

## Explanatory Statement

### Marine Order 44 (Safe containers) 2019 (Order 2019/1)

#### Authority

1. Subsection 112(4) of the *Navigation Act 2012* (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, stowage and carriage of cargo in vessels and the unloading of cargo from vessels.
3. 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.
4. Paragraph 340(1)(f) of the Navigation Act provides that the regulations may give effect to the Container Convention.
5. Subsection 341(1) of the Navigation Act provides for the imposition of penalties for a contravention of a provision of the regulations.
6. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders (to be known as Marine 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 Marine Order is a legislative instrument for the *Legislation Act 2003*.

#### Purpose

9. This Marine Order gives effect to the International Convention for Safe Containers (Container Convention).
10. This Marine Order makes provision for the maintenance, examination and marking of offshore containers in line with the *Guidelines for the approval of offshore containers handled in open seas* adopted by the International Maritime Organization and contained in the supplement to the International Maritime Dangerous Goods Code (IMDG Code).

#### Overview

11. This Marine Order repeals previous *Marine Order 44 (Safe containers) 2002*. When the Marine Order commences, Schedule 24 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Marine Order.
12. The Navigation Act implements Australia's obligations under the Container Convention. This Marine Order is made under the Navigation Act to give effect to the entirety of the Container Convention.
13. The Marine Order implements the *Guidelines for the approval of offshore containers handled in open seas* adopted by the International Maritime Organization and contained in the supplement to the International Maritime Dangerous Goods Code (IMDG Code). The Marine Order provides for the approval, maintenance and inspection requirements for offshore containers that are approved in Australia. The Marine Order also provides for the safe loading

and unloading of cargo, in particular offshore containers, from regulated Australian vessels and foreign vessels.

14. A list of recognised organisations and a list of the approving competent authorities is available at the AMSA website. AMSA has agreements with the recognised organisations and approving competent authorities for provision of approval and certification services for containers and offshore containers. Information on the application process to become a recognised organisation or an approving competent authority is also available at the AMSA website at <http://www.amsa.gov.au>.

### **Consultation**

15. A copy of the draft of this Marine Order was placed on the AMSA website for public comment on 1 February 2019 for a 4 week consultation period. Around 210 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. Three comments on the draft Marine Order were received. The comments were in support of the proposed changes.
16. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Marine 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 Marine Order incorporates by reference parts of the following documents:
  - *Marine Order 1 (Administration) 2013*
  - International Convention for Safe Containers (Container Convention)
  - the *Guidelines for development of an approved continuous examination programme (ACEP)*
  - the *Guidelines for the approval of offshore containers handled in open seas*
  - ISO/IEC 17020:2012 — *Conformity assessment – Requirements for the operation of various types of bodies performing inspection* standard.
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 Marine Order.
19. The Container Convention is incorporated as amended and in force for Australia from time to time. Information on obtaining a free copy of the Container Convention is available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>. Information is also provided concerning access for viewing the Convention, free of charge, at an AMSA office.
20. The *Guidelines for development of an approved continuous examination programme (ACEP)* is a supplement to the Container Convention and is incorporated as amended and in force from time to time. Information on obtaining a free copy of the Container Convention is available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>. Information is also provided concerning access for viewing the Convention, free of charge, at an AMSA office.

21. The International Maritime Organization's *Guidelines for the approval of offshore containers handled in open seas* is incorporated as amended from time to time. The Marine Order also refers to an equivalent international standard for approving an offshore container. These are managed by various international organisations. The standards are generally held by libraries and are available free of charge to members of the public for loan. Where a standard is not freely and readily available at library, AMSA will provide advice regarding the contents of the standard on request. Information on obtaining a free online copy of the guidelines or an equivalent international standard 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 guidelines, free of charge, at an AMSA office.
22. There is one standard with content incorporated in this Marine Order, namely standard ISO/IEC 17020:2012 — *Conformity assessment – Requirements for the operation of various types of bodies performing inspection*. The manner of incorporation of the standard is existing at the time of making of this Marine Order. The Marine Order also refers to an equivalent ISO/IEC 17020:2012 standard. An equivalent standard is managed by various international organisations. The standards are generally held by libraries and are available free of charge to members of the public for loan. Where a standard is not freely and readily available at library, AMSA will provide advice regarding the contents of the standard on request. Information concerning obtaining a copy of the standard 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.
23. IMO published material may also be purchased from:  
International Maritime Organization  
4 Albert Embankment, London SE1 7SR  
Telephone +44(0)20 7735 7611  
Fax +44(0)20 7587 3210  
IMO website: <http://www.imo.org>

### **Commencement**

24. This Marine Order commenced on 1 July 2019.

### **Contents of this instrument**

25. Division 1 (Preliminary) contains 11 provisions that assist the operation, interpretation and administration of the Marine Order.
26. Section 1 sets out the name of the Marine Order.
27. Section 1A provides for the commencement of the Marine Order.
28. Section 1B provides that *Marine Order 44 (Safe containers) 2002* is repealed.
29. Section 2 states the purpose of the Marine Order.
30. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.
31. Section 4 sets out definitions of terms used in the Marine Order.
32. Section 5 provides interpretation assistance for certain expressions.
33. Section 6 states the application of the Marine Order.

34. Section 7 specifies the decisions under the Marine Order that are subject to merits review for sections 17 and 18 of *Marine Order 1 (Administration) 2013*. A decision made under any other section not listed in section 7 is a reviewable decision for *Marine Order 1 (Administration) 2013*.
35. Section 8 provides a savings provision.
36. Section 9 provides a transitional provision.
37. Division 2 (Container Convention containers) contains 14 provisions.
38. Section 10 provides an approval power for AMSA or a recognised organisation to approve containers that comply with the requirements of the Container Convention. The decision of AMSA or a recognised organisation to issue an approval is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*. A list of recognised organisations and information on the application process to become a recognised organisation is available at the AMSA website at <http://www.amsa.gov.au>.
39. Section 11 makes it clear that the owner of a container that has an approval from AMSA must have a safety approval plate fixed to the container. The safety approval plate must meet the requirements set out in the Container Convention. An approval is only issued if a container complies with the Container Convention. Subsection (1) imposes a criminal penalty.
40. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. If the safety approval plate is missing or damaged, a person loading cargo in the container wouldn't know the details of the maximum amount of cargo or information about the loading of dangerous cargo. The application of strict liability to certain offences has been carefully considered and is consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant or unsafe containers from being loaded onto a vessel. It is important that the safety approval plate fixed to a container complies with the Container Convention as it ensures that certain information, such as maximum operating gross mass and allowable stacking load, is easily visible to people loading, unloading, stowing and carrying the container. If the safety approval plate does not comply with the Container Convention requirements, the container may be unsafe. For example, a container that is overloaded with cargo could lead to structural failure or a collapse, which may have serious safety implications, including environmental disaster.
41. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
42. The imposition of a strict liability offence, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the owner of a container from not fixing a safety approval plate that is compliant with the Container Convention and to prevent unlawful activity. The handling of an unsafe container could lead to serious injury or death.

43. Section 12 provides that the owner of a container must ensure that a container is marked with maximum operating gross mass markings that are consistent with the maximum operating gross mass indicated on the container's safety approval plate. Subsection (1) imposes a criminal penalty.
44. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded onto a vessel.
45. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
46. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The maximum gross mass marking is an important means by which to ensure that a container is not overloaded with cargo. The overloading of a container could lead to structural failure of that container or multiple containers underneath it, which may have serious safety implications, including environmental disaster. The handling of an unsafe container could lead to serious injury or death.
47. Section 13 requires the owner of a container with an approval from AMSA or a recognised organisation to remove the safety approval plate if the container no longer complies with the requirements of the Container Convention, for example due to it being modified, or if approval of the container is withdrawn by AMSA or a recognised organisation. Subsection (1) imposes a criminal penalty.
48. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel. The safety approval plate requirements under the Container Convention ensure that the container is safe. If a safety approval plate is required to be removed, it may be because the container is not safe or no longer complies with the Container Convention, which may have serious safety implications for human life, property and the environment.

49. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
50. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The handling of an unsafe container could lead to serious injury or death.
51. Section 14 provides that AMSA or a recognised organisation may withdraw an approval issued by it for a container if it no longer complies with the requirements of the Container Convention. The decision of AMSA or a recognised organisation must be given in writing and is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.
52. Section 15 requires an owner of a container with approval from AMSA or a recognised organisation to maintain the container in accordance with the Container Convention. Subsection (1) imposes a criminal penalty.
53. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel. The requirement to maintain a container in accordance with the Container Convention is an important means by which to ensure that a container is maintained in a safe condition for repeated use. The maintenance process determines whether the container has any defects that could place any person in danger. A container that is not maintained in a safe condition may have serious safety implications, including the handling of an unsafe container, which could lead to serious injury or death.
54. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
55. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The handling of an unsafe container could lead to serious injury or death.
56. Section 16 requires the owner of a container with an approval from AMSA or a recognised organisation to ensure that the container is periodically examined in accordance with the requirements of the Container Convention. This section does not apply if the owner has an approval for the container to be under a continuous examination program. Subsection (1) imposes a criminal penalty of units.

57. Subsection (3) requires the owner of a container to ensure that a container is examined after a defect has been repaired in the container and before the container is loaded onto a vessel after the repair. Subsection (3) imposes a criminal penalty of 50 units.
58. Subsection 16(4) states that a container that has been examined under subsection (3) must be re-examined at specified times. Subsection (4) imposes a criminal penalty of 50 units.
59. Subsection (5) provides that an offence against subsections (1), (3) and (4) are strict liability offences, and subsection (6) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The requirement to have a container examined in accordance with the Container Convention is an important means by which to ensure that a container is maintained in a safe condition. The examination process determines whether the container has any defects that could place any person in danger. A person handling a container is able to identify whether a container is safe to use and when it is due for inspection. A container that is not periodically examined may have serious safety implications, including the handling of an unsafe container, which could lead to serious injury or death.
60. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
61. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The handling of an unsafe container could lead to serious injury or death.
62. Subsection 17(1) requires an owner of a container under a periodic examination scheme to ensure that the container is marked permanently and legibly in accordance with the Container Convention. Subsection (1) imposes a criminal penalty.
63. Subsection (2) provides that an offence against subsections (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent fraudulent activity and non-compliant containers from being loaded or unloaded from a vessel.
64. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order,

the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

65. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The marking of a container under a periodic examination scheme in accordance with the Container Convention is an important means by which to ensure that a container is examined and maintained in a safe condition. The examination process determines whether the container has any defects that could place any person in danger. A container that is not maintained in a safe condition may have serious safety implications, including the handling of an unsafe container, which could lead to serious injury or death.
66. Section 18 provides that the owner of a container may apply to AMSA or a recognised organisation for the approval of a continuous examination program in accordance with the application process outlined in *Marine Order 1 (Administration) 2013*. AMSA or a recognised organisation may approve a continuous examination program if the program meets the requirements of the Container Convention. The decision of AMSA or a recognised organisation to issue an approval is a reviewable decision for *Marine Order 1 (Administration) 2013*. Subsections (3) and (4) provide that the owner of a container with approval of a continuous examination program must ensure that the container is examined at certain times if it has been refurbished or if a hire arrangement ceases. Subsections (3) and (4) impose a criminal penalty.
67. Subsection (5) provides that an offence against subsections (3) and (4) are strict liability offences, and subsection (6) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel.
68. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
69. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The requirement for an owner to have the container examined at certain points under a continuous examination program in accordance with the Container Convention is an important means by which to ensure that a container is maintained in a safe condition. The examination process determines whether the container has any defects that could place any person in danger. A person handling a container is able to identify whether a container is safe to use and when it is due for inspection. A container that is not maintained in a safe condition may have serious safety implications, including the handling of an unsafe container, which could lead to serious injury or death.

70. Section 19 provides that AMSA or a recognised organisation may withdraw an approval issued under section 18. The decision of AMSA or a recognised organisation to withdraw an approval is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.
71. Section 20 requires an owner of a container under a continuous examination program to mark the container in accordance with the Container Convention. Subsection (1) imposes a criminal penalty.
72. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel.
73. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
74. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The marking of a container under a continuous examination program in accordance with the Container Convention is an important way to ensure that a container is maintained in a safe condition. The examination process determines whether the container has any defects that could place any person in danger. A container that is not maintained in a safe condition may have serious safety implications, including the handling of an unsafe container, which could lead to serious injury or death.
75. Section 21 prescribes that a person must not load a container on to, or unload a container from, a vessel in particular circumstances. Subsection (1) imposes a criminal penalty.
76. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel. The unsafe handling of a container could lead to structural failure, which may have serious safety implications, including environmental disaster.
77. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order,

the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

78. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The handling of an unsafe container could lead to serious injury or death. The handling of an unsafe container could lead to serious injury or death.
79. Section 22 requires the master of a vessel to ensure that a container is not placed on another container on a vessel if it exceeds the allowable stacking load prescribed on the safety approval plate fixed to the container. A note at the end of the section requires the master of a vessel to consider the allowable stacking load for 1.8g indicated on the safety approval plate for a one door off operation. Subsection (1) imposes a criminal penalty.
80. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The unsafe handling of a container could lead to structural failure, which may have serious safety implications, including environmental disaster; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel.
81. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
82. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying containers, the safety of people on the vessel, and the safe carriage and stowage of containers. The allowable stacking load on a safety approval plate is set after considering the operation of containers, the forces as a result of the motion, location, stacking and gravitational effect of the loaded container and external forces not exceeding the design strength of the container. If the maximum load is exceeded at any time, the structure is likely to fail causing risk to safety and place a person in danger, which could lead to serious injury or death.
83. Section 23 sets out the powers of AMSA to give notice that requires a person to take proper precautions in specified circumstances.
84. Division 3 (Offshore containers) contains 8 provisions.
85. Section 24 provides a savings provision.
86. Section 25 provides transitional arrangements.
87. Section 26 provides that an organisation may apply to AMSA to be an approving competent authority in line with the application process set out in *Marine Order 1 (Administration) 2013*. AMSA may approve an organisation to be an approving competent authority if the criteria outlined in the Marine Order

are met. The criteria that an approving competent authority must meet includes technical standards for design and testing requirements set out in the *Guidelines for the approval of offshore containers handled in open seas*. The inspection standards that an organisation must meet is the requirements for type B inspection bodies in standard ISO/IEC 17020:2012 — *Conformity assessment – Requirements for the operation of various types of bodies performing inspection*, or equivalent standards. The decision of AMSA is a reviewable decision for *Marine Order 1 (Administration) 2013*. A note is included in this provision to advise potential applicants that further information, including the details of approving competent authorities, is available at the AMSA website at <http://www.amsa.gov.au>.

88. Section 27 provides an approval power for an approving competent authority to give approvals that comply with the requirements of the *Guidelines for the approval of offshore containers handled in open seas*. The approving competent authority may approve an offshore container that meets the standards outlined in the *Guidelines for the approval of offshore containers handled in open seas* or equivalent international standard. The decision of an approving competent authority to issue an approval is a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*. A list of the approving competent authorities and information on the application process to become an approving competent authority is available at the AMSA website at <http://www.amsa.gov.au>.
89. Section 28 provides that if an offshore container is approved by an approving competent authority, an approval plate must be fixed to the offshore container in accordance with the *Guidelines for the approval of offshore containers handled in open seas*. Subsection (1) imposes a criminal penalty.
90. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying cargo, the safety of people on the vessel, and the safe carriage and stowage of cargo, including offshore containers.
91. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
92. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the loading or unloading of an offshore container from a vessel unsafely and to prevent unlawful activity. It is important that the approval plate fixed to an offshore container complies with the *Guidelines for the approval of offshore containers handled in open seas* as it ensures that certain information, such as maximum operating gross mass and allowable stacking load, is easily visible to people loading, unloading, stowing and carrying the offshore container. If the approval plate is not fixed to the offshore container, it is impossible to determine whether it is approved and structurally safe for use. For example, the maximum operating gross mass is an important means by which to ensure that an offshore container is not overloaded with cargo. The overloading of an offshore container could lead to structural failure, which may have serious safety implications, including environmental

disaster. The handling of an unsafe offshore container could lead to serious injury or death, particularly because offshore containers often contain dangerous goods.

93. Section 29 provides for the maintenance and inspection of offshore containers. Subsection (2) requires an owner to ensure that an offshore container is periodically inspected and imposes a criminal penalty if the offshore container is not periodically inspected by an approving competent authority. Subsection (3) provides for the frequency of inspections and subsection (4) requires the inspection date to be marked on the offshore container.
94. Subsection (5) provides that an offence against subsection (2) is a strict liability offence, and subsection (6) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying offshore containers, the safety of people on the vessel, and the safe carriage and stowage of offshore containers.
95. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.
96. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to deter the loading or unloading of an offshore container from a vessel unsafely. The requirement to maintain an offshore container and have an offshore container periodically inspected is an important means by which to ensure that an offshore container is maintained in a safe condition for repeated use. The maintenance process eliminates any defects that could place any person in danger. Periodic inspection determines whether the offshore container is safe and if it has any defects. An offshore container that is not maintained in a safe condition may have serious safety implications, including the handling of an unsafe offshore container, which could lead to serious injury or death. The handling of an unsafe offshore container could lead to serious injury or death, particularly because offshore containers often contain dangerous goods.
97. Section 30 prescribes that a person must not load an offshore container on to, or unload an offshore container from a vessel in particular circumstances. Subsection (1) imposes a criminal penalty.
98. Subsection (2) provides that an offence against subsection (1) is a strict liability offence, and subsection (3) imposes a civil penalty. Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. Criminal and civil penalties are necessary to ensure the safety of the vessel carrying offshore containers, the safety of people on the vessel, and the safe carriage and stowage of cargo, including offshore containers.
99. The penalty for an offence is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. At the time of making of this Marine Order,

the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

100. The imposition of strict liability, and a penalty of 50 penalty units, reflects the seriousness of the offence and is intended to ensure the safety of the vessel carrying offshore containers; the safety of people on the vessel; and the safe carriage and stowage of cargo; in particular, to prevent non-compliant containers from being loaded or unloaded from a vessel. The unsafe handling of an offshore container or offshore container that is overloaded with cargo and may include dangerous cargo, could lead to structural failure, which may have serious safety implications, including environmental disaster. The handling of an unsafe offshore container could lead to serious injury or death, particularly because offshore containers often contain dangerous goods.
101. Section 31 sets out the powers of AMSA to give notice that requires a person to take proper precautions in specified circumstances.

### **Statement of compatibility with human rights**

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

#### **Overview of the legislative instrument**

103. The purpose of this Marine Order is to put in place safety measures for the carriage, stowage, loading and unloading of containers, including offshore containers and cargo, on vessels. This Marine Order gives effect to the International Convention for Safe Containers (Container Convention) and to the *Guidelines for the approval of offshore containers handled in open seas* adopted by the International Maritime Organization and contained in the supplement to the International Maritime Dangerous Goods Code (IMDG Code).
104. This Marine Order repeals and replaces *Marine Order 44 (Safe containers) 2002*.

#### **Human rights implications**

##### ***Strict liability offences***

105. Careful consideration has been given as to whether applying strict liability to offences in this Marine Order significantly enhances the effectiveness of the Marine Order. The application of strict liability to certain offences has been carefully considered and is consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers.
106. Subsections 11(1), 12(1), 13(1), 15(1), 16(1), 16(3), 16(4), 17(1), 18(3), 18(4), 20(1), 21(1), 22(1), 28(1), 29(2) and 30(1) of this Marine Order create strict liability offences. 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 containers and offshore containers are kept safe. Containers and offshore containers require proper treatment before, during and after transport, including stringent lashing requirements and weight calculations, to cope with the environmental conditions at sea. The handling of an unsafe offshore container could lead to serious injury or death and offshore containers often contain dangerous goods.
107. The offences are aimed at the proper approval and maintenance of containers and offshore containers through adequate documentation and also the safe handling, stowage and carriage of containers and offshore containers. 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 and other ships are also at significant risk of harm if containers or offshore containers are lost overboard necessitating the immediate reporting of such events. Incidents posing a significant risk of harm to people also includes the unsafe loading or unloading of containers and offshore containers from a vessel.

108. 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.
109. A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies, which means that the conduct alone is sufficient to make the defendant culpable. There is a specific defence of mistake of fact for strict liability offences under section 23 of the *Criminal Code 2002*.
110. Strict liability offences typically arise in a regulatory context where for reasons such as public safety, the public interest in ensuring that regulatory schemes are complied with, requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The application of strict liability in relation to these particular offences is appropriate, noting that they are reasonable, necessary and proportionate in pursuit of a legitimate objective, as follows:
  - vessel owners and operators involved in international voyages must make sure vessels are compliant with International and Australian standards and regulations;
  - the penalties for the relevant offences do not include imprisonment or exceed 60 penalty units;
  - for these offences, strict liability is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct;
  - it is necessary to ensure the integrity of the regulatory regime in question;
  - there are legitimate grounds for penalising persons lacking fault, the person will be placed on notice to guard against the possibility of any contravention; and
  - there is general public support and acceptance for both the measure and the penalty.
111. Strict liability is imposed in respect of a limited number of offences for specific reasons. These reasons include ensuring that the safety of the crew on board a vessel and the public interest of ensuring that the regulatory scheme is observed where the sanction of criminal and civil penalties are justified. The offences also arise in a context where a defendant can reasonably be expected, because of the person's involvement in marine activities, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.
112. The objective of these offences is to ensure that the master of the vessel and owners of containers and offshore containers ensure that persons involved in loading, stowage, unloading and carriage of containers and offshore containers are kept safe. Containers and offshore containers require careful management during transport to ensure safety of the vessel and safe stowage and carriage of

the containers and offshore containers, which includes enforcing measures such as approvals, control and maintenance.

113. Strict liability is imposed for breaches in this Marine Order to ensure compliance with internationally recognised measures that are intended to create world-wide uniformity of rules for the transport of containers and offshore containers 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.
114. This Marine 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.
115. 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 containers and offshore containers and the protection of the marine environment.

#### Conclusion

116. AMSA considers that this Marine 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

117. This Marine 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*.