

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as incorrect numbering or provision cross-references, or to correct references to other Marine Orders that have been repealed or reissued.
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 freely available. 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 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 (Construction — subdivision and stability, machinery and electrical installations) 2016* (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>.

Commencement

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

Contents of this instrument

14. Section 1 sets out the name of the Order.
15. Section 2 provides for the commencement of the Order.
16. 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

17. 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.
18. Item 2 of Schedule 1 corrects the numbering of the subsections in the offence provision in section 23 of Marine Order 12.

Schedule 2 Marine Order 25 (Equipment — lifesaving) 2014

19. Item 1 of Schedule 2 inserts a definition of ***launching appliance*** into section 4 of Marine Order 25.
20. 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.
21. 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).
22. 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.

23. 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

24. 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).

25. 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

26. 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>.

27. 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

28. 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.

29. 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.

30. 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

31. 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

32. 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

33. 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

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

Overview of the legislative instrument

35. 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.

36. 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 freely available. 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.

37. The Order does not create any new offences to which strict liability applies.

Human rights implications

38. This instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

39. 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

40. 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*.