

Explanatory Statement

Marine Order 11 (Living and working conditions on vessels) Amendment Order 2021 (Order 2021/1)

Authority

1. The following provisions of the *Navigation Act 2012* (the Navigation Act) provide for this Order to be made.
2. Subsection 54(5) provides for regulations to prescribe matters about work agreements.
3. Section 59 provides that regulations may be made about the payment of wages to seafarers.
4. Paragraph 340(1)(i) provides that regulations may be made to give effect to the Maritime Labour Convention.
5. Subsection 339(1) provides that regulations may be made prescribing matters that are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Navigation Act.
6. Subsection 341(1) provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations.
7. Subsection 342(1) provides that AMSA may make orders about anything that may or must be made by the regulations.
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 Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. This Marine Order amends *Marine Order 11 (Living and working conditions on vessels) 2015* (Marine Order 11) to ensure that wage protections and repatriation entitlements that apply to seafarers on regulated Australian vessels continue to be consistent with the Maritime Labour Convention.

Overview

11. This Marine Order amends Marine Order 11 to give effect to changes to the Maritime Labour Convention that came into effect internationally on 26 December 2020. The changes relate to the circumstance when a seafarer is held captive on or off a vessel as a result of act or piracy or act of armed robbery against the vessel. The changes protect wages and repatriation entitlements. Other amendments are minor for clarification.

Consultation

12. A copy of the draft of this Marine Order was placed on the AMSA website for public comment for 4 weeks. Over 120 stakeholders including ship operating companies, seafarer representative organisations, classification societies, shipping industry peak bodies and interested government departments and agencies were invited to participate in the consultation process. No comments were received that addressed the scope or application of the changes being made.
13. The Office of Best Practice Regulation (OBPR) considers that 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

14. Parts of the following are incorporated by reference or mentioned in this document:

- Maritime Labour Convention
- Section 51 of the *Crimes Act 1914*
- exchange rate of the Reserve Bank of Australia
- *Marine Order 76 (Health — health medical fitness) 2017*.

15. The manner of incorporation of the Maritime Labour Convention is as in force from time to time (see definition section 14 of the Navigation Act). The Convention is a treaty and available for free on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

16. The mention of the *Crimes Act 1914* is subject to section 10 of the *Acts Interpretation Act 1901* and it is in force from time to time.

17. The mention of the Reserve Bank of Australia exchange rate is a reference to the exchange rate that is published daily available at www.rba.gov.au.

18. *Marine Order 76 (Health — health medical fitness) 2017* is adopted as in force from time to time because it is adopted by reference to its title 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*).

Commencement

19. This Marine Order commenced on 1 June 2021.

Contents of this instrument

20. Section 1 sets out the name of the Marine Order.

21. Section 2 provides for the commencement of the Marine Order.

22. Section 3 provides that Schedule 1 amends Marine Order 11.

23. Item 1 of Schedule 1 amends section 4 to add a definition of *act of armed robbery against vessels* and *act of piracy*.

24. Item 2 of Schedule 1 substitutes a note to make reference to the web address for the Federal Register of Legislation.

25. Item 3 of Schedule 1 adds a new requirement for the owner of a regulated Australian vessel so that obligations under section 27 (Wages) apply until the death or repatriation of a seafarer who is held captive on or off a vessel as a result of an act of piracy or act of armed robbery against vessels. This measure ensures payment of wages is not interrupted. It also makes clear that the expiry, termination or suspension of the work agreement during captivity is irrelevant to the continuation of the obligation to pay wages.

26. Item 3 also renumbers subsections which results in the substitution of the pre-existing offence provision for the section. There is a strict liability offence with a civil penalty also applying. The penalty for a strict liability offence cannot be more than 50 penalty units for an individual or 250 penalty units for a body corporate. The maximum civil penalty amounts are the same as the amounts for an offence. At the time of making of this Marine Order, the *Crimes Act 1914* provided that the monetary amount of a penalty unit was \$210.

27. Item 4 of Schedule 1 adds new paragraph (g) to subsection 31(1), with pre-existing paragraph (f) substituted for formatting reasons. Subsection (1) describes

the circumstance when a seafarer is entitled to repatriation at no cost. New paragraph (g) adds the circumstance of captivity as a result of an act of piracy or an act of armed robbery against vessels.

28. Item 5 of Schedule 1 makes an amendment to section 34 (Timeframe for claim) to make clear that the time limit imposed on a seafarer to make a claim for repatriation does not apply in the case of an act of piracy or an act of armed robbery against vessels.

29. Item 6 of Schedule 1 substitutes mention of the latest version of Marine Order 76.

30. Item 7 of Schedule 1 adds to the list of matters that must be included in the seafarer's work agreement for section 21 (Work agreements). In Schedule 3 (Seafarer's work agreement information), the entitlement to wages and other benefits in circumstances of captivity as a result piracy and armed robbery is added. Mention of the entitlement to repatriation is changed to make it clear that it includes repatriation following acts of piracy and armed robbery.

31. Item 8 of Schedule 1 corrects a cross-referencing error.

Statement of compatibility with human rights

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

Overview of the legislative instrument

33. This Marine Order is made under the *Navigation Act 2012* and amends Marine Order 11 to give effect to changes to the Maritime Labour Convention that comes into effect internationally on 26 December 2020. The changes clarify that the protections provided to seafarers for payment of wages and repatriation entitlements continue irrespective of a seafarer being held in captivity as a result of an act of piracy or an act of armed robbery against vessels.

34. Other amendments are minor for clarification including rearrangement of text to improve readability of provisions or for the elimination of unintended errors.

Human rights implications

35. The human rights implications for Marine Order 11 were identified when the instrument commenced on 1 May 2015. See explanatory statement for the Order as made (F2015L00609) that described its requirements and prescribed matters as being consistent with the right to work (International Covenant on Economic Social Cultural Rights), freedom of movement and freedom of expression (International Covenant on Civil Political Rights), minimum age for employment (Convention of Rights of the Child).

36. The amendments in this instrument do not change the impact on the relevant rights or freedoms (where engaged in the original instrument) including the right to decent work and working conditions that are just and favourable (Articles 6 and 7 of the ICESCR). The amendments allow AMSA to clarify protections for wage payments and repatriation entitlements.

37. Minor changes have been made to section 4 (two new definitions being *act of armed robbery against vessels* and *act of piracy*), section 27 (Wages), section 31 (Repatriation), section 34 (Timeframe for claim) and Schedule 3 (Seafarer's work agreement information) to give effect to the MLC amendments.

38. Changes to section 27 (Wages) also involved renumbering of subsections that resulted in the substitution of the pre-existing offences attached to that section. Section 27 currently imposes strict liability obliging owners of Australian regulated

vessels to pay wages in a manner consistent with the protections set out in the Maritime Labour Convention. The MLC provides for internationally recognised measures intended to create world-wide uniformity of rules for the health and well-being of seafarers who work in an isolated environment at sea. Seafarers are considered vulnerable as they are remote from shore assistance and face difficulties not experienced by other employees in striving for appropriate working conditions.

39. There is no change to the penalty for the offence which 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. A civil penalty for failure to comply with the offence also continues to be applied to section 27 (Wages). The civil penalty provision is authorised by paragraph 341(1)(b) of the Navigation Act. Having regard to the objectives of the civil penalty provision and the relatively low level of penalty (the same maximum amounts as for an offence), the civil penalty is not considered to be a criminal matter for human rights law.

40. A strict liability offence may engage and limit the presumption of innocence mentioned in Article 14 of the ICCPR. The civil penalty provision may engage the criminal process provisions under Articles 14 and 15 of the ICCPR. However, if any amendment in this instrument is considered to limit relevant human rights or freedoms as a result of the amendment to section 27 (Wages) that limit is reasonable, necessary and proportionate to ensure the protection of seafarers.

Conclusion

41. AMSA considers that this instrument is compatible with human rights and freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

42. 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*.