

Explanatory Statement

Marine Order 52 (Yachts and training vessels) 2022 (Order 2022/5)

Authority

1. Subsection 98(1) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for safety certificates.
2. Paragraph 98(3)(a) of the Navigation Act provides that the regulations may provide that particular classes of vessels must have safety certificates of specified kinds, either generally or in specified circumstances, including survey certificates.
3. Section 314 of the Navigation Act provides for regulations to be made prescribing matters for the application for certificates and, among other things, the criteria for issue, variation and revocation of certificates, the conditions on certificates and when certificates cease to be in force.
4. 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.
5. Subsection 341(1) provides that the regulations may provide for the imposition of penalties for a contravention of the regulations.
6. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
7. Subsection 342(4) provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter in a document as in force or existing at a particular time or from time to time.
8. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power 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. The Marine Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. The Marine Order provides for the survey, maintenance and certification of yachts and training vessels and adopts the Part A of the Red Ensign Group Yacht Code as modified for Australia by the Australian National Annex (the REG Yacht Code) for regulated Australian vessels that are yachts ≥ 24 m in length.

Overview

11. The Marine Order provides for safety certificates to be issued for regulated Australian vessels that are commercial yachts and training vessels.
12. The Marine Order uses an existing international framework of standards for yachts, the Red Ensign Group Yacht Code, which has been developed by the United Kingdom Maritime Coastguard Agency in conjunction with other Red Ensign Group administrations. A yacht is defined in the Marine Order as a vessel that is: for commercial use for sport or pleasure; does not carry cargo; and does not carry more than 12 passengers.
13. Under the Marine Order, a yacht ≥ 24 m in length must have a certificate of compliance (large yacht). To be issued this certificate, a large yacht and its equipment must comply with the REG Yacht Code. Yachts and training vessels less than 500 GT must have a certificate of survey for a yacht or training vessel.

14. The Marine Order replaces *Marine Order 52 (Yachts and training vessels) 2016* following a review of that Marine Order.

Consultation

15. A copy of the draft of the Marine Order was placed on AMSA's website for an 8 week period of public consultation closing on 9 October 2022.

16. The draft Marine Order was also emailed to a targeted list of stakeholders including recognised organisations the yachting industry, seafarer representative organisations and relevant government agencies. Two comments were received relating to the application of the Marine Order and certificate process matters — these were considered when the Marine Order was finalised.

17. The Office of Best Practice Regulation (OBPR) was also consulted and confirmed that the Marine Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is OBPR22-02395.

Documents incorporated by reference

18. The following are incorporated by reference by the Marine Order:

- *Part A of the Red Ensign Group Yacht Code*, published by the Red Ensign Group in January 2019, as in force from time to time;
- the *Australian National Annex to Part A of the Red Ensign Group Yacht Code*, published by AMSA, as in force from time to time;
- some provisions of the International Convention for the Safety of Life at Sea (SOLAS) as in force from time to time;
- Marine Orders 1 and 31.

19. The Red Ensign Group Yacht Code is available at <http://www.redensigngroup.org>.

20. The Australian National Annex to Part A of the Red Ensign Group Yacht Code is available on the AMSA website at <http://www.amsa.gov.au>.

21. SOLAS, including any amendments, can be found in the Australian Treaties Series, accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. A link to the Australian Treaties Library is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. The Marine Orders link on the AMSA website also contains information on the purchase of SOLAS and its availability at libraries.

22. 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 Orders 1 and 31 is as in force from time to time because they are adopted by reference to their title in this Marine Order. These Marine Orders can be accessed through the marine orders link on the AMSA website at <http://www.amsa.gov.au>.

Commencement

23. The Marine Order commences on 1 January 2023.

Contents of this instrument

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

25. Section 1A provides for the commencement of the Marine Order.

26. Section 1B provides for the repeal of *Marine Order 52 (Yachts and training vessels) 2016*.

27. Section 2 states the purpose of the Marine Order.
28. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.
29. Section 4 sets out definitions of terms used in the Marine Order.
30. Section 5 describes the application of the Marine Order to certain kinds of regulated Australian vessels and foreign vessels.
31. Section 6 sets out an equivalent power that may be exercised by AMSA.
32. Section 7 requires a regulated Australian vessel that is a yacht ≥ 24 m in length to have a safety certificate known as Certificate of Compliance (large yacht).
33. Section 8 applies Division 3 of Marine Order 1 to applications for the certificate. The division sets out some general rules about the making of applications.
34. Section 9 prescribes the criteria for which an issuing body is to be satisfied has been met for the issue of the certificate. A decision to refuse to issue a certificate is made reviewable by subsection 313(1) of the Navigation Act.
35. Section 10 prescribes the conditions to which the certificate is subject.
36. Section 11 provides for endorsements on the certificate.
37. Section 12 provides for the duration of the certificate.
38. Section 13 prescribes the criteria for which an issuing body is to be satisfied has been met for the variation of the certificate. A decision to vary a certificate is made reviewable by subsection 313(1) of the Navigation Act.
39. Section 14 prescribes the criteria for which an issuing body is to be satisfied has been met for the revocation of the certificate. A decision to revoke a certificate is made reviewable by subsection 313(1) of the Navigation Act.
40. Section 15 requires a regulated Australian vessel that is a yacht or training vessel and also < 500 GT to have a safety certificate known as Certificate of Survey for a Yacht or Training Vessel.
41. Section 16 applies Division 3 of Marine Order 1 to applications for the certificate. This division sets out some general rules about the making of applications.
42. Section 17 prescribes the criteria for which an issuing body is to be satisfied has been met for the issue of the certificate. A decision to refuse to issue a certificate is made reviewable by subsection 313(1) of the Navigation Act.
43. Section 18 prescribes the conditions to which the certificate is subject.
44. Section 19 provides for endorsements on the certificate.
45. Section 20 provides for the duration of the certificate.
46. Section 21 prescribes the criteria for which an issuing body is to be satisfied has been met for the variation of the certificate. A decision to vary a certificate is made reviewable by subsection 313(1) of the Navigation Act.
47. Section 22 prescribes the criteria for which an issuing body is satisfied has been to be met for the revocation of the certificate. A decision to revoke a certificate is made reviewable by subsection 313(1) of the Navigation Act.
48. Section 23 sets out the certification matters for foreign vessels. It is an offence under sections 106 and 107 of the Navigation Act if a foreign vessel is taken to sea without a certificate of a specified kind in force for the vessel.

49. Section 24 requires the owner to arrange proper instruction and adequate supervision for trainees. While the master is in charge of the vessel, the owner is responsible for the nature of the vessel's operations. 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 \$222.

Statement of compatibility with human rights

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

Overview of this instrument

51. The Marine Order provides for the survey, maintenance and certification of regulated Australian vessels that are yachts and training vessels. It also sets out the certification requirements for foreign yachts and training vessels that are in Australian ports. The Marine Order adopts an international standard, known as Part A of the Red Ensign Group Yacht Code, for yachts ≥ 24 m in length.

52. Section 24 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). The civil penalty provision may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

53. Strict liability is imposed to ensure the proper supervision of trainees who must be medically fit to safeguard their safety at sea. The proper supervision of trainees capable of working in a remote environment not only ensures their personal safety during learning tasks but also the safe navigation of the vessel. Personnel must be available on board to supervise trainees to avoid impacting on the manning needed for, and engaged for the purpose of, the safe operation of the vessel. Strict liability is necessary to achieve the policy objective of vessel safety and preventing an owner devolving liability to others including the master.

54. The penalty provisions are authorised by paragraphs 341(1)(a) and (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 should not be considered to be criminal matter for human rights law.

55. It is considered any limitation on human rights as a result of the creation of the offence that is strict liability and the creation of the civil penalty is reasonable, necessary and proportionate to ensure safety of navigation and the safety of persons on board the vessel.

Conclusion

56. 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 of this instrument

57. The 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*.