

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Occupational Health and Safety (Maritime Industry) Act 1993

Occupational Health and Safety (Maritime Industry) Amendment (Incident Notification and Reporting) Regulations 2017

The *Occupational Health and Safety (Maritime Industry) Act 1993* (the Act) and the *Occupational Health and Safety (Maritime Industry) Regulations 1995* (OHS(MI) Regulations) regulate work health and safety for a defined part of the Australian maritime industry.

Section 121 of the Act confers power on the Governor-General to make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Occupational Health and Safety (Maritime Industry) Amendment (Incident Notification and Reporting) Regulations 2017* (the Regulations) amend the OHS(MI) Regulations to enable the Australian Maritime Safety Authority (AMSA) to streamline the incident notification and reporting obligations of maritime operators.

Obligations to notify AMSA of safety incidents may arise under various statutes depending on the nature of a vessel's operations at the time of the incident. Separate forms are currently used for the OHS(MI) Act and other relevant laws, including the *Navigation Act 2012*, *Maritime Safety (Domestic Commercial Vessel) National Law Act 2012* and *Work Health and Safety Act 2011*.

The Regulations repeal the current forms prescribed for the purpose of the OHS(MI) Act, and instead prescribe a list of information operators must include when reporting on or notifying AMSA of an incident. This will enable AMSA to develop a single form for all health and safety notifications, and remove the need for maritime operators to determine which Act applied to them at the time of the incident. This will improve work health and safety in the maritime industry because it will be easier for operators to notify and report incidents to AMSA.

The Regulations also clarify that the notice or report can be submitted by fax, email or other electronic means as specified on AMSA's website. Details of the Regulations are set out at [Attachment A](#).

The Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) requested the change to assist AMSA to streamline notification and reporting of maritime incidents after AMSA raised this issue at a Seacare Authority meeting and suggested it would benefit industry stakeholders. The Seacare Authority is a consultative body comprising members representing AMSA and employers and employees in the maritime industry. AMSA was also consulted during the drafting of the Regulations and are supportive of the changes.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OPPBR 22464).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after it is registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights has been completed and has assessed the Regulations as compatible with human rights. A copy of the Statement is at [Attachment B](#).

Preliminary

Section 1 – Name

This is a formal provision specifying the name of the instrument is the *Occupational Health and Safety (Maritime Industry) Amendment (Incident Notification and Reporting) Regulations 2017* (the Regulations).

Section 2 – Commencement

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the Schedule, and any other item in a Schedule to this instrument would have effect according to its terms. The Regulations amend the *Occupational Health and Safety (Maritime Industry) Regulations 1995*.

Schedule 1- Amendments

Section 107 of the OHS(MI) Act requires operators to notify the Australian Maritime Safety Authority (AMSA) of certain dangerous occurrences and accidents at a workplace. The Regulations may prescribe the time and the manner in which notice or a report is to be given, and the form of such a notice or report.

Item 1, Subregulation 12(4)-12(6)

Regulation 12 provides the time and manner in which the notice of an incident must be given for the purposes of paragraph 107(2)(a) of the OHS(MI) Act.

This item repeals the current requirement in subregulation 12(4) to provide notice in accordance with Form 6 (Incident alert). New subregulation 12(4) provides that the notice must:

- be in writing; and
- identify the workplace and the operator of the workplace; and
- specify the time of the incident; and
- identify the location of the workplace at that time; and
- describe the incident.

New subregulation 12(5) allows an operator to include in the notice any other matters it considers relevant.

New subregulation 12(6) prescribes the manner in which notice may be given to AMSA.

Item 2, Subregulation 13(4)-13(6)

Regulation 13 provides the time and manner in which the report of an incident must be given for the purposes of paragraph 107(2)(b) of the Act.

This item repeals the current requirement to provide a report in accordance with Form 7 (Incident report). New subregulation 13(4) provides that the report must:

- be in writing; and

- identify the workplace and the operator of the workplace; and
- specify the time of the incident; and
- identify the location of the workplace at that time; and
- specify the activities the workplace is engaged in at that time; and
- describe the incident; and
- set out a list of the consequences of the incident; and
- if a person was affected by the incident—set out the name, gender, nationality, date of birth and address of the person and describe the effect of the incident on the person; and
- set out the name, position and contact details of the person giving the report.

New subregulation 13(5) allows an operator to include in the report any other matters it considers relevant.

New subregulation 13(6) prescribes the manner in which notice may be given to AMSA.

Item 3 – Part 5, Regulation 17

This item provides a three month transition period during which notice given in accordance with the current regulations is taken to meet the new requirements.

Item 4

Item 4 repeals Forms 6 and 7.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Occupational Health and Safety (Maritime Industry) Amendment (Incident Notification and Reporting) Regulations 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Occupational Health and Safety (Maritime Industry) Amendment (Incident Notification and Reporting) Regulations 2017* (the Regulations) amend the OHS(MI) Regulations to enable the Australian Maritime Safety Authority (AMSA) to streamline the incident notification and reporting obligations of maritime operators.

Obligations to notify AMSA of safety incidents may arise under various statutes depending on the nature of a vessel's operations at the time of the incident. Separate forms are currently used for the OHS(MI) Act and other relevant laws, including the *Navigation Act 2012*, *Maritime Safety (Domestic Commercial Vessel) National Law Act 2012* and *Work Health and Safety Act 2011*.

The Regulations repeal the current forms prescribed for the purpose of the OHS(MI) Act, and include a list of information operators must include when reporting on or notifying AMSA of an incident instead. This will enable AMSA to develop a single form for all health and safety notifications, and remove the need for maritime operators to determine which Act applied to them at the time of the incident.

Human rights implications

The Regulations engage the right to safe and healthy working conditions which is part of the set of interdependent rights relating to work and conditions of work set out in articles 6, 7 and 8 of the *International Convention on Economic Social and Cultural Rights (ICESCR)*. Article 7(b) of ICESCR requires the States Parties to recognise the right of everyone to safe and healthy working conditions.

Australia principally complies with this obligation through a system of Commonwealth, state and territory work health and safety laws, which have been harmonised across the majority of jurisdictions through the adoption of model laws. The Act and the OHS(MI) Regulations represent work health and safety laws for a defined part of the maritime industry.

As outlined above the Regulations enable AMSA to develop a single form for all health and safety notifications and reporting to streamline this process. This will make it easier for maritime operators to notify and report incidents and allow AMSA to report safety trends with improved accuracy, improving work health and safety outcomes. As such, the Regulations are compatible with and promote the right to safe and healthy working conditions.

Conclusion

The Regulations are compatible with human rights.