

Explanatory Statement

Marine Order 504 (Certificates of operation and operation requirements — national law) Amendment Order 2023 (Order 2023/2)

Authority

1. The Marine Safety (Domestic Commercial Vessel) National Law (the national law), set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, provides for this Marine 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 update operational crewing requirements and require that risk assessments and written procedures address lifejacket wear.

Overview

8. The amending Order redrafts and clarifies the operational safety requirements for the determination of appropriate crewing. It requires the owner of a vessel to determine appropriate crewing and ensure that the vessel operates with the determined appropriate crewing. It lists the matters that must be taken into account by the owner when determining appropriate crewing.
9. The amending Order also contains a new table describing minimum crewing, which is the minimum standard for a determination of appropriate crewing. The minimum crewing standard cannot be used in cases where inadequate provision is made for the master and crew to obtain sufficient rest.
10. The process for gaining a determination of appropriate crewing for larger vessels is outlined. These vessels must apply to AMSA for an appropriate crewing determination, in contrast to the owner making the determination.
11. The amending Order introduces some requirements relating to lifejacket wear. The risk assessment for the vessel's operation must take account of when a lifejacket is to be worn on board the vessel. Procedures for key onboard operations must include safety inductions for passengers on lifejacket wear and cover the wearing and management of lifejackets.

Consultation

12. A draft of the amending Order was placed on AMSA's website on 15 November 2022 for a 10 week consultation period. The consultation process

details were posted on social media. In addition, 7,200 stakeholders were emailed a link to the draft amending Order and their comment invited. Stakeholders included regional safety committees, the National Safety Committee, state and territory government departments and agencies including marine safety regulators, work health and safety regulators, a specially convened working group comprising independent operators, representative bodies of commercial vessel operators, fishing and tourism operators, and relevant unions. There were 46 submissions received covering a range of issues including fatigue management, onboard training and drill requirements and the minimum and appropriate crewing provisions. These responses were taken into account in finalising the amending Order.

13. The Office of Impact Analysis (OIA) was also consulted and considered that the changes made by the amending Order have regulatory impacts of a minor nature and no regulation impact statement was required. The OIA reference number is OBPR22-03639.

Documents incorporated by reference

14. The following documents or parts of them are incorporated by reference in the amending Order:

- Part A of the International Safety Management Code (ISM Code)
- *Marine Order 501 (Administration — national law) 2013* (Marine Order 501)
- *Marine Order 505 (Certificates of competency — national law) 2022* (Marine Order 505)

15. The ISM Code is defined in Marine Order 504 by reference to its definition in Regulation 1 of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) done at London on 1 November 1974, as amended and in force for Australia from time to time. Regulation 1 of SOLAS defines the ISM Code as ‘the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the organization by resolution A.741(18), as may be amended by the Organization, provided that such amendments brought into force and take effect in accordance with the provisions of article VIII of the present Convention concerning the amendment procedures applicable to the Annex other than chapter 1.

16. The ISM Code is therefore incorporated as in force or existing from time to time. This is in accordance with section 164 of the national law. IMO Resolutions are available to download from the IMO website at no cost. A link to IMO resolutions is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. 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.

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*), Marine Orders 501 and 505 are adopted as in force from time to time because they are adopted in the amending Order by reference to their title. These Marine Orders can be accessed through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au> and are available for free download from the Federal Register of Legislation through links from AMSA’s website.

Commencement

18. This Marine Order commenced on 1 August 2023.

Contents of this instrument

19. Section 1 sets out the name of the amending Order.
20. Section 2 provides for the commencement of the amending Order.
21. Section 3 provides that Schedule 1 amends Marine Order 504.

Schedule 1

22. Item 1 amends section 4 of Marine Order 504 to require that a vessel's safety management system is kept not only on the vessel, but also onshore with shore based personnel.
23. Item 2 amends section 4 of Marine Order 504. Previously this provision provided that a safety management system complied with Marine Order 504 if it complied with Part A of the ISM Code. This amendment requires compliance with additional provisions of Schedule 1 as well as Part A of the ISM Code, as a means of establishing compliance with Marine Order 504.
24. Item 3 removes an unnecessary note.
25. Item 4 amends section 5 of Marine Order 504. This amendment requires compliance with additional provisions of Schedule 1 as well as Part A of the ISM Code, as a means of establishing compliance with Marine Order 504.
26. Item 5 substitutes paragraph 7(1)(b) of Marine Order 504. By cross-referencing to section 5 it clarifies that the condition on the certificate requires continued compliance with applicable requirements of Schedules 1 and 2 and continued compliance with the ISM Code, if applicable. In particular, the change clarifies that, for Class 4 vessels, compliance with Part A of the ISM Code is not an alternative to complying with Schedules 1 and 2.
27. Item 6 removes an unnecessary note.
28. Item 7 inserts 2 new definitions into section 15 of Marine Order 504 which is the definition section for the Marine Order.
29. Item 8 corrects some references and a note.
30. Item 9 inserts a new subclause into clause 1 of Schedule 1 of Marine Order 504. The new subclause requires that the information about vessel and contact details must be kept both on board the vessel if practical to do so, and onshore.
31. Item 10 inserts new paragraphs into subclause 2(2) of Schedule 1 of Marine Order 504. The new paragraphs require that a risk assessment be prepared in consultation with the master and crew of the vessel and that the risk assessment is readily accessible to the master and crew and given on request to enforcement personnel.
32. Item 11 makes a change to subclause 2(3) by adding a new paragraph into subclause 2(3) to ensure that the risk assessment identifies when a lifejacket must be worn by any person on board.
33. Item 12 updates examples in the note for paragraph 2(3)(b).
34. Item 13 amends clause 4 of Schedule 1 of Marine Order 504 to ensure that the person designated for monitoring and safety issues and ensuring support for the vessel has access to the highest levels of the entity responsible for the operation, and is contactable by master and crew.

35. Item 14 substitutes 5 new clauses for clause 6 of Schedule 1 of Marine Order 504. New clause 6 sets up the responsibility of the owner of the vessel to determine appropriate crewing for the vessel and lists the matters that must be considered in that determination process. The owner must ensure that the vessel operates with the appropriate crewing.
36. New clause 6A inserted into Schedule 1 of Marine Order 504 provides that the determination of appropriate crewing must be no less than the numbers set out in the table in the clause. However, the table does not apply to some vessels for which other requirements are mentioned.
37. New clause 6B sets out the process for obtaining a temporary crewing permit. New clause 6C sets out the process for obtaining an appropriate crewing determination from AMSA for larger vessels. These vessels are excluded from the requirement in new clause 6 for the owner to determine appropriate crewing.
38. New clause 6D imposes on the vessel owner an obligation to ensure training and onboard induction are delivered to the master and crew. The clause covers matters that must be covered, the conduct of emergency drills, and records of training and drills that must be kept.
39. New clause 6E requires the owner to ensure the vessel to operate with a person qualified to give first aid and to a person with radio communications qualifications.
40. Item 15 inserts new paragraphs in subclause 7(6) of Schedule 1 of Marine Order 504 to require that the procedures developed for key onboard operations must include induction for passengers on the wearing of lifejackets and must take account of life jacket wear in accordance with the vessel's risk assessment. The procedures must also cover the ready availability of lifejackets.
41. Item 16 updates note numbering to take account of the additional paragraph added to subclause 7(6).
42. Item 17 corrects a cross-reference.
43. Item 18 updates a reference following the making of *Marine Order 505 (Certificates of competency — national law) 2022*.
44. Item 19 amends the note at the top of Schedule 2 of Marine Order 504 to reflect the changes made to paragraph 7(1)(b) on the conditions attaching to the certificate of operation. The note reflects the change made to paragraph 7(1)(b) to clarify that Class 4 vessels must comply with Schedule 2, and the provisions in Schedule 1 that apply to Class 4 vessels. Complying with Part A of the ISM Code is not an alternative means of compliance for Class 4 vessels.
45. Item 20 amends clause 5 of Schedule 2 of Marine Order 504 to set out the details of the first aid certificate that must be held by a tour leader of a Class 4 vessel.

Statement of compatibility with human rights

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

Overview of the legislative instrument

47. 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.

48. The amending Order redrafts and clarifies the operational safety requirements for the determination of appropriate crewing. It requires the owner of a vessel to determine appropriate crewing and ensure that the vessel operates with the determined appropriate crewing. It lists the matters that must be taken into account by the owner when determining appropriate crewing. These include some new matters such as the risk of fatigue on the master and the crew.

49. The amending Order also contains a new table describing minimum crewing, which is the minimum standard for a determination of appropriate crewing. The description of minimum crewing standard cannot be used in cases where inadequate provision is made for the master and crew to obtain sufficient rest.

50. The process for gaining a determination of appropriate crewing for larger vessels is outlined. These vessels must apply to the National Regulator for an appropriate crewing determination, in contrast to the owner making the determination.

51. The amending Order introduces some requirements relating to life jacket wear. The risk assessment for the vessel's operation must take account of when a lifejacket is to be worn on board the vessel. Procedures for key onboard operations must include safety inductions for passengers on lifejacket wear and cover the wearing and storage of lifejackets.

Human rights implications

52. 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

53. 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

54. 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*.