

Explanatory Statement

Marine Orders Amendment (Marine Order 76 — consequential changes) 2017 (Order 2017/9)

Authority

1. Section 65 of the *Navigation Act 2012* (the Navigation Act) provides that regulations may be made about the health of seafarers.
2. Paragraph 164(2)(a) of the Navigation Act provides that the regulations may provide for the medical fitness of licensed pilots.
3. Paragraph 340(1)(h) of the Navigation Act provides that regulations may provide for giving effect to the STCW Convention.
4. Paragraph 340(1)(i) of the Navigation Act provides that regulations may provide for giving effect to the Maritime Labour Convention.
5. 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.
6. 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.
7. 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.
8. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Order amends 7 Marine Orders (the amended Orders) to make consequential changes as a result of the commencement of *Marine Order 76 (Health — medical fitness) 2017* that repealed and replaced *Marine Order 9 (Health — medical fitness) 2010*.

Overview

10. This Order makes consequential changes as a result of the commencement of *Marine Order 76 (Health — medical fitness) 2017*. Marine Order 76 commenced on 1 January 2018. The amendments in this Order relate to the substitution or insertion of the definition of *certificate of medical fitness* in 6 Marine Orders and the replacement or omission of the mention of repealed *Marine Order 9 (Health — medical fitness) 2010* in 2 Marine Orders.

11. The definition of *certificate of medical fitness*, that is being either substituted or inserted in the amended Orders, makes clear the kind of certificate of medical fitness for Marine Order 76 that a person is required to have.

Consultation

12. A copy of the draft of this Order was placed on the AMSA website for public comment on 8 August 2017 for a consultation period of 6 weeks. Around 200 stakeholders including seafarer representative organisations, training organisations, ship operators, shipping and cargo industry bodies, recognised organisations and various government bodies were invited to comment on the draft Order. No comments were received.

13. 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

14. The amendments made to Marine Orders 2, 54, 70, 71, 72, 73 and 74 incorporate into those Orders the mention of *Marine Order 76 (Health — medical fitness) 2017*. 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 76 (Health — medical fitness) 2017* is adopted as in force from time to time because it is adopted by reference to its title in the amended Orders.

15. For Marine Order 2, section 10 of the *Acts Interpretation Act* (as applied by the *Legislation Act*) will also apply to the mention of Marine Orders 47, 51 and 54, so that they are adopted as in force from time to time.

Commencement

16. This Order commenced immediately after the commencement of *Marine Order 76 (Health — medical fitness) 2017*. Marine Order 76 commenced on 1 January 2018.

Contents of this instrument

17. Item 1 of Schedule 1 omits each mention of *Marine Order 9 (Health — medical fitness)* in item 16 of Division 2 (inserted material) of *Marine Order 2 (Australian International Shipping Register) 2016* and inserts *Marine Order 76 (Health — medical fitness) 2017*. Marine Order 9 was repealed and replaced by Marine Order 76 on 1 January 2018.

18. Item 1 of Schedule 2 substitutes the definition of *Certificate of Medical Fitness* in subsection 4(1) of *Marine Order 54 (Coastal pilotage) 2014*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for a pilot licence.

19. Item 1 of Schedule 3 substitutes the definition of *certificate of medical fitness* in section 4 of *Marine Order 70 (Seafarer certification) 2014*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for the specified certificate or endorsement.

20. Item 2 of Schedule 3 omits the mention of Marine Orders 9, 47 and 51 from section 63 of Marine Order 70 and inserts mention of Marine Order 47, 51 and 54. Marine Order 9 was repealed by Marine Order 76 on 1 January 2018 and its mention in section 63 is no longer required. The insertion of Marine Order 54 assists the interpretation of Marine Order 70.

21. Item 1 of Schedule 4 inserts a definition for *certificate of medical fitness* in *Marine Order 71 (Masters and deck officers) 2014*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for the specified certificate or revalidation of certificate.

22. Item 1 of Schedule 5 inserts a definition for *certificate of medical fitness* in *Marine Order 72 (Engineers officers) 2014*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for the specified certificate or revalidation of certificate.

23. Item 1 of Schedule 6 inserts a definition for *certificate of medical fitness* in *Marine Order 73 (Ratings) 2014*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for the specified certificate or revalidation of certificate.

24. Item 1 of Schedule 7 inserts a definition for *certificate of medical fitness* in *Marine Order 74 (Masters and deck officers —yachts) 2015*. The new definition makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have for the specified certificate or revalidation of certificate.

Statement of compatibility with human rights

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

Overview of the legislative instrument

26. This Order makes consequential changes in relation to the commencement of *Marine Order 76 (Health — medical fitness) 2017*. Marine Order 76 commenced on 1 January 2018 and repealed and replaced *Marine Order 9 (Health — medical fitness) 2010*.

27. The amendments in this Order relate to the substitution or insertion of the definition of *certificate of medical fitness* in 6 Marine Orders and the replacement or omission of the mention of repealed *Marine Order 9 (Health — medical fitness) 2010* in 2 Orders.

28. The definition of *certificate of medical fitness*, that is either being substituted or inserted in the amended Orders, makes clear the kind of certificate of medical fitness under Marine Order 76 that a person is required to have. The amendments avoid confusion and assists the user of each amended Order by clearly identifying the provisions of Marine Order 76 that relate to their circumstance.

Human rights implications

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

Conclusion

30. AMSA considers that 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

31. 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*.