506 to obtain a certificate of competency to operate or undertake certain duties on a domestic commercial vessel.
10. This arrangement was allowed for under the national law. However, ASQA is established by the *National Vocational Education and Training Regulator Act 2011* (NVR Act) as the national regulator for VET providers in Australia and MO506 duplicated the regulatory requirements of the NVR Act and those imposed on VET providers in Victoria and Western Australia under State legislation. In particular, the criteria for approval under MO506 of an organisation as a training organisation, as well as many of the conditions of that approval, are also required under the NVR Act or relevant State legislation.

11. AMSA has entered into Memoranda of Understanding (MoU) and Letters of Exchange with ASQA and the Victorian and Western Australian regulatory bodies relating to the provision of Maritime Training Package courses by VET providers approved by those bodies instead of by the National Regulator. These agreements concern the exchange of information between the statutory authorities, and the provision by AMSA of maritime technical advice to auditors of those authorities on an ad hoc basis when they audit VET providers that provide maritime training courses. AMSA's MoU with ASQA and the Western Australian regulatory body is published on the AMSA website.

12. The small number of consequential amendments the Order makes to *Marine Order 505 (Certificates of competency — national law) 2013* (MO505) are to remove references to MO506 and training organisations approved under MO506.

Consultation

13. Initial consultation occurred with the Maritime Agencies Forum (comprising representatives from State and Territory maritime safety authorities) and ASQA, which both support the proposal. A copy of the draft Order was subsequently released for external consultation on 6 March 2017 for a four week period. Five submissions were received.

14. 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 purpose of the repeal of MO506 is to remove duplication that imposes an unnecessary regulatory burden on VET providers. The OBPR reference number is 20193.

Commencement

15. This Order commenced on 1 July 2017.

Documents incorporated by reference

16. No documents are incorporated by reference in this Order.

Contents of this instrument

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

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

19. Section 3 repeals *Marine Order 506 (Approval of training organisations — national law) 2013*.

20. Schedule 1 of the Order makes minor amendments to MO505.

21. Item 1 of Schedule 1 inserts a definition of *registered training organisation* as meaning a training organisation registered by ASQA, the Victorian Registration and Qualifications Authority or the Training Accreditation Council of Western Australia.

22. Item 2 of Schedule 1 omits a reference to *approved training organisation* from a note to subsection 5(1).

23. Item 3 of Schedule 1 omits a note to subsection 10(1) that refers to training organisations approved under MO506.

24. Item 4 of Schedule 1 replaces a reference in paragraph 30(e) to an approved training organisation with a reference to a registered training organisation.

Statement of compatibility with human rights

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

Overview of the legislative instrument

26. This Order is made under the *Marine Safety (Domestic Commercial Vessel) National Law* (the national law). It repeals *Marine Order 506 (Approval of training organisations — national law) 2013* (MO506) and makes a small number of consequential amendments to *Marine Order 505 (Certificates of operation — national law) 2013*.

27. MO506 required vocational education and training (VET) providers to obtain approval from the Australian Maritime Safety Authority (AMSA) to provide Maritime Training Package courses. It was a condition of that approval that a VET provider be registered with the Australian Skills Quality Authority (ASQA) or another VET regulatory body. VET providers are also subject to compliance audits by AMSA.

28. Under the national law, to obtain a certificate of competency to operate or undertake certain duties on a domestic commercial vessel a person was required to hold a qualification issued by a training organisation approved by the National Regulator under MO506.

29. ASQA is established by the *National Vocational Education and Training Regulator Act 2011* (NVR Act) and is the national regulator for VET providers in Australia.

30. MO506 duplicated the regulatory requirements of the NVR Act and the regulatory requirements imposed on VET providers in Victoria and Western Australia. Those States maintain separate legislative frameworks regulating VET providers. In particular, the criteria for approval under MO506 of an organisation as a training organisation, as well as many of the conditions of that approval are also required under the NVR Act or relevant State legislation.

31. AMSA has entered into Memoranda of Understandings (MoU) with ASQA and the Victorian and Western Australian regulatory bodies relating to the provision of Maritime Training Package courses by VET providers approved by those bodies instead of by the National Regulator. These agreements concern the exchange of information between the statutory authorities, and the provision by AMSA of maritime technical advice to auditors of these authorities on an ad hoc basis when they audit VET providers that provide maritime training courses.

Human rights implications

32. This instrument repeals an instrument that engaged the right to work protected by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). MO506 engaged the ICESCR right to work because it set up the process for the approval of training organisations. With the repeal of MO506, this same task will be performed by ASQA and relevant State authorities. With the reaching of Memoranda of Understanding with these bodies, AMSA will continue to contribute to the approval process for training organisations ensuring the acquisition of skills for seafarers, which in turn contributes to safety at sea.

Conclusion

33. 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

34. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990*.