

Explanatory Statement

Marine Order 503 (Certificates of survey — national law) 2018 (Order 2018/8)

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) 2017*.

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 prescribes the standards that apply to a domestic commercial for the issue of a certificate of survey and also prescribes the standards to be met for the survey of a domestic commercial vessel.
12. This Order repeals and replaces *Marine Order 503 (Certificates of survey — national law) 2017*.

Consultation

13. The changes to the survey regime for domestic commercial vessels has been the subject of extensive consultation with stakeholders over a number of years, commencing with the 2014 Streamlining Review of National System undertaken on decision of the then Standing Council on Transport and Infrastructure. Consultation has been undertaken with state and territory governments, industry, and the broader community through a number of forums. Face to face consultations were undertaken around Australia, including at 24 open consultation sessions attended by approximately 800 stakeholders, one round table discussion with key industry representatives and

presentations at industry association meetings. Seventy-nine written submissions were received from stakeholders in response to the 2014 Streamlining Review, with many providing comments on the then current survey arrangements.

14. Public consultation on the proposed survey regime occurred from 17 August 2015 to 12 October 2015. Fourteen written submissions on the Consultation Regulation Impact Statement (RIS) were received during the consultation period. The Consultation RIS was approved by the OBPR. The Office of Best Practice Regulation (OBPR) reference number is 18689.
15. The *Decision Regulation Impact Statement – Survey under the National System for Domestic Commercial Vessels* prepared by AMSA addresses the regulatory impact of the changes to the survey regime for domestic commercial vessels implemented through this Order. The Decision RIS was approved by the OBPR and is attached to this statement. This document may be accessed on the Department of Prime Minister and Cabinet website: http://ris.pmc.gov.au/sites/default/files/posts/2018/02/survey_under_the_national_system_for_domestic_commercial_vessel_safety_ris.pdf. The Office of Best Practice Regulation (OBPR) reference number is 18689.
16. One minor technical change was also made to the Order separate to changes covered by the RIS. This change is to include an additional survey ‘modifier’ for vessels that are 15 years or older in age and not made of steel or aluminium. The OBPR has advised that based on the information provided to it, the regulatory impacts of those changes appear minor and no formal Regulation Impact Statement assessed by the OBPR is required. The OBPR reference number is 23217.
17. A copy of this Order was released for external public consultation on 4 April 2018 for a four week period. Comments arising from the external public consultation process were received from 26 members of the public with comments predominantly concerning the changes to the survey regime for domestic commercial vessels. These comments were taken into account in the preparation of the final draft.

Documents incorporated by reference

18. Parts of the following documents are incorporated by reference:
 - *Marine Order 501 (Administration — national law) 2013* (Marine Order 501);
 - *Marine Order 507 (Load line certificates — national law) 2018* (Marine Order 507);
 - International Convention for the Prevention of Pollution from Ships (MARPOL);
 - International Convention on Load Lines (Load Lines Convention);
 - the National Law – Marine Surveyors Accreditation Guidance Manual 2014;
 - the National Standard for Commercial Vessels;
 - the USL Code; and
 - AS/NZS 3000 *Electrical installations*.
19. 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*).
20. MARPOL is of treaty status and is incorporated as amended and in force for Australia from time to time (see definition of *MARPOL* in *Marine Order 1 (Administration) 2013* and definition of *the Convention* in subsection 3(1) of the *Pollution Prevention Act*). MARPOL, including any amendments, can be found in the

Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Information about obtaining hard copies of MARPOL is available on the AMSA website at <http://www.amsa.gov.au>.

21. The Load Lines Convention is of treaty status and is incorporated as amended and in force for Australia from time to time (see definition of *Load Lines Convention* in *Marine Order 1 (Administration) 2013*). Load Lines Convention, including any amendments, can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Information about obtaining hard copies of the Load Lines Convention is available on the AMSA website at <http://www.amsa.gov.au>.
22. The manner of incorporation for the National Law – Marine Surveyors Accreditation Guidance Manual 2014, 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>.
23. 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

24. This Order commenced on 1 July 2018.

Contents of this instrument

25. Division 1 (Preliminary) has 5 provisions.
26. Section 1 sets out the name of the Order.
27. Section 1A states that this Order commences on 1 July 2018.
28. Section 1B provides for the repeal of Marine Order 503 (Certificates of survey — national law) 2017 (the repealed Marine Order 503).
29. Section 2 provides that a person may apply for a determination mentioned in the National Law – Marine Surveyors Accreditation Guidance Manual 2014. The National Regulator may make a determination for a matter that is specified in the Guidance Manual to be made by it. At the time of making of this instrument, a determination was specified to be made for the allocation of vessels to survey frequency categories. This determination power would only be used to allocate vessels to a survey frequency category where they do not fit within any category specified in Schedule 3 of the Order. All vessels are intended to be covered by the categories specified in the Order; however, there may be some existing vessels which have ‘grandfathered’ (pre-National System) arrangements which have a Restricted Class and which need to be considered on an individual vessel basis. A determination may be given subject to conditions. As an application for a determination is to be made in accordance with Marine Order 501, merits review applies to any decision in accordance with section 13 and Division 4 of that Order.
30. Section 3 provides that a person may apply for an approval mentioned in the National Law – Marine Surveyors Accreditation Guidance Manual 2014. The National Regulator may make an approval for a matter that is specified to be made by it in the Guidance Manual. At the time of making of this instrument, an approval was specified to be made for changes to the type and depth of periodic survey required for the vessel. These approvals would only cover the items specified in the manual (what needs to be surveyed and how the survey is conducted), and not the survey frequency requirements

set out in the Order. The National Regulator may give an approval subject to conditions.

31. As an application for an approval is to be made in accordance with Marine Order 501, merits review applies to any decision in accordance with section 13 and Division 4 of that Order.
32. Division 2 (Requirements for certificates of survey) has 9 provisions.
33. Section 4 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. This provision is the same as the application provision (section 2) in the repealed Marine Order 503.
34. Section 5 prescribes standards that apply in relation to the conduct of a survey of a domestic commercial vessel. An initial survey, periodic survey and renewal survey must be conducted in accordance with Part 2 of the National Law – Marine Surveyors Accreditation Guidance Manual 2014.
35. Section 6 sets out who must conduct the survey of a domestic commercial vessel. Subsection (1) provides that, other than for electrical survey, the person must be the National Regulator, an accredited marine surveyor, or a recognised organisation. Subsection (2) provides that a vessel that is $\geq 35\text{m}$ is required to be surveyed in accordance with Chapter 5 of Part 2 of the National Law – Marine Surveyors Accreditation Guidance Manual 2014. However, a vessel that is an existing vessel or transitional vessel, as defined in section 22, that is $\geq 35\text{m}$ is excepted from this requirement where the survey process that applied to the vessel when last surveyed before 1 July 2013 permitted the vessel to be surveyed by a person other than a recognised organisation. Subsections (3) and (4) deal with who may a conduct electrical survey of a vessel.
36. Section 7 prescribes the vessel and equipment standards for a vessel that is not surveyed by a recognised organisation. A person who is not a recognised organisation that surveys a vessel is an accredited marine surveyor. These prescribed standards include standards set out in the NSCV and the USL Code dealing with construction, subdivision, stability, fire safety, machinery and equipment. The standards prescribed are for an existing vessel, new vessel, or transitional vessel. However, for a new vessel built as a sister vessel, it may comply with the standards mentioned in subsection (3) up to 3 years before the first construction phase occurs. Also, a new vessel must comply with the standards that applied to it when it was first issued a certificate of survey or other approval unless a change mentioned in Schedule 1 has occurred or the vessel has not had a certificate of survey or other approval to operate in force for at least 2 years. This provision is mostly the same as the comparable provisions on standards for vessels surveyed by a person that is not a recognised organisation (section 4) in the repealed Marine Order 503, with the exception of an additional provision dealing with standards for new vessels built as sister vessels.
37. Section 8 prescribes the vessel and equipment standards for a vessel that is surveyed by a recognised organisation. Some vessels must be surveyed by a recognised organisation (in accordance with section 6) – where this is the case, the standards prescribed are the class rules for construction, machinery, anchoring equipment and electrical installations, and for all other aspects of the vessel, the specified standards set out in the NSCV and the USL Code. For vessels where the owner elects for the vessel to be surveyed by a recognised organisation, either class rules or the NSCV/USL Code standards are specified for the construction, machinery, anchoring equipment and electrical installations aspects. For all other aspects of the vessel, the specified standards are those set out in the NSCV and the USL Code.

38. Section 9 prescribes the criteria that the National Regulator must be satisfied of for the issue of a certificate of survey of a vessel. Subsection 9(1) provides the circumstances when a vessel must complete an initial or, in some cases a renewal, survey for the issue of a certificate of survey. Subsection 9(2) specifies further criteria for the issue of a certificate of survey including when the vessel must meet Annex I of MARPOL construction and equipment standards and have an EIAPP certificate issued in accordance with Annex VI MARPOL. If Marine Order 507 applies to the vessel, the National Regulator must also be satisfied that the vessel has a load line certificate or will obtain a load line certificate at some time in the future, as a criteria for the issue of a certificate of survey.
39. Section 10 relates to renewal of certificates so that the National Regulator can now renew a certificate of survey in the specified circumstances. The circumstances specified include where the vessel has had a certificate of survey in force in the 2 year period before application for a certificate, but the certificate has expired. However, the National Regulator may not renew a certificate of survey if the vessel has had a change mentioned in Schedule 1 or the vessel does not meet the criteria specified in subsections 9(2) and (3). In those circumstances, an application for the issue of a further certificate of survey will need to meet the criteria for first time issue of a certificate of survey specified in section 9. A decision by the National Regulator to refuse to renew a certificate is a reviewable decision for section 16 (internal review) and section 17 (review by the Administrative Appeals Tribunal) of Marine Order 501.
40. Section 11 sets out the conditions that apply on the issue of a certificate of survey. The conditions that apply include a vessel completing the periodic surveys mentioned in Schedule 3. There are new periodic survey requirements which will reduce the periodic survey frequency for the majority of the fleet. A survey frequency (high, medium or low) is specified, and when a periodic survey must be conducted, for each class of vessel, and depending on whether any *modifier* (or risk) is associated with its operations. This frequency is set out in Table 2 of Schedule 3.
41. A survey frequency category is specified for a vessel based on risk, and depending on the vessel service and operational area category and whether the vessel is operating with or without passengers or with or without a survey modifier. In section 21, a *modifier* is defined to specify certain higher risk factors including where the vessel carries dangerous goods including petroleum or gas products (other than petroleum or gas products intended for use on the vessel or fireworks carried on the vessel only for use on the vessel for a fireworks display), or where the vessel is 15 years or older and made of materials other than steel or aluminium. Vessels used for, or that have, any of the attributes set out in the definition of *modifier* in section 21 are required to undergo periodic surveys at a higher frequency than a vessel of the same kind without a modifying attribute. For example, a vessel of a kind in 'low' survey frequency will be required to undergo the surveys at the frequency for vessels in 'medium' frequency. Where a vessel is built to class rules for construction, machinery, anchoring equipment and electrical installations, those aspects of the vessel must be surveyed at the frequency required by the class rules. For all other aspects of the vessel, Tables 1 and 2 apply.
42. A new condition has been included which requires vessel owners to notify the National Regulator if any changes are made to a vessel's structure, arrangements, material or scantlings. This requirement to notify the National Regulator only applies to changes of these kinds made to the vessel after the commencement of this Order on 1 July 2018. New subsection (3) provides clarification that any certificate of survey issued prior to 1 July 2018 is also subject to the conditions mentioned in section 11.
43. Section 12 sets out a duration of five years for the certificate of survey if the certificate itself does not specify its date of expiry.

44. Division 3 (Variation, suspension and revocation of certificates of survey) has 4 provisions.
45. Section 13 provides that an application for variation, suspension or revocation of a certificate of survey must be in made by the owner in the approved form and be accompanied by any prescribed fee.
46. Section 14 prescribes the criteria for the variation of a certificate of survey for paragraphs 40(1)(b) and 40(2)(a) of the national law. There is a new criterion that provides for variation in circumstances of removal of a service category. Furthermore, there is a new criteria for variation of a certificate of survey, on the National Regulators own initiative, which will enable the National Regulator to vary a certificate in circumstances where there has been in change in relation to conditions imposed on the certificate under section 38(3)(b) of the national law. This could be for example, where the National Regulator has become aware that a condition previously imposed on the certificate is no longer appropriate or necessary.
47. Section 15 prescribes the criteria 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). This provision is the same as the comparable provision relating to suspension of a certificate (section 11) in the repealed Marine Order 503.
48. Section 16 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). This provision is the same as the comparable provision relating to the criteria for revocation of a certificate (section 12) in the repealed Marine Order 503
49. Division 4 (Equivalent means of compliance) has 4 provisions.
50. Section 17 provides the circumstances for the approval by the National Regulator of an equivalent means of compliance.
51. Section 18 sets out the matters that must be included in any application for the approval of an equivalent means of compliance. This provision is the same as the application for an equivalent means of compliance provision (section 14) in the repealed Marine Order 503.
52. Section 19 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. This provision is the same as the comparable provision relating to the criteria for revocation of an equivalent means of compliance (section 15) in the repealed Marine Order 503.
53. Section 20 sets out the duration of an equivalent means of compliance.
54. Division 5 (Definitions and interpretation) contains 3 provisions.
55. Section 21 sets out the definitions for the Order. The definition section includes new definitions for the following terms and expressions: EIAPP certificate; high speed thrill ride vessel; initial survey; Load Lines Convention; landing barge; MARPOL; modifier; novel vessel; periodic survey; National Law – Marine Surveyors Accreditation Guidance Manual 2014; renewal survey; sister vessel; safety equipment; and unpowered barge.
56. Section 22 sets out the meaning of existing vessel, transitional vessel and new vessel for the Order. These terms have the same meaning as the definitions in the section 17 of the repealed Marine Order 503.

57. Section 23 deals with transitional and saving matters in relation to applications for the issue, variation, suspension or revocation of a certificate of survey made on or before 30 June 2018 but not yet decided by the National Regulator by 1 July 2018. Subsection (2) provides that the application is taken to be an application made for the purposes of this Order. This is to ‘preserve’ applications made under the repealed Marine Order 503 but not yet decided when this Order commences. Subsection (3) allows the National Regulator to continue to assess an application made on or before 30 June 2018 but not yet decided on 1 July 2018 in accordance with the respective criteria set out the repealed Marine Order 503. Subsections (2) and (3) have been included to avoid applicants having to withdraw and resubmit any applications after the commencement of this Order, or having to provide further or different information and documents to demonstrate the respective criteria has been met.
58. 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;
 - the power for revocation of the certificate of survey by the National Regulator;
 - an existing vessel being taken to be a transitional vessel.
59. 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.
60. Schedule 3 sets out the frequencies at which vessels needs to undergo periodic surveys in order to comply with a condition of a certificate of survey under section 11 (1) (a) of this Order. Table 1 sets out the years at which a vessel must undergo a periodic survey. For example, vessels in low survey frequency are not required to complete any periodic surveys, with an initial survey and a renewal survey the only surveys required for the duration of its certificate; a vessel in medium survey frequency is required to complete one periodic survey in the third year of its certificate in the six month window that corresponds to the expiry date of its certificate; and a vessel in high survey frequency is required to complete one periodic survey in the first, second and third year of its certificate in the six month window that corresponds to the expiry date of its certificate. Table 2 of Schedule 3 places all vessels into a survey frequency of either ‘high’, ‘medium’ or ‘low’, as explained above. Table 2 has 46 items.

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. 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.
63. This Order repeals and replaces *Marine Order 503 (Certificates of survey — national law) 2017*.

Human rights implications

64. Article 6 of the International Covenant on Economic, Social and Cultural Rights (the *Covenant*) recognises the right to work, defined as the opportunity of everyone to gain their living by freely chosen or accepted work. This instrument engages Article 6 as it reduces the frequency at which some domestic commercial vessels will need to be surveyed, meaning the availability of work for persons who survey these vessels may reduce.
65. Under the repealed Marine Order 503 and this Order, surveys of domestic commercial vessels must be conducted by marine surveyors who are accredited by AMSA under the *Marine Safety (Domestic Commercial Vessel) national Law Regulation 2013*, or a recognised organisation. The national marine surveyor accreditation scheme commenced on 2 January 2015 and is a mechanism through which the AMSA, as the National Regulator, ensures that marine surveyors are competent to conduct and provide reports of surveys of domestic commercial vessels. These reports form part of the basis for the issuing of certificates of survey.
66. This Order will continue to require all surveys of domestic commercial vessels will continue to be performed by accredited marine surveyors or recognised organisations; however, the frequency which vessels need to be surveyed will reduce for most vessels required to have a certificate of survey.
67. The national marine accreditation scheme created important work opportunities. Before 2015, surveys of commercial vessels were conducted by private (non-government) surveyors in very limited circumstances in the majority of states and territories, with the vast majority of surveys conducted by government employed surveyors. By contrast, the opposite will be the case going forward, with the majority of surveys of domestic commercial vessels across Australia to be performed by private accredited marine surveyors.
68. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making the instrument

69. 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*.