

Explanatory Statement

Marine Order 41 (Carriage of dangerous goods) 2017 (Order 2017/6)

Authority

1. Subsection 112(4) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the carriage of cargo on a vessel.
2. Subsection 112(5) of the Navigation Act provides that the regulations may provide for the loading, stowing or carriage of cargo in vessels, the unloading of cargo from vessels and the giving of notices related to that loading, stowage, carriage or unloading.
3. Subsection 112(6) of the Navigation Act provides for the carriage of dangerous goods.
4. Subsection 112(7) of the Navigation Act provides that the regulations may deal with specified matters relating to dangerous goods.
5. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations 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.
6. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Safety of Life at Sea (SOLAS).
7. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for contravening a provision of the regulations, including providing for the imposition of civil penalties.
8. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for which provision must or may be made by regulations.
9. 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.
10. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

11. This Order gives effect to regulation 19.4 of Chapter II-2 and Parts A and D of Chapter VII of SOLAS and, in particular, the International Maritime Dangerous Goods Code (IMDG Code) and the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code).
12. This Order also prescribes the manner of giving notice of intention to ship dangerous goods for section 119 of the Navigation Act.

Overview

13. The Navigation Act implements Australia's obligations under SOLAS. This Order is made under the Navigation Act to give effect to certain requirements of Chapter VII of SOLAS relating to the safe carriage of dangerous goods in packaged form. The IMDG Code and INF Code are made mandatory by Chapter VII of SOLAS and are also given effect to in this Order. This Order further deals with documentation and notification matters for the safe shipment of dangerous goods and protection of the marine environment.

14. This Order repeals previous *Marine Order 41 (Carriage of dangerous goods) 2009*. When the Order commences, Schedule 21 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Order.

Consultation

15. A copy of the draft of this Order was placed on the AMSA website for public comment on 18 July 2017 for a 6 week consultation period. Around 160 stakeholders, including recognised organisations, ship operators, shipping and cargo industry bodies, port authorities, seafarer representative organisations, training organisations and various government bodies were invited to comment. Two comments on the draft Order were received. The comments related to citation matters and the timing for the provision of information to AMSA before loading of dangerous goods on a vessel. These comments were taken into account in the preparation of the Order.

16. The Office of Best Practice Regulation (OBPR) considers that the changes made by this 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

17. This Order incorporates by reference parts of the following documents:

- *Marine Order 1 (Administration) 2013*
- *Explosives Act 1961*
- IMDG Code
- INF Code
- SOLAS
- *IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units*
- *AS 1210—2010 Pressure vessels*
- *ISO 16528-1:2007 Boilers and pressure vessels*

18. Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), *Marine Order 1 (Administration) 2013* is adopted as in force from time to time because it is adopted by reference to its title in this Order. The *Explosives Act 1961* is also subject to section 10 of the *Acts Interpretation Act* and is incorporated as in force from time to time.

19. The IMDG Code is incorporated as amended and in force from time to time. Information on obtaining a free online copy of the International Maritime Organization (IMO) resolution or resolutions that contain the text of the IMDG Code is available from the Marine Order link on the AMSA website at <http://www.amsa.gov.au>. Information is also provided concerning access to the IMDG Code and its Supplement through libraries and also for purchase.

20. The INF Code is incorporated as amended and in force from time to time. Information on obtaining a free online copy of the IMO resolution or resolutions that contain the text of the INF Code is available from the Marine Order link on the AMSA website at <http://www.amsa.gov.au>. Information is also provided concerning access to the publication through libraries and also for its purchase.

21. SOLAS is incorporated as amended and in force from time to time. This convention is available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

22. The latest edition of the *IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units* is incorporated in this Order. A free online copy is available from the UNECE website at <https://www.unece.org>.

23. Information on obtaining a copy of any other IMO document, IMO resolution or other document that is mentioned in this Order is available from the Marine Order link on the AMSA website at <http://www.amsa.gov.au>.

24. There are two standards with content incorporated in this Order, namely AS 1210—2010 *Pressure vessels* and ISO 16528-1:2007 *Boilers and pressure vessels*. The manner of incorporation of these standards is existing at the time of making of this Order. Information concerning obtaining a copy of these standards through libraries, and their purchase, is available from the Marine Order link on the AMSA website at <http://www.amsa.gov.au>. Information is also provided concerning access for viewing these standards, free of charge, at an AMSA office.

Commencement

25. This Order commenced on 1 January 2018.

Contents of this instrument

26. Division 1 (Preliminary) contains 8 provisions that assist the operation, interpretation and administration of the Order.

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

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

29. Section 1B provides that *Marine Order 41 (Carriage of dangerous goods) 2009* is repealed.

30. Section 2 states the purpose of the Order.

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

32. Section 4 sets out definitions of terms used in the Order and provides interpretation assistance for certain expressions. It also makes it clear that a person is permitted to comply with the amendments to the International Maritime Dangerous Goods Code that IMO has agreed may be applied on a voluntary basis.

33. Section 5 states the application of the Order.

34. Section 6 provides AMSA may give an exemption in specified circumstances. The duration of an exemption instrument may be for up to 5 years and is subject to conditions.

35. Section 7 provides an approval power for AMSA to give approvals that are mentioned in the IMDG Code or required to be made under the Order.

36. Section 8 specifies the decisions under the Order that are subject to merits review.

37. Division 2 (Documents of compliance to carry dangerous goods) contains 4 provisions.

38. Section 9 requires the master or owner to have in place for the vessel a document of compliance to carry dangerous goods for the loading of dangerous goods that are mentioned in regulation 19.4 of Chapter II-2 of SOLAS. Regulation 19.4 provides that a document of compliance is required for dangerous goods other than solid dangerous cargoes in bulk, goods that are classes 6.2 and 7 and goods in limited and excepted quantities. It is also a requirement for the master or owner to permit dangerous goods to be loaded only in accordance with the

document of compliance. The requirements are strict liability offences with civil penalties also applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

39. Section 10 provides that the master or owner of a regulated Australian vessel may apply to an issuing body for the issue of a document of compliance to carry dangerous goods.

40. Section 11 provides that an issuing body may issue a document of compliance to carry dangerous goods if the vessel and its equipment complies with regulation 19 of Chapter II-2 of SOLAS. Regulation 19 sets out additional safety measures to mitigate the fire risk for ships carrying dangerous goods. The duration of a document of compliance may be up to 5 years.

41. Section 12 sets out that an issuing body may revoke a document of compliance to carry dangerous goods. The criteria for revocation are specified.

42. Division 3 (Requirements for carriage of dangerous goods) contains 3 provisions.

43. Section 13 provides that the master or owner of a vessel must ensure that the loading, stowage, carriage and unloading of dangerous goods complies with the specified requirements. Parts A and D of Chapter VII of SOLAS impose requirements for documentation and reporting and also mandates compliance with the IMDG and INF Codes. The IMDG Code deals with requirements for the safe shipment of dangerous goods in packaged form. The INF Code deals with the special requirements for the carriage of packaged irradiated nuclear fuel, plutonium and high level radioactive wastes on board ships.

44. Section 14 requires the shipper or consolidator to comply with the requirements of the IMDG Code for the packing, marking, labelling and placarding of dangerous goods. A training requirement is imposed for personnel involved in the packing of dangerous goods. The requirements are strict liability offences with civil penalties also applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

45. Section 15 provides that it is an offence if an owner of a vessel carrying dangerous goods in packaged form fails to have on board instructions on emergency response in accordance with paragraph 5.4.3.2 of the IMDG Code. This provision of the IMDG Code sets out the compliance options for the documentation method and where the information must be located on board the vessel. Section 15 also provides that the master must ensure that the instructions on emergency response are available to seafarers on board. The requirements are strict liability offences and civil penalties apply. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

46. Division 4 (Information and notice requirements) contains 5 provisions.

47. Section 16 sets out the manner and to whom notice of intention to ship dangerous goods must be given by the shipper for section 119 of the Navigation Act.

The notice must include a completed Multimodal Dangerous Goods Form or a dangerous goods transport document in accordance with Chapter 5.4 of the IMDG Code. Chapter 5.4 of the IMDG Code sets out documentation requirements to ensure dangerous goods and their hazards are properly described, including the form of the dangerous goods transport document.

48. Section 17 requires a consolidator to give notice in writing to the master of the vessel and, if requested, to AMSA if dangerous goods are packed into a cargo transport unit. The notice must consist of the notice received by the consolidator under section 16 and a completed packing declaration that complies with section 5.4.2 of the IMDG Code. This provision of the IMDG Code sets out the matters to be certified by the consolidator including the adequacy of packing measures and proper marking and labelling. The notice requirement is a strict liability offence with a civil penalty applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

49. Section 18 requires the master of a vessel to provide to AMSA specified information at least 24 hours before dangerous goods are loaded on a vessel and for the special list or manifest to be given before loading. It is also a requirement for any change to be notified to AMSA. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

50. Section 19 requires a person organising a transshipment to give specified information to the master if the dangerous goods are in packaged form and being transhipped from a port in Australia. It is also a requirement for the information to be given to AMSA if requested. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

51. Section 20 provides reporting requirements for incidents at sea involving dangerous goods in packaged form. The master must report the loss or likely loss overboard of dangerous goods in packaged form to the nearest coastal State. The owner or agent of a vessel also has reporting responsibilities in relation to loss or likely loss of dangerous goods and abandoned vessels. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount for a penalty unit was \$210.

52. Division 5 (Training and safe system of work requirements) has 2 provisions.

53. Section 21 sets out an offence if the employer fails to ensure that persons engaged in the handling, packing, stowing and carriage of dangerous goods are given specified training. The employer must also ensure that evidence of training is kept for at least 5 years. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50

penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

54. Section 22 provides that AMSA may carry out an audit of training systems in accordance with Chapter 1.3 of the IMDG Code. Chapter 1.3 of the IMDG Code sets out that the audit is to verify the effectiveness of the system in place and be commensurate with the role and responsibilities of personnel.

55. Division 6 (Other matters) contains 5 provisions.

56. Section 23 requires the packagings used for the carriage of dangerous goods to be constructed, marked, tested and approved in accordance with Part 6 of the IMDG Code. Part 6 of the IMDG Code sets out provisions for the safe and effective containment of dangerous goods. Section 23 also requires the packaging of specified radioactive materials to be approved by AMSA. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

57. Section 24 provides that a shipper must ensure that any portable tank, multiple-element gas carrier, road tank vehicle or bulk container, that is used for the carriage of dangerous goods on a vessel, is marked, tested and approved in accordance with Part 6 of the IMDG Code. The requirement is a strict liability offence with a civil penalty applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

58. Section 25 requires the shipper to notify AMSA before dangerous goods of Class 1 are packed into a closed cargo transport unit and make the unit available for inspection on request. The section also makes it a requirement for the shipper to ensure that the unit is structurally serviceable. The section further provides that a shipper must ensure that dangerous goods of Class 1 are not carried on a tanker without the approval of AMSA. The requirements are strict liability offences with civil penalties applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit amount was \$210.

59. Section 26 provides that a shipper or consolidator must ensure that the stowage and securing of dangerous goods of Class 7 is done in accordance with the approval given by AMSA. The requirement is a strict liability offence with a civil penalty applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

60. Section 27 sets out the powers of an inspector to give notice that requires a person to take proper precautions in specified circumstances.

Statement of compatibility with human rights

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

Overview of the legislative instrument

62. The purpose of this Order is to put in place safety measures for the carriage of dangerous goods on vessels. This Order gives effect to regulation 19.4 of Chapter II-2 and Parts A and D of Chapter VII of SOLAS and, in particular, the International Maritime Dangerous Goods Code (IMDG Code) and the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code). This Order also prescribes the manner of giving notice of intention to ship dangerous goods for section 119 of the Navigation Act.

63. This Order repeals and replaces *Marine Order 41 (Carriage of dangerous goods) 2009*.

Human rights implications

64. Sections 9, 14, 15, 17 to 21 and 23 to 26 of this Order impose offences to which strict liability applies. The objective of the offences is to ensure that vessel owners, operators, seafarers, shippers, consolidators and other persons involved in packing, loading, stowage, unloading and carriage of dangerous goods are kept safe. Dangerous goods require proper treatment during transport, including segregation from other goods, due to their inherently dangerous characteristics, the duration of transport and the environmental conditions at sea. The offences are aimed at the proper identification of dangerous goods through adequate documentation and also the proper handling, containment and carriage of dangerous goods. Incidents in port or at sea pose particular logistical problems for seafarers and rescue authorities due to the likely isolated location of incidents. The marine environment is also at significant risk of harm if dangerous goods are spilled or lost overboard necessitating the immediate reporting of such events.

65. Strict liability is imposed for breaches in this Order to ensure compliance with internationally recognised measures that are intended to create world-wide uniformity of rules for the transport of dangerous goods by sea. The penalty for an offence is relatively low (maximum of 50 penalty units for an individual) and within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. It is long standing practice to impose strict liability for breaches in marine orders in circumstances requiring deterrence and where breaches pose serious threats to life, safety of navigation or the marine environment.

66. This Order also creates civil penalties for failure to comply with offences. The civil penalty provisions are authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provisions and the relatively low level of penalty (the same maximum amounts as for an offence), the civil penalties should not be considered to be criminal matters for human rights law.

67. 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.

68. 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 safe shipment of dangerous goods and the protection of the marine environment.

Conclusion

69. 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

70. This Order 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*.