

Explanatory Statement

Marine Order 64 (Vessel traffic services) 2022 (Order 2022/3)

Authority

1. Section 213 of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for vessel traffic services.
2. 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.
3. Paragraph 340(1)(a) of the Navigation act provides that regulations may provide for giving effect to the International Convention for the Safety of Life at Sea (SOLAS).
4. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for contravening a provision of the regulations, including providing for the imposition of civil penalties.
5. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make Marine Orders for any matter in the Act for which provision must or may be made by regulations.
6. 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.
7. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

8. This Marine Order provides for vessel traffic services for Australia and gives effect to Regulation 12 of Chapter V of SOLAS.
9. Under Regulation 12, Australia must take account of guidelines developed by the International Maritime Organization (IMO) for vessel traffic services. The IMO's *Guidelines for Vessel Traffic Services* (the Guidelines) cover the operation of vessel traffic services under instruments of authority to be issued by the competent authority. AMSA is the competent authority for Australia.

Overview

10. The Marine Order makes provision for the authorisation of vessel traffic service (VTS) providers through the issue of instruments of authority. Provision is made for AMSA to audit VTS providers and those who apply to become VTS providers.
11. The Marine Order provides for the accreditation of registered training organisations as VTS training organisations through the issue of certificates of accreditation. Provision is made for AMSA to audit VTS training organisations and those who apply to become accredited as VTS training organisations.
12. The Marine Order prescribes matters for the Navigation Act about a master providing reports and information to a VTS provider and makes it an offence for a master of a vessel not to comply with an instruction from a VTS provider on the movement of the vessel.

Consultation

13. A draft of this Marine Order was placed on the AMSA website for public comment on 7 March 2022 for a consultation period of 4 weeks. 156 stakeholders including VTS providers, training organisations, port authorities, seafarer representative organisations, ship operators, shipping industry peak bodies,

classification societies and various government bodies were invited to comment on the draft Marine Order. 3 submissions were received. The comments related to overlapping of Commonwealth and State jurisdictions, clarification on instructions by VTS providers to masters, in-house recurrent training by VTS providers, renewal of certificates of accreditation for VTS training organisations and penalties. These comments were taken into account in the preparation of the final Marine Order.

14. 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 OBPR22-01745.

Documents incorporated by reference

15. This Marine Order incorporates by reference parts of the following documents:

- *IALA Standard S1010 Marine Aids to Navigation Planning and Service Requirements* (IALA Standard 1010)
- *IALA Standard S1040 Vessel Traffic Services* (IALA Standard 1040)
- *IALA Standard S1050 Training and Certification* (IALA Standard 1050)
- *IALA Standard S1070 Information Services* (IALA Standard 1070)
- *Marine Order 1 (Administration) 2013* (Marine Order 1)
- *Guidelines for Vessel Traffic Services* adopted by IMO Resolution A.1158(32) (the Guidelines)

16. IALA Standards S1010, S1040, S1050 and S1070 are incorporated as amended from time to time. These standards are available for download at no cost from the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) website at <http://www.iala-aism.org>. Information on obtaining access to the IALA standards is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

17. 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*), the manner of incorporation of Marine Order 1 is as in force from time to time because it is adopted by reference to its title in this Marine Order. Marine Order 1 can be accessed through the Marine Orders link on the AMSA website at: <http://www.amsa.gov.au> and is available for download at no cost from the Federal Register of Legislation through that link.

18. The Guidelines are available in IMO Resolution A.1158(32). They are adopted as amended from time to time. Information on obtaining access to IMO resolutions and circulars is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>, where AMSA provides information on how to navigate the IMO website to download documents. This resolution is available to download from the IMO website at no cost.

Commencement

19. This Marine Order commenced on 1 July 2022.

Contents of this instrument

20. Division 1 (Preliminary) contains 6 provisions that assist the operation, interpretation and administration of the Marine Order.

21. Section 1 sets out the name of the Order.

22. Section 1A provides for the commencement of the Order.
23. Section 1B provides that *Marine Order 64 (Vessel traffic services) 2013* is repealed.
24. Section 2 states the purpose of the Order, which is to provide for vessel traffic services in Australia and give effect to Regulation 12 of Chapter V of SOLAS.
25. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
26. Section 4 sets out definitions of terms used in the Order and provides that AMSA is the competent authority for the Guidelines.
27. Division 2 provides for the authorisation of VTS providers and contains 8 provisions.
28. Section 5 sets out the requirements for a person to apply for an instrument of authority to run a vessel traffic service. The application must be made in accordance with *Marine Order 1 (Administration) 2013* (Marine Order 1).
29. Section 6 sets out the criteria for AMSA to decide an application for the issue of an instrument of authority. Decisions are reviewable in accordance with the process for review of decisions set out in Marine Order 1.
30. Section 7 attaches conditions to the instrument of authority. These include the VTS provider operating in accordance with the Guidelines and in accordance with standards developed by IALA.
31. Section 8 sets out the information that must be included in an instrument of authority.
32. Section 9 provides for the commencement and expiration of an instrument of authority and further provides that an instrument of authority is not in effect while it is suspended. Section 9 requires a VTS provider to apply for a new instrument of authority 90 days before expiration of the existing one, in order to ensure continuity of service.
33. Section 10 sets up a process for instruments of authority to be amended by AMSA, either on its own initiative or on request by the VTS provider. Decisions about amendments to the instrument of authority are reviewable in accordance with the process for review of decisions set out in Marine Order 1.
34. Section 11 provides for suspension and cancellation of an instrument of authority. Decisions are made reviewable under Marine Order 1.
35. Section 12 provides for a VTS provider to apply to AMSA for approval to conduct recurrent training. A decision by AMSA not to approve is reviewable under Marine Order 1.
36. Division 3 contains one provision and is about the auditing of VTS providers and applicants for an instrument of authority.
37. Section 13 sets out the reasons why AMSA may conduct an audit and what the audit may review.
38. Division 4 contains 7 provisions and deals with the accreditation of vessel traffic services training organisations (VTS training organisations).
39. Section 14 provides that a person may apply for accreditation as a VTS training organisation and sets out requirements for the application.

40. Section 15 sets out the criteria for AMSA to issue a certificate of accreditation as a VTS training organisation. A decision not to accredit is reviewable under Marine Order 1.
41. Section 16 sets out the conditions attached to a certificate of accreditation.
42. Section 17 sets out the information that must be included in a certificate of accreditation.
43. Section 18 provides for the commencement and expiration of a certificate of accreditation.
44. Section 19 sets up a process for certificates of accreditation to be amended by AMSA, either on its own initiative or on request by the VTS training organisation. Decisions about amendments to a certificate of accreditation are reviewable in accordance with the process for review of decisions set out in Marine Order 1.
45. Section 20 provides for suspension and cancellation of certificates of accreditation. Decisions are made reviewable under Marine Order 1.
46. Division 5 contains one provision and is about the auditing of VTS training organisations and applicants for a certificate of accreditation.
47. Section 21 sets out the reasons why AMSA may conduct an audit and what the audit may review.
48. Division 6 contains one provision dealing with obligations for the master of a vessel.
49. Section 22 prescribes detail of reports and information that must be provided by the master of a vessel to a VTS provider about the vessel's identity or passage. The Navigation Act makes it an offence for a person not to provide reports or information required by the regulations.
50. Section 22 also makes the master of a vessel liable to an offence for not obeying instructions from a VTS provider about the movement of the vessel.
51. Division 7 contains 2 provisions dealing with transitional and savings matters.
52. Section 23 covers transitional arrangements.
53. Section 24 preserves instruments of authority and certificates of accreditation in effect on 30 June 2022.

Statement of compatibility with human rights

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

Overview of the legislative instrument

55. The purpose of this Marine Order is to provide for vessel traffic services for Australia and give effect to Regulation 12 of Chapter V of the International Convention for the Safety of Life at Sea (SOLAS) to which Australia is a party. Regulation 12 of SOLAS recognises the importance of navigational services in improving the safety and efficiency of vessel traffic and in protecting the environment. Vessel traffic services are even more important for areas such as the Great Barrier Reef.
56. The Marine Order makes provision for the authorisation of vessel traffic service providers (VTS providers) through the issue of instruments of authority. Provision is made for the Australian Maritime Safety Authority (AMSA) to audit VTS providers and those who apply to become VTS providers.

57. The Marine Order provides an application process for registered training organisations to seek accreditation as VTS training organisations. The role of VTS training organisations is to run training courses and certify personnel who work for VTS providers. Provision is made for AMSA to audit VTS training organisations and those who apply to become accredited as VTS training organisations.

58. The Marine Order prescribes matters for the *Navigation Act 2012* (the Navigation Act) about masters providing reports and information to a VTS provider and makes it an offence for a master of a vessel not to comply with an instruction from a VTS provider on the movement of the vessel.

Human rights implications

59. Subsection 22(2) of the Marine Order creates an offence to which strict liability applies. It also creates a civil penalty. Strict liability offences 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. This provision also engages the right to freedom of movement contained in Article 12 of the ICCPR.

60. The purpose of this provision is to enforce an instruction from a VTS provider about the movement of a vessel. The provision makes it an offence for the master of a vessel not to obey such an instruction. Masters of vessels are required under the Marine Order to give information relating to the identity, passage and location of the vessel. Masters of vessels work with VTS providers in areas that are subject to vessel traffic services to ensure safety of navigation and protection of the marine environment. Subsection 22(2) provides an offence in the situation that a master of a vessel chose not to obey an instruction from a VTS provider aimed at ensuring navigation safety, protection of life at sea or protection of the environment.

61. This provision provides a sanction aimed at preserving the integrity of the vessel traffic service system of guidance and direction. The purpose of vessel traffic services is to ensure the safety of navigation, protect life at sea and protect the marine environment. The system relies on the compliance and cooperation of vessel operators. In the occurrence of non-compliance, this offence provides security that the system can be enforced. Without that security, the purpose of the vessel traffic service is undermined.

62. Strict liability is imposed for this reason. The penalty is relatively low (50 penalty units) and within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. The provision is directed specifically at the master of a vessel and not members of the general community.

63. The civil penalty provision is directed at the master of the vessel rather than the community at large and is regulatory in nature. 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 (which are protective, preventative, disciplinary and regulatory in nature), and the relatively low level of penalty, the civil penalty should not be considered to be a criminal matter for human rights law.

64. Any restriction on the right of freedom of movement is directed specifically at the master of a vessel on a matter that could be of critical importance to maritime safety and is considered appropriate for achieving the aims of the system of vessel traffic services.

65. It is considered any limitation on human rights as a result of the imposition of strict liability, the creation of civil penalties and restriction of the right of movement is reasonable, necessary and proportionate in order for vessel traffic services to

achieve their purpose of ensuring safe navigation, safety of life at sea and protection of the marine environment.

Conclusion

66. AMSA considers that this instrument 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

67. 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*.