

Explanatory Statement

Marine Order 504 (Certificates of operation and operation requirements — national law) Amendment Order 2020

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 operation 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 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.
5. 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.
6. This Marine Order amends *Marine Order 504 (Certificates of operation and operation requirements — national law) 2018* (Marine Order 504), and is a legislative instrument for the *Legislation Act 2003*.

Purpose

7. This Marine Order (the amending Order) amends Marine Order 504 to strengthen and clarify the requirements for monitoring and counting passengers and for managing situations where a passenger is unaccounted for.

Overview

8. The amending Order makes new requirements for all vessels carrying passengers to include procedures in the Safety Management System (SMS) for monitoring and counting passengers. All vessels must also include an emergency procedure in the SMS for responding to a situation where a person is unaccounted for. In addition, a range of passenger vessels must include a procedure for counting passengers on embarkation and disembarkation. The passenger counts must be recorded in the vessel's logbook.
9. The amending Order also makes some minor drafting clarifications not related to passenger safety. These changes do not alter the intention of the affected provisions.

Consultation

10. A draft of the amending Order was placed on AMSA's website on 16 December 2019 for a nine week consultation period. The consultation process details were posted on social media. In addition, 83 stakeholders were emailed a copy of the draft amending Order and their comment invited. Stakeholders included the Domestic Commercial Vessel Industry Advisory Committee, the Fishing Industry Advisory Committee, the Maritime Agencies Forum, charter boat and tourism industry associations, other industry associations and state and territory government departments and agencies. There were 26 submissions received and these responses were taken into account in finalising the amending Order.

11. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the changes made by the Order have regulatory impacts of a minor nature and no regulation impact statement was required. The OBPR reference number is 21119.

Documents incorporated by reference

12. The amending Order incorporates by reference the following document:
- Part F1C of the National Standard for Commercial Vessels (NSCV)
13. Part F1C NSCV is specified in Marine Order 504 as incorporated as existing from time to time. This is in accordance with section 164 of the national law. This document is available for free from the AMSA website at: <http://www.amsa.gov.au>.

Commencement

14. This Order commenced on 31 May 2020.

Contents of this instrument

15. Section 1 sets out the name of the amending Order.
16. Section 2 provides for the commencement of the amending Order.
17. Section 3 provides that Schedule 1 amends Marine Order 504.

Schedule 1

18. Item 1 of Schedule 1 makes a minor editorial change to section 10 of Marine Order 504 to make it clear that certain documents must be included in an application for variation, suspension or revocation of a certificate of operation for a domestic commercial vessel. This change inserts a word that was inadvertently omitted when Marine Order 504 was made and is not directly related to passenger safety.
19. Item 2 makes a minor editorial change to a note in Schedule 1 of Marine Order 504 to correct a reference. The change corrects a typographical error and is not related to passenger safety.
20. Item 3 substitutes a new provision in subclause 6(6) of Schedule 1 of Marine Order 504 to ensure that the vessel owner's determination of appropriate crewing takes account of the number of persons to be carried on the vessel, arrangements for passenger monitoring, and the fact that the master of the vessel must be able to find out the number of passengers on board the vessel at any time.
21. Item 4 amends subclause 7(6) of Schedule 1 of Marine Order 504 to clarify that the requirement for including a safety induction for passengers applies to all vessels that carry passengers.
22. Item 5 inserts new paragraphs in subclause 7(6) of Schedule 1 of Marine Order 504 which covers what procedures for key onboard operations must be addressed in a SMS:
- new paragraph (ba) provides that the procedures for key onboard operations must include a means of effective passenger monitoring so that the master is able to find out the number of passengers on board the vessel at any time
 - new paragraph (bb) provides that procedures must include a passenger count on embarkation and disembarkation for vessels carrying up to 75 passengers operating in certain waters and for voyages between 30 minutes and 12 hours
 - new paragraph (bc) imposes an additional passenger count on vessels before departing the site of a water based activity. However, it provides that a count

is not required each time a passenger enters or leaves the water while at the site, or enters or leaves another vessel used in conjunction with the activity.

23. Item 6 inserts 3 notes at the end of subclause 7(6) of Schedule 1 of Marine Order 504, the first to give examples of passenger monitoring systems, the second to give examples of methods of passenger counts, the third to give examples of water based activities.
24. Item 7 makes a change to subclause 7(7) of Schedule 1 of Marine Order 504 to make it clear that it only applies to vessels to which NSCV Part F1C applies. This change is not directly related to passenger safety, and clarifies the intention of the provision.
25. Item 8 amends paragraph 8(3)(b) of Schedule 1 of Marine Order 504 to provide that the emergency plan for a vessel must include procedures to respond to a situation where a person is overboard or unaccountably missing.
26. Item 9 amends subclause 11(4) of Schedule 1 of Marine Order 504 to require details of all passenger counts to be recorded in the vessel's logbook. It also renumbers an existing item related to recording recreational operation of the vessel in the logbook
27. Item 10 repeals subclause 11(9) of Schedule 1 of Marine Order 504 which contains requirements for the master about headcounts and knowing the number of passengers on the vessel. These matters are dealt with in the amending Order in the changes outlined in item 5.

Statement of compatibility with human rights

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

Overview of the legislative instrument

29. This Marine Order (the amending Order) amends *Marine Order 504 (Certificates of operation and operation requirements — national law) Order 2018* which sets out the operational requirements for domestic commercial vessels. A certificate of operation must be held by a person who operates a domestic commercial vessel.

30. The amending Order makes new requirements for all vessels carrying passengers to include procedures in the vessel's Safety Management System (SMS) for monitoring and counting passengers. All vessels must also include an emergency procedure in the SMS for responding to a situation where a person is unaccounted for. In addition, for a range of passenger vessels a procedure must be included for counting passengers on embarkation and disembarkation. The passenger counts must be recorded in the vessel's logbook.

Human rights implications

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

Conclusion

32. AMSA considers that this Marine Order 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

33. 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*.