

Explanatory Statement

Marine Order 503 (Certificates of survey — national law) 2017 (Order 2017/7)

Authority

1. The *Marine Safety (Domestic Commercial Vessel) National Law*, set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the national law), provides for this Order to be made.
2. Division 5 of Part 4 of the national law provides for matters that can be prescribed in the regulations for certificates of survey for domestic commercial vessels.
3. Subsection 159(1) of the national law provides for regulations to be made 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 national law.
4. Subsection 159(2) of the national law provides for regulations to be made prescribing the standards for domestic commercial vessels.
5. Subsection 159(5A) of the national law provides for regulations to be made for the conduct of the survey of vessels.
6. Subsection 163(1) of the national law provides that the National Regulator may make a Marine Order for any matter for which provision must or may be made by regulations, other than for matters mentioned in the section.
7. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time including the National Standard for Commercial Vessels (NSCV) and the Uniform Shipping Laws (USL Code).
8. 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.
9. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. This Order repeals and replaces *Marine Order 503 (Certificates of survey — national law) 2013*.

Overview

11. This Order prescribes matters for the national law in relation to the application, issue, variation, suspension and revocation of certificates of survey for domestic commercial vessels. It also prescribes the standards that apply to a domestic commercial for the issue of a certificate of survey.
12. This Order repeals and replaces *Marine Order 503 (Certificates of survey — national law) 2013*.

Consultation

13. A copy of the draft of this Order was sent to AMSA's domestic commercial vessel and fishery advisory committees and to members of the Maritime Agencies Forum which represents the marine safety authorities of each State and Territory. A copy was also released for external public consultation on 15 September 2017 for a four week period. Comments arising from the external public consultation process were received from 24 members of the public with comments predominantly concerning application of the standards. These comments were taken into account in the preparation of the final draft.

14. The Office of Best Practice Regulation (OBPR) has advised that based on the information provided to it, the regulatory impacts of the amendments in this Order appear minor and no formal Regulation Impact Statement assessed by the OBPR is required. The OBPR reference number is 21923.

Documents incorporated by reference

15. Parts of the following documents are incorporated by reference:

- *Marine Order 501 (Administration — national law) 2013*;
- *Marine Order 507 (Load line certificates — national law) 2013*;
- the National Standard for the Administration of Marine Safety, endorsed by the Australian Transport Council on 6 November 2009 (NSAMS);
- the National Standard for Commercial Vessels;
- the Uniform Shipping Laws Code;
- AS/NZS 3000 *Electrical installations*.

16. The manner of incorporation for Marine Orders 501 and 507 is as in force from time to time 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*).

17. The manner of incorporation for NSAMS, NSCV and USL Code is specified for each instrument as existing from time to time. These instruments are available for free from the AMSA website at <http://www.amsa.gov.au>.

18. The manner of incorporation of AS/NZS 3000 *Electrical installations* is existing from time to time. This standard is available through libraries, or for purchase at SAI Global at <http://www.saiglobal.com>. This standard can also be made available for viewing, at no cost at an AMSA office, by phoning (02) 6279 5000 or using the contact details on the AMSA website at <http://www.amsa.gov.au>.

Commencement

18. This Order commenced on 1 January 2018.

Contents of this instrument

19. Division 1 (Preliminary) has 3 provisions.

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

21. Section 1A states that this Order commences on 1 January 2018.

22. Section 1B provides for the repeal of *Marine Order 503 (Certificates of survey — national law) 2013*.

23. Division 2 (Requirements for certificates of survey) has 7 provisions.

24. Section 2 specifies that an application for a certificate of survey for a domestic commercial vessel must be in accordance with section 9 of *Marine Order 501 (Administration — national law) 2013*. Section 9 of that Order specifies the form and content of an application.

25. Section 3 prescribes the survey process requirements that a domestic commercial vessel must meet for the issue of a certificate of survey for paragraph 38(1)(b) of the national law. New vessels and transitional vessels are to be surveyed in accordance with section 4 of NSAMS while existing vessels are to be surveyed in accordance with section 4 of NSAMS, Section 14 of the USL Code, or another survey process that applied to the vessel when it was last surveyed before 1 July 2013. Surveys, including electrical surveys for plan approval, are to be conducted by accredited

marine surveyors, the National Regulator, or recognised organisations. Electrical surveys other than for plan approval may be conducted by a person who holds an unrestricted electrical licence or a person who is an accredited marine surveyor.

26. Section 4 prescribes the standards that a domestic commercial vessel must meet for the issue of a certificate of survey under subsection 159(2) of the national law. These prescribed standards include standards set out in the NSCV and the USL Code dealing with construction, subdivision, stability, fire safety, machinery and equipment. This section applies to a domestic commercial vessel that is not surveyed by a recognised organisation.

27. Section 5 prescribes the standards that a domestic commercial vessel must meet for the issue of a certificate of survey under subsection 159(2) of the national law. The standards prescribed are the class rules for construction, machinery, anchoring equipment and electrical installations, and where no class rules apply, the specified standards set out in the NSCV and the USL Code. This section applies to a domestic commercial vessel that is surveyed by a recognised organisation.

28. Section 6 prescribes the criteria for the issue of a certificate of survey for a domestic commercial vessel for paragraph 38(1)(c) of the national law. The criteria prescribed relate to compliance with survey requirements and prescribed standards, the vessel's suitability for intended use and whether the vessel has a valid load line certificate.

29. Section 7 prescribes the conditions attaching to a certificate of survey for a domestic commercial vessel for paragraph 38(3)(a) of the national law.

30. Section 8 specifies that the duration of a certificate of survey for a domestic commercial vessel is 5 years if the certificate does not specify a date on which it ceases to be in force.

31. Division 3 (Variation, suspension and revocation of certificates of survey) has 4 provisions.

32. Section 9 specifies that an application for the variation, suspension or revocation of a certificate of survey must be made by the owner of the vessel in the approved form.

33. Section 10 prescribes the criteria for the variation of a certificate of survey for paragraphs 40(1)(b) and 40(2)(a) of the national law.

34. Section 11 prescribes the criterion and purpose for the suspension of a certificate of survey for paragraph 41(1)(b) and subsection 41(2A) of the national law. It also prescribes the period of suspension for paragraph 41(3)(b).

35. Section 12 prescribes the criteria for revocation of a certificate of survey for paragraphs 42(1)(b) and 42(2)(a) of the national law. It also prescribes the period of suspension of the certificate for paragraph 41(3)(b).

36. Division 4 (Equivalent means of compliance) contains 4 provisions.

37. Section 13 provides the circumstances for the approval by the National Regulator of an equivalent means of compliance.

38. Section 14 sets out the matters that must be included in any application for the approval of an equivalent means of compliance.

39. Section 15 gives the National Regulator the power to revoke an equivalent means of compliance. A decision to revoke an equivalent means of compliance is a reviewable decision.

40. Section 16 sets out the duration of an equivalent means of compliance.

41. Division 5 (Definitions and interpretation) contains 2 provisions.
42. Section 17 sets out the definitions for the Order.
43. Section 18 sets out the meaning of existing vessel, transitional vessel and new vessel for the Order.
44. Schedule 1 lists changes, including changes to the operation of a domestic commercial vessel and its arrangements, that trigger the following:
- for a new vessel, the replacement of the standards for construction, subdivision, stability, fire safety, machinery and associated systems that the vessel was required to meet when it was first issued a certificate of survey (see paragraph 4(4)(a));
 - the power for revocation of the certificate of survey by the National Regulator (see paragraph 12(2)(c));
 - an existing vessel being taken to be a transitional vessel (see paragraph 18(2)(a)).
45. Schedule 2 sets out the standards applying to a domestic commercial vessel that is a transitional vessel. The standards mentioned in Schedule 2 apply according to the kind of vessel and the nature of the changes that has occurred to the vessel's operations, arrangements or equipment.

Statement of compatibility with human rights

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

Overview of the legislative instrument

47. This Order is made under the *Marine Safety (Domestic Commercial Vessel) National Law* and prescribes matters concerning certificates of survey for domestic commercial vessels. More specifically, it prescribes matters for the application, issue, variation, suspension and revocation of certificates of survey for such vessels, and in the particular, the survey process and standards that apply in relation to the survey of domestic commercial vessels.

48. This Order repeals and replaces *Marine Order 503 (Certificates of survey — national law) 2013*.

Human rights implications

49. This Order does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

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