

Replacement Explanatory Statement

Marine Order 501 (Administration – national law) Amendment Order 2018 (Order 2018/6)

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. Divisions 2 and 5 of Part 4 of the National Law provide for matters to be prescribed in the regulations about certificates of survey for domestic commercial vessels.
3. Subsection 159(2) of the National Law provides for regulations to be made prescribing standards for the National Law.
4. Subsection 159(5A) of the National Law provides for regulations to be made for the conduct of the survey of vessels.
5. Subsection 163(1) of the National Law provides for the making of Marine Orders about matters that can be made by the regulations.
6. 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 Code (USL Code).
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, Marine Order 501 (Administration – national law) Amendment Order 2018, was made under subsection 163(1) of the National Law and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

9. This Order amends *Marine Order 501 (Administration – national law) 2013* (Marine Order 501) to:
 - (a) prescribe the National Law – Marine Surveyors Accreditation Guidance Manual 2014 (Marine Surveyors Manual) as a prescribed standard for the purposes of the National Law and Marine Orders made under that law, including *Marine Order 503 (Certificates of survey – national law) 2018* (Marine Order 503);
 - (b) remove reference to National Standard for the Administration of Marine Safety (NSAMS) from the list of prescribed standards, consequential to changes made through Marine Order 503;
 - (c) remove reference to NSCV Part E – Operations (Part E) from the list of prescribed standards, consequential to changes made through *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018* (Marine Order 504) commencing on 1 July 2018;
 - (d) correct outdated references to Marine Orders, as a result of changes made through *Marine Order 502 (Vessel identifiers – national law) 2017* (Marine Order 502) and *Marine Order 507 (Load line certificates – national law) 2018* (Marine Order 507); and
 - (e) remove references to decisions made by a State and Territory marine safety agencies as being decisions made by the National Regulator, consequential

to the revocation of AMSA's delegation arrangements with State and territory marine safety agencies from 1 July 2018.

Overview

10. This Order prescribes the Marine Surveyors Manual as a prescribed standard under Marine Order 501 for the purposes of the National Law and Marine Orders. It also amends Marine Order 501 to remove references to standards which are no longer to be prescribed. This Order also updates a number of outdated references to existing Marine Orders in Marine Order 501, and removes provisions relating to matters with respect to State and Territory marine safety agencies which will be redundant from 1 July 2018.

Consultation

11. This Order was not publicly consulted on because the amendments are all minor editorial, administrative or consequential amendments that do not substantially alter existing arrangements provided for under Marine Order 501 or other Marine Orders.

12. 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

13. The Order incorporates by reference one additional instrument, being the National Law – Marine Surveyors Accreditation Guidance Manual 2014. Other instruments also incorporated are:

- (a) NSCV Parts B, C, D, F and G; and
- (b) USL Code.

14. The manner of incorporation for Marine Surveyors Manual, and the NSCV and USL Code, are specified for each instrument as existing from time to time. These instruments are available for free from the Australian Maritime Safety Authority (AMSA) website at <http://www.amsa.gov.au>.

Commencement

15. This Order commenced on 1 July 2018.

Contents of this instrument

16. Section 1 sets out the name of this Order.

17. Section 2 states that this Order commences on 1 July 2018.

18. This Order has one schedule which amends Marine Order 501. Section 3 of this Order provides that Schedule 1 amends Marine Order 501 in accordance with the amendments in that schedule.

Schedule 1 Marine Order 501 (Administration) 2013

19. Item 1 of Schedule 1 of this Order omits section 5 of Marine Order 501.

20. Item 2 of Schedule 1 of this Order substitutes the heading of this provision to *section 5 – fit and proper person*, consequential to section 5 being omitted as above. This is to reorder the numbering of the provisions of Marine Order 501 so that they are consecutive.

21. Item 3 of Schedule 1 of this Order amends section 6A of Marine Order 501 to amend the provision heading to *section 6 – Standards*, consequential to section 5

being omitted as above. This is to reorder the numbering of the provisions of Marine Order 501 so that they are consecutive. This item also prescribes the Marine Surveyors Manual as a standard prescribed for the purposes of the National Law.

22. The Marine Surveyor Manual has two parts. Part 1 sets out the requirements for an individual to be accredited by AMSA as a marine surveyor entitled to survey domestic commercial vessels under Marine Order 503. This part of the Marine Surveyors Manual is based on requirements currently existing under Part 3 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* (National Law Regulation).

23. Part 2 of the Marine Surveyor Manual prescribes the manner in which a person authorised by Marine Order 503 to conduct a survey on a domestic commercial vessel is required to undertake that survey. Part 2 of the Marine Surveyor Manual consolidates requirements that previously applied under Section 4 of NSAMS and through AMSA's instructions to surveyors. It is also based on requirements which are contained in the new Marine Order 503.

24. Item 3 of Schedule 1 of this Order also removes reference to NSAMS from the list of prescribed standards. These amendments are consequential to changes made through Marine Order 503 and Marine Order 507.

25. Item 3 of Schedule 1 of this Order also amends section 6A of current Marine Order 501 to remove reference to NSCV Part E from the list of prescribed standards. This amendment is consequential to changes made through Marine Order 504.

26. Item 4 of Schedule 1 of this Order amends section 7 of Marine Order 501 to include a new definition for the term National Law – Marine Surveyors Accreditation Guidance Manual 2014. The corresponding definition for the term NSAMS in Marine Order 501 has also been omitted.

27. Item 5 of Schedule 1 of this Order amends the Note to subsection 8(1) of Marine Order 501 to remove reference to NSCV Part E.

28. Item 6 of Schedule 1 of this Order amends subsection 9(a) of the current Marine Order 501 to remove reference to applications made under a Marine Order to be accompanied by any fee charges by a State or Territory agency for a thing done by a delegate of the National Regulator. The requirement to pay any prescribed fee charged by the National Regulator, being a fee prescribed under the National Law Regulation, remains unchanged.

29. Item 7 of Schedule 1 of this Order amends Note 2 to subsection 9(a) of Marine Order 501 to remove reference to fees charges by a State or Territory agency, as above.

30. Item 8 of Schedule 1 of this Order amends Division 2 of schedule 1 of Marine Order 501. These changes are to update outdated references to Marine Order 502 and Marine Order 507. No other changes have been made to the matters set out in Division 2 of Schedule 1.

Statement of compatibility with human rights

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

Overview of the legislative instrument

32. This Order prescribes the Marine Surveyors Manual as a prescribed standard under Marine Order 501 for the purposes of the National Law and Marine Orders. It also amends Marine Order 501 to remove references to standards which are no longer to be prescribed. This Order also updates a number of outdated references to

existing Marine Orders in Marine Order 501 which have been recently amended, and removes provisions relating to matters with respect to State and Territory marine safety agencies which will be redundant from 1 July 2018.

Human rights implications

33. 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

34. AMSA considers that 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

35. 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*.