

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Infrastructure, Transport, Regional Development and Local Government**

*Marine Safety (Domestic Commercial Vessel) National Law Act 2012*

*Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022*

The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) supports a nationally consistent framework for Domestic Commercial Vessel safety. The Act establishes the Marine Safety (Domestic Commercial Vessel) National Law, in Schedule 1 to the Act, which sets out arrangements for ensuring the safe operation, design, construction and equipping of domestic commercial vessels.

Section 159 of the National Law provides for the Governor-General to make regulations required or permitted under the Act, or necessary and convenient to be prescribed for carrying out or giving effect to the Act. Section 150 of the National Law provides for regulations to set out fees payable to the National Regulator (the Australian Maritime Safety Authority (AMSA)).

Subsection 150(1) of the Act provides that AMSA may charge such fees as are prescribed by the relevant Regulations for activities carried out by AMSA under the Act. Paragraph 163(1)(c) of the Act clarifies that such fees may only be set out in Regulations and may not be set out in other legislative instruments, such as Marine Orders.

The purpose of the Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022 (the Regulation) is to provide for the continuation of cost recovery arrangements for services provided by AMSA when Marine Order 505 (Certificates of competency — national law) 2022 (the Marine Order) commences on 1 January 2023. The Regulation provides for recovering costs in relation to certificates of competency first established under the Marine Order, while continuing cost recovery arrangements for other services. It also provides for renewal fees to be charged rather than full fees where a person moves to a new certificate from phased-out certificate, in line with arrangements set out in the Marine Order.

The Marine Order establishes a nationally consistent and simplified qualifications framework for people working on domestic commercial vessels. The Marine Order provides for five new competency certificate types and phases out three existing competency certificate types, with the holders to move to new certificates as they come up for renewal.

It is estimated more than 15,000 certificates may be issued to individuals over the first five-year period after the commencement of the Marine Order.

All fees are commensurate with the expected cost to AMSA to provide each service.

There are no statutory preconditions that must be satisfied for the instrument to be lawfully made.

The Regulation does not include any decision-making powers.

AMSA undertook extensive consultation with stakeholders in developing the Marine Order, with two separate rounds of public consultations. The first round comprised of information sessions held across Australia between August and September 2019. The second-round occurred from September to November 2021 and sought feedback on key issues and proposals to address concerns identified during the first round of consultation.

To facilitate industry input, AMSA established an Industry Reference Group (IRG) to effectively work on a co-design of the revised qualifications framework. The IRG consisted of representatives from various industries, including ferry operators, sailing, tourism, charter vessel operators, fishing, pearling and aquaculture, construction and towage, and unions.

In addition to consultation undertaken in relation to the Marine Order, ASMA undertook public consultation to support the development of a Cost Recovery Implementation Statement and in relation to the development of the Regulation. Consultation included direct communication with stakeholders and a public call for submissions.

In accordance with the Australian Government Charging Framework and in consultation with the Department of Finance, AMSA will publish a Cost Recovery Implementation Statement before charges commence.

The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is OBPR22-03566

Details of the Regulation are set out in the [Attachment](#).

The Regulation commenced on 1 January 2023.

Fees set out in the Regulation apply in relation to applications and requests made on or after 1 January 2023.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised and declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Australian Maritime Safety Authority (AMSA) is the National Marine Safety Regulator, for domestic commercial vessels under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act).

The *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022* (the Regulation) amends the *Marine Safety (Domestic Commercial Vessel) National Law Regulations 2013* (the Principal Regulation) to update certain fees from 1 January 2023. These changes support the commencement of Marine Order 505 (Certificates of competency — national law) 2022 by establishing fee arrangements for new certificates of competency and providing for those moving to new certificates to be charged renewal fees. Subsection 150(1) of the Act provides that AMSA may charge such fees as are prescribed by the regulations for activities they carry out under the Act.

The purpose of the Regulation is to provide for the continuation of cost recovery arrangements for services provided by AMSA when Marine Order 505 (Certificates of competency — national law) 2022 (the Marine Order) commences on 1 January 2023.

#### **Human rights implications**

This Disallowable Legislative Instrument engages the right to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions, under article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Regulations also engage the right to work under article 6 of ICESCR.

*Article 7: the right to the enjoyment of just and favourable conditions of work*

Article 7(b) provides that State Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular, safe and healthy working conditions.

The Regulation engages and promote this right by contributing to safe working conditions on and around domestic commercial vessels. By stipulating fees which fund AMSA to deliver

safety services and certification to Australia's domestic commercial vessels industry, the Regulation promotes the right to safe working conditions.

The fees prescribed in the Regulation directly fund, and are commensurate with, the cost of processing these applications.

In this way they directly promote the article 7 human right to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions.

*Article 6: the right to work*

Article 6 provides that State Parties recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. Article 6 also provides that the steps taken by a State Party to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

The Regulation engages this right because it establishes fees for new certificates of competency and renewal fees for those moving to new certificates. It also continues the requirement for marine surveyors, domestic commercial vessel operators, and seafarers working on domestic vessels to pay fees related to safety certification, which are required for them to work without committing an offence.

On this basis, these fees potentially limit the right to work by requiring payment before marine surveyors, domestic commercial vessel operators and seafarers on domestic commercial vessels can legally work.

However, the limitations are permissible as they:

a) *pursue a legitimate objective*

Ensuring vessels, their operators, and the seafarers working aboard these vessels comply with Australian standards and laws is a key role of AMSA. Managing certificates of operation and survey for vessels, granting unique vessel identifiers, and managing certificates of competency for seafarers directly contributes to this role.

b) *have a rational connection to this objective*

These fees directly fund AMSA's delivery of specific safety services to individuals.

c) *are reasonable, necessary, and proportionate*

The fee amounts to be paid to AMSA are commensurate with existing fee levels and AMSA's expected service delivery costs, and have been set following public consultation. Fees are not expected to prevent individuals from accessing work.

## **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate, pursue a legitimate objective, and have a rational connection to this objective.

This instrument also promotes human rights as it supports the right to the enjoyment of just and favorable conditions of work, in particular, the right to safe and healthy working conditions.

## Attachment - Details of the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022*

### Section 1 – Name

This section provides that the title of the Regulation is the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022*.

### Section 2 – Commencement

This section provides that the Regulation to commenced on 1 January 2023, the date that Marine Order 505 (Certificates of competency — national law) 2022 commenced.

### Section 3 – Authority

This section provides for the Regulation to be made under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

### Section 4 – Schedules

This section provides that each instrument specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

### Schedule 1 – Amendments

#### ***Part 1 – Amendments***

This Part sets out amendments to the Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013

#### **Item [1] – Subsections 50B(1) to (3)**

This item repeals subsections 50B(1) to (3) and substitute for new subsections as set out in the Regulation.

Subsection (1) sets out a table describing the fees relating to certificates, including in relation to certificates of survey, certificates of operation, certificates of competency and conducting a final assessment for a certificate of competency. For fees set out in subsection (1) prior to amendment by the Regulation, fee levels reflect current charges, which are greater than those listed in the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* due

to indexation that has occurred in accordance with section 52. It should be noted Item 2 resets the indexation schedule to commence from 1 July 2023.

Subsection (2) lists the certificates prescribed in the Marine Order for which the fee is \$163 for the purposes of item 9 of the table (new certificates) and \$150 for the purposes of item 10 of the table (renewals). Fee levels reflect current charges, which are greater than those listed in the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* due to indexation that has occurred in accordance with section 52. It should be noted Item 2 resets the indexation schedule to commence from 1 July 2023.

Subsection (3) lists the certificates prescribed in the Marine Order for which the fee is \$282 for the purposes of item 9 of the table (new certificates) and \$238 for the purposes of item 10 of the table (renewals). Fee levels reflect current charges, which are greater than those listed in the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* due to indexation that has occurred in accordance with section 52. It should be noted Item 2 resets the indexation schedule to commence from 1 July 2023.

Subsection (3A) lists the certificates prescribed in the Marine Order for which Item 10A of the table sets the fee at \$150 for paragraph (3A)(a) and \$238 for paragraphs (3A)(b) and (c).

Paragraph (3A)(a) applies where the applicant holds a Mate < 80 m NC at the time of application and has applied for a Master <24 m NC. This provides for a renewal fee to be charged rather than a charge for a new certificate, where a person is transitioning from an old certificate (Mate < 80 m NC) to a new certificate (Master <24 m NC) in line with arrangements in the Marine Order.

Paragraph (3A)(b) applies where the applicant holds a Master <35 m NC at the time of application and has applied for a Master <45 m NC. This provides for a renewal fee to be charged rather than a charge for a new certificate, where a person is transitioning from an old certificate (Master <35 m NC) to a new certificate (Master <45 m NC) in line with arrangements in the Marine Order.

Paragraph (3A)(c) applies where the applicant holds a Master < 80 m NC at the time of application and has applied for a Master <100 m NC. This provides for a renewal fee to be charged rather than a charge for a new certificate, where a person is transitioning from an old certificate (Master < 80 m NC) to a new certificate (Master <100 m NC) in line with arrangements in the Marine Order.

Subsection (3B) provides that, for the purposes of subsection (3A), *Mate < 80 m NC*, *Master <35 m NC* and *Master < 80 m NC* have the same meaning as in Marine Order 505

(Certificates of competency — national law) 2013 as in force immediately before the commencement of Marine Order 505 (Certificates of competency — national law) 2022. The effect of this provision is that, for renewal fees to apply, a person would need to hold a valid certificate issued in accordance with the *Marine Order 505 (Certificates of competency — national law) 2013* (the previous Marine Order) at the point where it is superseded by the *Marine Order 505 (Certificates of competency — national law) 2022*. This avoids the risk of providing for other certificates to be valid, such as those that had expired before 1 January 2023.

### **Item [2] - Before subsection 52(1)**

This Item inserts a new subsection before 52(1) and sets out indexation arrangements for dollar amounts set out in the amended table at subsection 50B(1).

Subsection (1A) provides for indexation and applies to the dollar amounts specified in the table in subsection 50B(1).

Subsection (1B) provides that on 1 July 2023 and each subsequent 1 July each indexed amount is replaced by an amount worked out using a formula where the indexation factor for the indexation day is multiplied by the indexed amount immediately beforehand. This applies where the indexation factor for an indexation day is greater than 1. Subsection 52(3) sets out the meaning of *indexation factor*.

### **Item [3] - Paragraph 52(1)(e)**

This item omits ‘50B(1)’ from paragraph 52(1)(e), which is consequential to the amendments proposed in Item 2.

### **Item [4] - Subsection 52(3)**

This item omits “The” from subsection 52(3) and substitutes “For the purposes of subsections (1B) and (2), the”. This is consequential to the amendments proposed in Item 2.

### **Item [5] - Subsection 52(5)**

This item inserts “(1B) or after “subsection” in subsection 52(5), and is consequential to the amendments proposed in Item 2.

## ***Part 2 Application of amendments***

This Part adds a new Division at the end of the Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013, “Division 3—Application of amendments made by the Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022”, with a new section added “55 Application of amendments”.

Subsection 55 (1) relates to applications and requests, and provides that amendments made by the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022* apply in relation to applications and requests made on or after 1 January 2023.

Subsection 55(2) relates to annual indexation and provides that Section 52, as amended by the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022*, applies in relation to indexation days occurring on or after 1 July 2023.

Subsection 55(2) is intended to narrow the scope of indexation amendments to those fees directly related to the Marine Order. This subsection provides for the continuation of indexation arrangements for those provisions not related to the proposed amendments. These other fees are set out in subsection 50(1), subsection 50(2), the table in subsection 50(2A), section 50A, and the tables in subsections 50C(1) and 51(1) (the Other Fee Provisions).

Under subsection 55(2), the unamended Section 52 applies to indexation days up until 1 July 2023 and the amended provision thereafter. As the Other Fee Provisions are not amended by the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Regulation 2022*, their indexation arrangements remain unchanged.

For fees set out in the amended table at 50B(1), fee levels have been adjusted to reflect current charges, which are greater than those listed in the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* due to indexation that has occurred in accordance with section 52. The indexation arrangements at Item 2 reflect this updating of fee levels by commencing indexation from 1 July 2023 for fees in the amended table at 50B(1).