

Replacement Explanatory Statement

Marine Orders (Navigation Act) Administrative Amendment Order 2017 (Order 2017/5)

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 Navigation 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 must or 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 makes some amendments of an administrative or editorial nature to a number of Marine Orders to clarify requirements and improve their operation.

Overview

7. This Order amends eight Marine Orders. Most of the amendments are of an editorial nature necessary to correct minor drafting errors such as incorrect numbering or provision cross-references, or to correct references to other Marine Orders that have been repealed or reissued. The numbering of an offence provision in *Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016* (Marine Order 12) is corrected by replacement of the provision.
8. The amendments made to *Marine Order 25 (Equipment — lifesaving) 2014* (Marine Order 25) clarify requirements for survival craft and rescue boats for cargo vessels. The amendment made to *Marine Order 28 (Operations standards and procedures) 2015* (Marine Order 28) makes clear how to access the STCW Convention, parts of which are incorporated in that Order. The amendments made to *Marine Order 32 (Cargo handling equipment) 2016* (Marine Order 32) specify how some equipment standards are incorporated by reference in the Order and where they are available for free. The amendments made to *Marine Order 63 (Vessel reporting systems) 2015* (Marine Order 63) update a reference in a note to guidelines for the onboard operational use of shipborne automatic identification systems (AIS) to refer to the latest AIS guidelines issued by the International Maritime Organization (IMO).

Consultation

9. A copy of the draft of this Order was placed on AMSA's website for public consultation for three weeks (from 20 July to 11 August 2017). A draft of the Order was also emailed directly to all eight recognised organisations. For information about recognised organisations see section 8 of *Marine Order 1 (Administration) 2013* (Marine Order 1). No submissions were received.

10. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OBPR reference number is 16724.

Documents incorporated by reference

11. The amendment made to Marine Order 12 incorporates into that Order Section 5 of Part C of the National Standard for Commercial Vessels, as in force from time to time (the NSCV). The NSCV is available for free download from the AMSA website at <http://www.amsa.gov.au>. An amendment made to Schedule 3 of Marine Order 32 incorporates by reference Appendix E of the ILO Code of Practice *Safety and Health in Ports, 2005* (the ILO Code). The ILO Code is adopted as in force from time to time — see definition of ILO Code in Marine Order 32. The ILO Code is available for free download from the International Labour Organization (ILO) website at <http://www.ilo.org>.

12. This Order amends Marine Order 25 to incorporate by reference AS/NZS 4280.1:2017 *406 MHz satellite distress beacons — Marine emergency position-indicating radio beacons (EPIRB)*, as amended from time to time. The Order also amends Marine Order 32 to clarify that the reference in Schedule 3 to AS 1353.2-1997 *Flat Synthetic Webbing Slings Part 2: Care and use* is to that standard as in force on 1 January 2017. Australian Standards are available for purchase from the SAI Global website at <https://www.saiglobal.com>. Both these standards will also be made available for viewing free of charge at AMSA offices on request. Contact details for AMSA are on the AMSA website at <http://www.amsa.gov.au>.

13. The Order also amends Marine Order 25 to incorporate by reference the International Life-Saving Appliance Code, adopted by IMO Resolution MSC.48(66), as in force from time to time (the LSA Code). The LSA Code is available for free from the IMO website at <http://www.imo.org>. As at commencement of the Order, the LSA Code was also available for free online at <http://treaties.fco.gov.uk/docs/pdf/1998/TS0044.pdf>. Note 1 under subsection 4(1) of Marine Order 25 also states that the AMSA website provides information about how to obtain copies of IMO documents mentioned in the Order.

14. The Order also amends Marine Order 63 to refer in a note to the *Revised guidelines of the on board operational use of shipborne automatic identification systems (AIS)*, adopted by IMO Resolution A.1106(29), as amended from time to time. These revised guidelines are available for free from the IMO website at <http://www.imo.org>. As at commencement of the Order, they were also available for free online at: https://www.safety4sea.com/wp-content/uploads/2016/02/IMO-Revised-guidelines-for-onboard-operational-use-of-AIS-2015_12.pdf. Note 3 under subsection 4(1) of Marine Order 63 also states that the AMSA website Marine Orders link provides information about how to access all IMO documents referred to in the Order.

15. The Order also amends *Marine Order 91 (Marine pollution prevention — oil) 2014* (MO91) to refer to the *Revised guidelines and specifications for pollution prevention equipment for machinery space bilges of ships*, adopted by IMO Resolution MEPC.107(49), as amended from time to time. These revised guidelines are available for free from the IMO website at <http://www.imo.org>. As at commencement of the Order, they were available at [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-\(MEPC\)/Documents/MEPC.107\(49\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-(MEPC)/Documents/MEPC.107(49).pdf). Note 5 under section 4 of MO91 also refers the reader to the IMO website for access to any IMO document referred to in the Order.

Commencement

16. This Order commenced on the day after it was registered.

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 provides that each Order mentioned in the title of a Schedule is amended in accordance with the Schedule.

Schedule 1 Amendments to Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016

20. Item 1 of Schedule 1 inserts a reference to Section 5 of Part C of the NSCV in subparagraph 10(1)(a)(i) of Marine Order 12.
21. Item 2 of Schedule 1 corrects the numbering of the subsections in the offence provision in section 23 of Marine Order 12 by remaking the provision.
22. Section 23 of Marine Order 12 is an important safety measure designed to achieve the safety of persons boarding or leaving vessels. Section 23 requires a person boarding or leaving a vessel to use the means of access provided or identified by the master of the vessel. Subsection 23(2) provides that non-compliance with subsection 23(1) is an offence and that strict liability applies to the offence. Subsection 23(3) provides that a person is liable to a civil penalty.

Schedule 2 Marine Order 25 (Equipment — lifesaving) 2014

23. Item 1 of Schedule 2 inserts a definition of *launching appliance* into section 4 of Marine Order 25.
24. Item 2 of Schedule 2 inserts a new subsection 30(2) into Marine Order 25. This subsection clarifies the survival craft requirements for cargo vessels certified Class 2C that are less than 25 m long.
25. Item 3 replaces section 33 of Marine Order 32. New section 33 clarifies that vessels certified as Class 2A or 2B that are at least 85 m long must comply with either of two sets of specified requirements for survival craft and rescue boats. This gives effect to Regulation 31.1.2 of Chapter III of the International Convention for the Safety of Life at Sea (SOLAS).
26. Item 4 of Schedule 1 updates a reference in subclause 10(1) of Schedule 1 to Marine Order 25 to refer to the most recent AS/NZS standard for emergency position-indicating radio beacons (EPIRBs) as amended from time to time. Item 5 of Schedule 1 similarly updates a reference to this standard in a related note.
27. Item 6 updates the language used to describe IMO Resolution A.802 (19) to more accurately explain how it is being adopted, that is, as amended.

Schedule 3 Marine Order 27 (Safety of navigation and radio equipment) 2016

28. Item 1 of Schedule 3 omits a note under paragraph 26(8)(e) of *Marine Order 27 (Safety of navigation and radio equipment) 2016* (Marine Order 27).
29. Item 2 of Schedule 3 substitutes the note at the end of subsection 26(8) of Marine Order 27 with two notes. The first note is the same as the note omitted by item 1. The second note is the same as the current note except that it now correctly refers to paragraph (8)(g) instead of (5)(g).

Schedule 4 Marine Order 28 (Operations standards and procedures) 2015

30. Item 1 of Schedule 4 inserts into the note under subsection 2(1) of Marine Order 28 an explanation as to where the International Convention on Certification and Watchkeeping for Seafarers, 1978 (the ***STCW Convention***) and the STCW Code can be freely accessed. The note explains that the STCW Convention and the STCW Code, including any amendments in force, is freely available from Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

31. Various provisions of Marine Order 28 incorporate provisions of the STCW Convention and STCW Code by reference. The amended note is similar to that included the seafarer certification series of Marine Orders.

Schedule 5 Marine Order 32 (Cargo handling equipment) 2016

32. Item 1 of Schedule 5 amends note 1 under section 4 of Marine Order 32 to state that copies of incorporated documents will be made available for viewing free of charge the nearest AMSA office, on request. The AMSA website provides information as to how to contact AMSA offices, and a link to this information can also be found in the AMSA website Marine Orders link that is also mentioned in the note.

33. Item 2 of Schedule 5 amends the definition of ***safety factor*** in subclause 13(3) of Schedule 3 of Marine Order 32 to clarify that the safety factor for the formula mentioned in that subclause could also be at least the amount mentioned in Appendix E of the ILO Code.

34. Item 3 of Schedule 5 amends subclause 13(4) of Schedule 3 to specify the Australian standard with which material, design, manufacture, making testing and certification of flat synthetic-webbing slings must comply, and how those standards are incorporated. The item also inserts a note to state that standards mentioned in this clause will be available for viewing free of charge at AMSA offices on request.

Schedule 6 Marine Order 34 (Solid bulk cargoes) 2016

35. Item 1 of Schedule 6 amends a note to section 21 of *Marine Order 34 (Solid bulk cargoes) 2016* to correct a reference to another Order. The note now correctly refers to the prescribed periods and forms for the reporting of marine incidents being in Marine Order 1. The provision setting out the prescribed periods for the reporting of a marine incident was moved from *Marine Order 31 (Vessel surveys and certification) 2015* to Marine Order 1 in 2016.

Schedule 7 Marine Order 63 (Vessel reporting systems) 2015

36. Item 1 of Schedule 7 updates a reference in a note in Schedule 3 of Marine Order 63 to refer to the latest International Maritime Organization guidelines for the onboard operational use of shipborne automatic identification systems (AIS). SOLAS requires an automatic identification system (AIS) to be operated taking into account these guidelines.

Schedule 8 Marine Order 91 (Marine pollution prevention — oil) 2014

37. Item 1 of Schedule 8 amends a reference in section 37 of *Marine Order 91 (Marine pollution prevention — oil) 2014* to some specifications for pollution prevention equipment for machinery space bilges of ships to make clear that the revised guidelines which include the specifications are being incorporated as amended from time to time. These revised guidelines were recently amended by the IMO in October 2016 and may be further amended.

Statement of compatibility with human rights

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

Overview of the legislative instrument

39. This Order makes amendments of an administrative nature to a number of Marine Orders. Most of the amendments are of an editorial nature necessary to correct minor drafting errors such as incorrect numbering or provision cross-references, or to correct references to other Marine Orders that have been repealed or reissued.

40. Item 2 of Schedule 1 corrects the numbering of the subsections in the offence provision in section 23 of *Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016* (Marine Order 12) by remaking the provision. Section 23 is an offence to which strict liability applies.

41. The amendments made to *Marine Order 25 (Equipment — lifesaving) 2014* clarify requirements for survival craft and rescue boats for cargo vessels to ensure the International Convention for the Safety of Life at Sea (SOLAS) is given effect. The amendment made to *Marine Order 28 (Operations standards and procedures) 2015* makes clear how to access the STCW Convention, parts of which are incorporated into that Order. The amendments made to *Marine Order 32 (Cargo handling equipment) 2016* specify how some equipment standards are incorporated by reference in the Order and where they are available for free. The amendments made to *Marine Order 63 (Vessel reporting systems) 2015* update a reference in a note to guidelines for the onboard operational use of shipborne automatic identification systems (AIS) to refer to the latest AIS guidelines issued by the International Maritime Organization. The amendment made to *Marine Order 91 (Marine pollution prevention — oil) 2014* clarifies how some revised guidelines that include some specifications for certain pollution prevention equipment are being incorporated.

Human rights implications

42. This Order remakes section 23 of Marine Order 12. Section 23 is an offence to which strict liability applies. Section 23 requires a person boarding or leaving a vessel to use the means of access provided or identified by the master of the vessel. Subsection 23(2) provides that non-compliance with subsection 23(1) is an offence and that strict liability applies to the offence. Subsection 23(3) provides that a person is liable to a civil penalty.

43. Strict liability offences allow for the imposition of criminal liability without the need to prove fault (see section 6.1 of the *Criminal Code*). Subsection 341(1) of the *Navigation Act 2012* (the Act) provides that the regulations may provide for penalties of not more than 50 penalty units for an individual and 250 penalty units for a body corporate for a contravention of the regulations. Under section 342 of the Act, marine orders may deal with any matter for which provision may be made by the regulations.

44. Section 23 of Marine Order 12 is an important safety measure designed to achieve the safety of persons boarding or leaving vessels. It is considered that for deterrence reasons strict liability is warranted to achieve this objective. Strict liability is imposed for offences in marine orders including in circumstances where there are risks posed to the life and safety of persons arising from breach of the offences. The penalty is relatively low and is within the limitation imposed by paragraph 341(1)(a) of the Act. The Order also creates a civil penalty for failure to

comply with the offence. The civil penalty is regulatory rather than punitive in nature and is authorised by paragraph 341(1)(b) of the Navigation Act.

45. Offences that are strict liability 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.

46. It is considered any limitation on human rights as a result of the imposition of offences that are strict liability and the creation of civil penalties is reasonable, necessary and proportionate to ensure the safety of persons boarding or leaving vessels.

Conclusion

47. AMSA considers that this Order is compatible with human rights. To the extent that it limits rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies, the limitation is reasonable, necessary and proportionate.

Making the instrument

48. 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*.